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

FORM 10-Q

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

For the quarterly period ended June 30, 2006

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

For the transition period from _____ to _____

Commission File Number 1-32375

Comstock Homebuilding Companies, Inc.

(Exact name of registrant as specified in its charter)

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

11465 Sunset Hills Road
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 o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one)

Large accelerated filer o Accelerated filer ☑ Non-accelerated filer o

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

As of August 8, 2006, 13,396,534 shares of the Class A common stock, par value $.01 per share, and 2,733,500 shares of Class B common stock, par value $0.01, of the Registrant were outstanding.

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

	June 30, 2006	December 31, 2005
ASSETS		
Cash and cash equivalents	$ 22,739	$ 42,167
Restricted cash	13,157	10,800
Receivables	2,528	6,365
Note receivable	—	1,250
Due from related parties	3,381	2,899
Real estate held for development and sale	476,534	263,802
Inventory not owned — variable interest entities	50,490	89,890
Property, plant and equipment	1,814	605
Investment in real estate partnerships	(88)	(35)
Deferred income tax	—	2,545
Other assets	12,033	11,031
TOTAL ASSETS	$ 582,588	$ 431,319
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	$ 50,810	$ 59,131
Due to related parties	39	40
Obligations related to inventory not owned	48,206	83,015
Notes payable	286,525	142,994
Junior subordinated debt	30,000	—
Notes payable—related parties	663	663
Deferred income tax	8,430	—
TOTAL LIABILITIES	424,673	285,843
Commitments and contingencies (Note 14)		
Minority interest	402	400
SHAREHOLDERS' EQUITY		
Class A common stock, $0.01 par value, 77,266,500 shares authorized, 14,120,222 and 11,532,442 issued and outstanding	141	115
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	146,620	126,461
Treasury Stock, at cost (258,400 Class A Common Stock)	(1,865)	—
Retained earnings	12,590	18,473
TOTAL SHAREHOLDERS' EQUITY	157,513	145,076
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 582,588	$ 431,319

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Revenues				
Sale of real estate—Homes	$ 50,351	$ 39,599	$ 86,716	$ 68,064
Other revenue	346	312	576	576
Total revenue	50,697	39,911	87,292	68,640
Expenses				
Cost of sales of real estate	41,295	29,658	68,456	47,249
Cost of sales of other	21	9	30	20
Impairments and write-offs	12,914	0	12,914	0
Selling, general and administrative	8,429	5,608	16,076	10,660
Operating (loss) income	(11,962)	4,636	(10,184)	10,711
Other (income) expense, net	(355)	(154)	(587)	(190)
(Loss) income before minority interest and equity in earnings of real estate partnerships	(11,607)	4,790	(9,597)	10,901
Minority interest	12	7	5	8
(Loss) income before equity in earnings of real estate partnerships	(11,619)	4,783	(9,602)	10,893
Equity in earnings of real estate partnerships	(26)	4	(53)	34
Total pre tax (loss) income	(11,645)	4,787	(9,655)	10,927
Income tax (benefit) provision	(4,522)	1,721	(3,771)	4,052
Net (loss) income	$ (7,123)	$ 3,066	$ (5,884)	$ 6,875
Basic earnings per share	$ (0.47)	$ 0.26	$ (0.41)	$ 0.59
Basic weighted average shares outstanding	15,034	11,831	14,511	11,727
Diluted earnings per share	$ (0.47)	$ 0.26	$ (0.41)	$ 0.58
Diluted weighted average shares outstanding	15,034	11,993	14,511	11,882

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)

	Six Months Ended June 30, 2006	2005
Cash flows from operating activities:		
Net (loss) income	$ (5,884)	$ 6,875
Adjustment to reconcile net (loss) income to net cash used in operating activities		
Amortization and depreciation	259	81
Write-down of land, deposits and pre-acquisition costs	12,914	—
Loss on disposal of assets	—	9
Minority interest	5	8
Equity in losses (earnings) of real estate partnerships	53	(34)
Amortization of stock compensation	1,546	1,086
Deferred income taxes	(4,769)	(328)
Changes in operating assets and liabilities:		
Restricted Cash	(2,357)	(5,836)
Receivables	5,620	(5,073)
Due from related parties	(482)	(203)
Real estate held for development and sale	(108,416)	(109,493)
Other assets	4,457	3,249
Accounts payable and accrued liabilities	(21,581)	9,120
Income tax payable	—	863
Due to related parties	(1)	(71)
Net cash used in operating activities	(118,636)	(99,747)
Cash flows from investing activities:		
Purchase of property, plant, and equipment	(1,236)	(121)
Distributions of capital from investments in real estate partnerships	—	60
Business acquisitions, net of cash acquired	(15,491)	—
Net cash used in investing activities	(16,727)	(61)
Cash flows from financing activities:		
Proceeds from notes payable	160,798	116,276
Proceeds from junior subordinated debt	30,000	—
Proceeds from related party notes payable	—	444
Payments on notes payable	(91,635)	(50,156)
Payments on related party notes payable	—	(8,125)
Contribution from minority shareholders	—	79
Distributions paid to minority shareholders	(3)	(2,409)
Distributions paid to shareholders	—	(6,309)
Proceeds from shares issued under employee stock purchase plan	78	36
Purchase of treasury stock	(1,864)	—
Net proceeds from equity offerings	18,561	52,810
Net cash provided by financing activities	115,935	102,646
Net (decrease) increase in cash and cash equivalents	(19,428)	2,838
Cash and cash equivalents, beginning of period	42,167	67,559
Cash and cash equivalents, end of period	$ 22,739	$ 70,397

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.

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 June 30, 2006 and for the three and six months ended June 30, 2006 and 2005 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, 2005 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.

The Company historically has experienced and expects to continue to experience variability in quarterly results. The consolidated statement of operations for the three and six months ended June 30, 2006 is not necessarily indicative of the results to be expected for the full year.

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., Raleigh, North Carolina, Charlotte, North Carolina, Myrtle Beach, South Carolina and Atlanta, Georgia markets. Our business was founded in 1985 by Christopher Clemente, our Chairman and Chief Executive Officer, as a residential land developer and home builder focused on land development and semi-custom homebuilding in the northern Virginia suburbs of Washington, D.C. In 1992, we repositioned ourselves as a finished-lot-option production home builder focused on moderately priced homes in areas where we could more readily purchase finished building lots through option contracts. In 1997, we entered the Raleigh, North Carolina market. In the late 1990s we began entitling and developing land once again and in the early 2000s we became active in development and construction of mixed-use and urban in-fill projects in the greater Washington, DC area. In all of our markets we focus on middle-market products for first time, early move-up and first move-down home buyers. In January 2006, we completed the acquisition of Parker Chandler Homes, Inc. and expanded into the Atlanta, Georgia, Charlotte, North Carolina and Myrtle Beach, South Carolina area. In May 2006, we completed the acquisition of Capitol Homes, Inc. which expanded our existing presence in Raleigh, North Carolina.

For purposes of identification and description, we are referred to as the "Predecessor" for the period prior to the IPO in December 2004, the Company for the period subsequent to the IPO, and "we," "us," and "our" for both periods.

2. RECENT ACCOUNTING PRONOUNCEMENTS

In June 2006, the FASB issued FASB Interpretation No. 48, "An Interpretation of FASB Statement No. 109," ("FIN 48") which clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." This Interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 reflects the benefit recognition approach, where a tax benefit is recognized when it is "more likely than not" to be sustained based on the technical merits of the position.

This Interpretation is effective for fiscal years beginning after December 15, 2006. The Company is evaluating the impact of FIN 48 on its consolidated financial statements.

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.

3. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

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

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

Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. The evaluation takes into consideration the current status of the property, various restrictions, carrying costs, costs of disposition and any other circumstances, which may affect fair value including management's plans for the property. Due to the large acreage of certain land holdings, disposition in the normal course of business is expected to extend over a number of years. A write-down to estimated fair value is recorded when the 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.

During the second quarter of 2006, the Company experienced continued significant slowdown in demand for homes at several of its projects. This slowdown in demand resulted in lower overall sales volume, reduction in selling prices, increases in concessions being offered to customers and extensions of estimated project completion dates. As a result, the Company evaluated each of its projects to determine if recorded carrying amounts were recoverable. This evaluation resulted in an aggregate impairment charge of $9,500 at seven projects throughout the Company's markets. The impairment charge was calculated using a discounted cash flow analysis model, which is dependent on several subjective factors, including the selection of an appropriate discount rate, estimated average selling prices and estimated sales and absorption rates. The estimates used by the Company are based on the best available information available at the time the estimates are made. Adverse changes to these estimates in future periods could result in additional material impairment amounts to be recorded.

In addition to the impairment charges, as a result of current market conditions, the Company wrote-off approximately $3.4 million related to deposits on option contacts, value assigned to option contracts and related feasibility costs.

(Amounts in thousands, except per share data)

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

	June 30, 2006	December 31, 2005
Land and land development costs	$250,436	$ 119,530
Cost of construction (including capitalized interest and real estate taxes)	226,098	144,272
	$476,534	$ 263,802

4. 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, Consolidation of Variable Interest Entities. 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 losses occur. The Company, therefore, examines the entities with which the Company enters into fixed price purchase agreements for possible consolidation by the Company under FIN 46-R. This requires the Company to compute expected losses and expected residual returns based on the probability of future cash flows as outlined in FIN 46-R. This calculation requires substantial management judgments and estimates. In addition, because the Company does not have any contractual or ownership interests in the entities with which it contracts to buy the land, the Company does not have the ability to compel these development entities to provide financial or other data to assist the Company in the performance of the primary beneficiary evaluation.

The Company has evaluated all of its fixed price purchase agreements and has determined that it is the primary beneficiary of some of those entities. As a result, at December 31, 2005, the Company has consolidated five entities in the accompanying consolidated balance sheets. The effect of the consolidation at December 31, 2005 was the inclusion of $89,890 in "Inventory not owned—variable interest entities" with a corresponding inclusion of $83,015 (net of land deposits paid of $6,875) to "Obligations related to inventory not owned." At June 30, 2006, the Company consolidated seven entities in the accompanying consolidated balance sheet. The effect of the consolidation at June 30, 2006 was the inclusion of $50,490 in "Inventory not owned—variable interest entities" with a corresponding inclusion of $48,206 (net of land deposits paid of $2,284) to "Obligations related to inventory not owned." Creditors, if any, of these variable interest entities have no recourse against the Company.

5. WARRANTY RESERVE

(Amounts in thousands, except per share data)

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. Because 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 six months ended June 30, 2006 and 2005:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Balance at beginning of period	$ 1,310	$ 954	$ 1,206	$ 916
Additions	514	153	814	309
Releases and/or charges incurred	(267)	(162)	(463)	(280)
Balance at end of period	$ 1,557	$ 945	$ 1,557	$ 945

6. CAPITALIZED INTEREST AND REAL ESTATE TAXES

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Total interest incurred	$ 6,844	$ 3,254	$ 11,612	$ 5,767
Beginning interest capitalized	15,562	$ 5,987	11,590	$ 4,524
Plus: Interest incurred on notes payable	6,824	2,993	11,572	5,096
Plus: Interest incurred on related party notes payable	20	188	40	269
Less: Interest expensed as a component of cost of sales	(1,567)	(1,159)	(2,363)	(1,880)
Ending interest capitalized	$ 20,839	$ 8,009	$ 20,839	$ 8,009

7. EARNINGS PER SHARE

The following weighted average shares and share equivalents, using the treasury stock method, are used to calculate basic and diluted earnings per share for the three and six months ended June 30, 2006 and 2005:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Basic earnings per share				
Net (loss) income	$ (7,123)	$ 3,066	$ (5,884)	$ 6,875
Basic weighted-average shares outstanding	15,034	11,831	14,511	11,727

(Amounts in thousands, except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Per share amounts	$ (0.47)	$ 0.26	$ (0.41)	$ 0.59
Dilutive earnings per share				
Net income	$ (7,123)	$ 3,066	$ (5,884)	$ 6,875
Basic weighted-average shares outstanding	15,034	11,831	14,511	11,727
Stock options and restricted stock grants	—	162	—	155
Dilutive weighted-average shares outstanding	15,034	11,993	14,511	11,882
Per share amounts	$ (0.47)	$ 0.26	$ (0.41)	$ 0.58

During the three and six months ended June 30, 2006, 92,279 and 92,209 shares where excluded from the diluted shares outstanding because inclusion would be anti-dilutive.

Comprehensive income

For the three and six months ended June 30, 2006 and 2005, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying combined consolidated financial statements.

8. INVESTMENT IN REAL ESTATE PARTNERSHIPS

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

On June 28, 2005 the Company received a capital call from North Shore in the amount of $719 so that North Shore may comply with certain debt repayments. Because the Company may be obligated to provide future financial support to cover certain debt repayments, the Company, is recording its share of losses incurred by North Shore in the accompanying financial statements in the amount of $(26), for the three months ended June 30, 2006 and 2005, respectively. The Company's share of losses were $(53) and $(26) for the six months ended June 30, 2006 and 2005, 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 and issued a notice of default under the acquisition and development loan at maturity on September 30, 2005. The Company then filed suit for collection of the loans against one of the individual guarantors under the loan on or about October 21, 2005 and initiated foreclosure proceedings on or about November 18, 2005. On or about December 22, 2005, the individual guarantor subject to the earlier suit filed a countersuit against two of the officers of the Company who were also individual guarantors under the acquisition and development loan. The Company has agreed to indemnify these officers. The Company, as manager of an affiliated entity, set and held a foreclosure sale on March 24, 2006 in which it was the highest bidder. However, transfer of title to the property has been delayed pending judicial resolution of a suit filed on March 24, 2006 by the non-affiliated 50% owner of North Shore. On June 30, 2006, the Company, on its own behalf and on behalf of affiliates, filed an additional lawsuit expanding the number of party defendants, demanding equitable relief and demanding $33,000 in damages. As of June 30, 2006, the Company carried the following amounts in its financial statements related to North Shore:

Investment in real estate partnerships	$ (88)
Development and construction loan receivable	$3,235

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. ACQUISITIONS

On January 19, 2006, the Company acquired all of the issued and outstanding capital stock of Parker Chandler Homes, Inc., a homebuilder in the Atlanta, Georgia metropolitan market, for a cash purchase price of $10,400 (including transaction costs) and the assumption of $63,800 in liabilities. The results of Parker Chandler Homes are included in the accompanying financial statements from the period January 19, 2006 to June 30, 2006. The Company accounted for this transaction in accordance with SFAS No. 141. “Business Combinations” Approximately $700 of the purchase price was allocated to intangibles with a weighted average life of 4.6 years. The intangibles are related to the Parker Chandler trade name, employment and non-compete agreements entered into with certain selling shareholders. The remainder of the purchase price was allocated to real estate held for development and sale and land option agreements. There was no goodwill recorded.

On May 5, 2006, the Company acquired all of the issued and outstanding capital stock of Capitol Homes, Inc., a homebuilder in North Carolina, for a cash purchase price of $7,500 (including transaction costs) and the assumption of $20,600 in liabilities. The results of Capitol Homes are included in the accompanying financial statements from the period May 5, 2006 to June 30, 2006. The Company accounted for this transaction in accordance with SFAS No. 141. “Business Combinations” Approximately $251 of the purchase price was allocated to intangibles with a weighted average life of 2.7 years. The intangibles are related to the Capitol Homes trade name, employment and non-compete agreements entered into with certain selling shareholders. The remainder of the purchase price was allocated to real estate held for development for sale and land option agreements. There was no goodwill recorded in connection with the initial purchase accounting. However, the Company may be obligated to pay an earn-out in the amount of $2,500 if certain profit margins are achieved over the course of a 3 year period. In the event, an earn-out amount becomes payable, it will be recorded as goodwill.

10. DEBT

On May 4, 2006, the Company closed on a privately placed 30-year, $30 million junior subordinated unsecured note offering with a five year fixed rate of 9.72% and a floating rate of Libor + 4.2% thereafter. Interest payments are due quarterly with principal due at the end of the 30 year term. The Company is required to maintain certain covenants which include the maintenance of minimum tangible net worth in the amount of $120,000, a leverage ratio not to exceed 3:1 and a fixed charge ratio not to be less than 2:1.

On May 26, 2006, the Company became a borrower pursuant to the Borrowing Base Revolving Credit Agreement between the Company and Wachovia Bank. Pursuant to the Borrowing Base Revolving Facility, the lender agreed to advance up to a maximum of $40 million at any given time under a senior secured revolving credit facility bearing interest equal to the 30 day LIBOR rate + 2.75%. The loan is secured by certain projects of the Company in North Carolina. As of June 30, 2006, the Company had drawn $11,600 under this facility. The Company is required to maintain certain covenants which include the maintenance of minimum tangible net worth in the amount of $125,000 increasing each year by 25% of income before taxes, EBITDA to debt service ratio equal to or greater than 2.5:1, a senior liabilities to tangible net worth ratio which is less than or equal to 2.5:1 and certain restrictions on the number of speculative homes the Company may have at any given time.

11. INCOME TAX

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

(Amounts in thousands, except per share data)

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.

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 June 30, 2006 and December 31, 2005 were as follows:

	June 30, 2006	December 31, 2005
Deferred tax assets:		
Inventory (1)	$ —	$2,245
Warranty	583	417
Deferred rent	40	27
Accrued expenses	64	73
Stock based compensation	1,363	790
	2,050	3,552
Less—valuation allowance	(569)	(840)
Net deferred tax assets	1,481	2,712
Deferred tax liabilities:		
Inventory (1)	$(9,756)	$ —
Investment in affiliates	(8)	(8)
Depreciation and amortization	(147)	(159)
Net deferred tax liabilities	(9,911)	(167)
Net deferred tax (liabilities) assets	$(8,430)	$2,545

(1) The increase in net deferred tax liabilities of $12,000 is related to deferred tax liabilities established as a result of the purchase accounting related to acquisition of Parker Chandler Homes, Inc., and Capitol Homes, Inc. in the amount of $15,000. This amount was offset by a deferred tax asset in the amount of $3,000 related to impairment charges recorded during the three months ended June 30, 2006

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

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

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

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

(Amounts in thousands, except per share data)

The following equity awards were outstanding at June 30, 2006:

Stock options	213,993
Restricted stock grants	947,860
Total outstanding equity awards	1,161,853

On June 30, 2006 the following amounts were available for issuance under the plan:

Shares available for issuance at January 1, 2006	1,050,231
Adjustments:	
Additional shares added to plan	337,757
Restricted stock grants — Issued	(690,160)
Shares issued under employee stock purchase plan	(7,512)
Restricted stock grants — Forfeitures	16,191
Shares available for issuance at June 30, 2006	706,507

At June 30, 2006 the Company had 213,993 options outstanding with a weighted average exercise price of $19.94. There was no stock option activity for the six months ended June 30, 2006 and there were no options which were fully vested as of June 30, 2006.

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

	Shares	Weighted average fair value at date of grant
Restricted shares outstanding at December 31, 2005	273,891	$16.46
Granted	690,160	11.84
Vested	—	—
Forfeited	(16,191)	15.43
Restricted shares outstanding at June 30, 2006	947,860	$13.11

As of June 30, 2006, there was $9,178 of total unrecognized compensation cost related to nonvested restricted stock issuances granted under the Plan. Of this cost, $6,178 is expected to be recognized over a weighted-average period of 3.75 years and $3,000 may vest over a 1.5 year period if certain performance and service conditions are met.

Total compensation expense for share based payment arrangements for the three months ended June 30, 2006 and 2005 was $1,006 and $561 respectively, of which $91 and $129 was capitalized to real estate held for development and sale. Total compensation expense for share based payment arrangements for the six months ended June 30, 2006 and 2005 was $1,542 and $1,097, respectively, of which $162 and $213 was capitalized to real estate held for development and sale.

The total deferred tax benefit related to stock compensation, recorded on the balance sheet as of June 30, 2006 and December 31, 2005 amounted to $1,363 and $790, respectively.

In accordance with SFAS 123(R), the Company is required to establish a deferred tax asset related to stock awards based on the fair value of the award at date of grant. At the time the award is vested, the realized tax benefit as a result of the fair value on date on grant will most likely be different as compared to the amount recorded on the financial statements, which will result excess tax benefits or unrealized tax benefits. SFAS 123(R) requires that excess tax benefits be recognized as an addition to capital surplus and that unrealized tax benefits be recognized as income tax expense unless there are excess tax benefits from previous equity awards to which it can be offset. Because the Company had no issuances of stock awards prior to adoption to SFAS 123(R), the Company does not have any eligible excess tax benefits that are available to offset future tax shortfalls.

The Company has approximately 143,764 stock grants which are expected to vest at December 31, 2006 with an average fair value at date of issuance of $16.08 per share. Based on the closing stock price of $5.67 at July 31,

2006, the Company's effective tax rate, and the assumption that our stock price at December 31, 2006 would equal that value, the Company would be required to take an additional charge to income tax expense in the amount of $583. Actual amount of charges will depend on the actual closing stock price at December 31, 2006.

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

13. PRIVATE PLACEMENT

On May 12, 2006 (the "Closing Date"), the Company completed a private placement (the "PIPE") to institutional and other accredited investors of 2,121,048 shares of Class A common stock and warrants exercisable into 636,316 shares of Class A common stock. The Company sold the securities for $9.43 per share for total proceeds of approximately $20.0 million and net proceeds of approximately $18.7 million. The per share price of $9.43 represented a premium of approximately 14.6% of the closing price of the Company's common stock on the date the purchase was completed. The net proceeds were used for general corporate purposes. The warrants issued in connection with the PIPE were five-year warrants exercisable at any time after November 10, 2006 with an exercise at a price of $11.32 per share.

In accordance with the terms of the PIPE, the Company was required to file with the Securities and Exchange Commission, within fifteen days from the Closing Date, a registration statement covering the common shares issued and issuable in the PIPE. The Company was also required to cause the registration statement to go effective within a predetermined amount of time as defined in the Registration Rights Agreement and to exert its "best efforts" to maintain the effectiveness of the registration. The Company is subject to liquidated damages of 2% per month of the aggregate investment made by the investor with a 10% cap, as to the total liquidated damages, if the Company fails to cause the registration statement to become effective. Upon the registration statement being declared effective, the Company could be subject to the foregoing liquidated damages if it fails to maintain the effectiveness of the registration statement. The Securities and Exchange Commission declared the registration statement effective on July 7, 2006.

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

14. STOCK REPURCHASE PROGRAM

In February 2006, the Company's Board of Directors authorized the Company to purchase up to one million shares of the Company's Class A common stock in the open market or in privately negotiated transactions. The authorization did not include a specified time period in which the shares repurchase would remain in effect. During the three months ended June 30, 2006, the Company repurchased an aggregate of 188,100 shares of Class A common stock for total of $1,187 or $6.31 per share. For six months ended June 30, 2006, the Company repurchased an aggregate of 258,400 shares of Class A common stock for a total of $1,865 or $7.22 per share.

15. COMMITMENTS AND CONTINGENCIES

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

(Amounts in thousands, except per share data)

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

On August 11, 2005, the Company was served with a motion to compel arbitration resulting from an allegation of a loan brokerage fee being owed for placement of a $147,000 project loan for the Potomac Yard project. The claim in the base amount of $2,000 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. 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 these 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.

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 June 30, 2006, the Company has outstanding $5,192 in letters of credit and $18,077 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 June 30, 2006 approximate:

Year Ended:	Amount
2006	$ 608
2007	1,231
2008	1,120
2009	903
2010	164
Thereafter	5

Operating lease rental expense aggregated $514 and $301, respectively, for six months ended June 30, 2006 and 2005.

16. 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 $4,000. The note, which had interest at 12% per annum, 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 a affiliate which the company manages as a non-member. The promissory note agreement allows the Company to borrow up to $10 million. The note, which had interest at 12% per annum, was paid in full during November 2005.

In April 2002 and January 2004, the Predecessor entered into lease agreements for approximately 7.7 and 8.8 square feet, respectively, for its corporate headquarters at 11465 Sunset Hills Road, Reston, Virginia from Comstock Partners, L.C., an affiliate of our Predecessor in which executive officers of the Company Christopher Clemente, Gregory Benson, and others are principals. Christopher Clemente owns a 45% interest, Gregory Benson owns a 5% interest, an entity which is owned or controlled by Christopher Clemente's father-in-law, Dwight Schar, owns a 45% interest, and an unrelated third party owns a 5% interest in Comstock Partners. For nine months ended September 30, 2004, total payments made under this lease agreement were $231. On September 30, 2004, the lease agreements were canceled and replaced with new leases for a total of 20.6 square feet with Comstock Asset Management, L.C., an entity wholly owned by Christopher Clemente. Total payments made under this lease agreement were $142 as of December 31, 2004. On August 1, 2005, the lease agreement was amended for an additional 8.4 square feet. For three months ended June 30, 2006 and 2005 total payments made under this lease agreement were $188 and $142, respectively. During six months ended June 30, 2006 and 2005 total payments were $373 and $277, 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 two of the Company's developments. The Company paid $2,000 and $1,900 to this construction company during the six months ended June 30, 2006 and 2005, respectively.

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

During 2003, the Predecessor entered into agreements with I-Connect, L.C., a company in which Investors Management, LLC, an entity wholly owned by Gregory Benson, holds a 25% interest, for information technology consulting services and the right to use certain customized enterprise software developed with input from the Company. The intellectual property rights associated with the software solution 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 June 30, 2006 and 2005, the Company paid $161and $155, respectively, to I-Connect. During the six months ended June 30, 2006 and 2005, the Company paid $256 and $260, respectively, to I-Connect.

In October 2004, the Predecessor entered into an agreement with Comstock Asset Management Inc. (CAM), where CAM assigned the Company first refusal rights to purchase a portion of their Loudoun Station Properties. In partial consideration for the performance in which the Company would provide management services for a fee of $20 a month. For the three months ended June 30, 2006 and 2005 the Company recorded $60 in revenue. At June 30, 2006 and 2005 the Company recorded a receivable for $0 and $60, respectively, from this entity. During six months ended June 30, 2006 and 2005 the Company recorded $120 in revenue and no outstanding receivable. In addition, the Company in November 2004, entered into an agreement with Comstock Asset Management to sell certain retail condominium units at Potomac Yard for a total purchase price of $14,500. In connection with this sale, the Company received a deposit of $8,000 upon execution of the agreement. The agreement was modified in 2005, which reduced the deposit amount to $6,000.

During the six months ended June 30, 2006 and 2005, the Company provided bookkeeping services to related party entities at no charge.

In August 2004, the Predecessor entered into a $2,400 promissory note agreement with Belmont Models I, L.C., an affiliate managed by Investors Management. The note bears an interest rate of 12%, which is payable monthly and matures in August 2006. In March 2004, 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. For the six months ended June 30, 2006 and year ended December 31, 2005 the Company owed $663. Accrued interest on this note totaled $7, $13 and $6, respectively, as of six months ended June 30, 2006 and 2005 and year ended December 31, 2005.

During six months ended June 30, 2006 and 2005, the Company entered into sales contracts to sell homes to certain employees of the Company. The Company, in order to attract, retain, and motivate employees maintains a home ownership benefit program. Under the home ownership benefits, an employee receives certain cost benefits provided by us when purchasing a home or having one built by us. Sales of homes to employees for investment purposes are conducted at market prices.

In May 2006, we purchased Capitol Homes in the Raleigh, North Carolina area formerly owned by Richard Weale (33.33%), Glenn Hartman (33.33%) and Pablo Reiter (33.33%). At the time of purchase, Capitol Homes had a contract to purchase approximately 112 single family lots at Massey Preserve from REX2 Development LLC. REX2 Development LLC was owned by certain selling shareholder of Capitol Homes, Inc. and other unrelated parties. Capitol Homes also had another contract to purchase approximately 88 single family lots in Cleveland Springs with REX Development LLC, owned at the time by certain selling shareholder of Capitol Homes, Inc. and other unrelated parties. In addition, the company bought 42.5 acres of raw land known as Massey Preserve in North Carolina. The land was purchased from Forestville Partners, LLC owned by the selling shareholders of Capitol Homes, Inc.

In September 2005, Comstock Foundation, Inc., was created. Comstock Foundation is a not-for-profit organization organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code and is an affiliate of the Company. The affairs of Comstock Foundation are managed by a five person board of directors with Christopher Clemente, Gregory Benson, Bruce Labovitz and Tracy Schar (employee of the Company and spouse of Christopher Clemente) being four of the five. The Company also provides bookkeeping services to Comstock Foundation. During the six months ended June 30, 2006 the Company donated $25 to Comstock Foundation.

17. SUBSEQUENT EVENTS

In July of 2006, the Company closed on twenty-four lots at Glen Ivy in Atlanta, Georgia for a purchase price of $1,726.

In July of 2006, the Company closed on thirty-four lots at Providence in Raleigh, North Carolina for a purchase price of $1,282.

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, 2005, appearing in our Annual Report on Form 10-K for the year then ended (the "2005 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., Raleigh, North Carolina and Atlanta, Georgia 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 Annual Report on Form 10-K for the year ended December 31, 2005. 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., Raleigh, North Carolina, Charlotte, North Carolina, Myrtle Beach, South Carolina and Atlanta, Georgia markets. Our business was founded in 1985 by Christopher Clemente, our Chairman and Chief Executive Officer, as a residential land developer and home builder focused on land development and semi-custom homebuilding in the northern Virginia suburbs of Washington, D.C. In 1992, we repositioned ourselves as a finished-lot-option production home builder focused on moderately priced homes in areas where we could more readily purchase finished building lots through option contracts. In 1997, we entered the Raleigh, North Carolina market. In the late 1990s we began entitling and developing land once again and in the early 2000s we became active in development and construction of mixed-use and urban in-fill projects in the greater Washington, DC area. In all of our markets we focus on middle-market products for first time, early move-up and first move-down home buyers. In January 2006, we completed the acquisition of Parker Chandler Homes, Inc. and expanded into the Atlanta, Georgia area. In May 2006, we completed the acquisition of Capitol Homes, Inc. which expanded our existing presence in Raleigh, North Carolina.

The following tables summarize certain information related to new orders, settlements, and backlog for the three and six month period ended June 30, 2006 and 2005:

	Three Months Ended June 30, 2006	2005	Six Months Ended June 30, 2006	2005
New orders	199	160	379	406
New order revenues	$ 55,992	$ 59,134	$115,211	$162,417
Average new order price	$ 281	$ 370	$ 304	$ 400
Settlements	165	123	277	201
Settlement revenue	$ 50,351	$ 39,599	$ 86,716	$ 68,064
Average settlement price	$ 305	$ 322	$ 313	$ 339
Backlog units	575	666	575	666
Backlog	$218,393	$268,579	$218,393	$268,579
Average backlog price	$ 380	$ 403	$ 380	$ 403

At June 30, 2006, we either owned or controlled under option agreements or non-binding letters of intent over 6,005 building lots including non-consolidating joint ventures in which we are the manager. We currently have communities under development in multiple counties throughout the markets we serve. The following chart summarizes certain information for our current and planned communities as of June 30, 2006:

		As of June 30, 2006					
Project	State	Estimated Units at Completion	Units Settled	Backlog(2)	Lots Owned Unsold	Lots under Option Agreement Unsold	Average New Order Revenue to Date
Status: Active (1)							
Allen Creek	GA	26	11	6	9	—	$211,183
Arcanum	GA	34	3	6	25	—	$401,254
Brentwood Estates	GA	32	8	5	3	16	$134,813
Falling Water	GA	23	2	6	15	—	$422,581
Gates of Luberon	GA	32	1	1	30	—	$392,000
Glenn Ivey	GA	104	—	8	33	63	$230,806
Highland Station	GA	105	1	27	77	—	$287,030
Maristone	GA	40	—	—	40	—	$ —
Senators Ridge	GA	88	8	7	45	28	$247,662
Traditions	GA	21	—	—	21	—	$ —
Sub-Total / Weighted Average (3):		505	34	66	298	107	$267,168
Emerald Farm	MD	84	74	—	10	—	$455,443
Sub-Total/Weighted Average:		84	74	—	10	—	$455,443
Allyn's Landing	NC	117	24	10	83	—	$221,043
Brookefield Station	NC	130	—	—	—	130	$ —
Carpenter Pointe	NC	5	—	—	5	—	$ —
Deerfield	NC	1	—	—	1	—	$ —
Haddon Hall	NC	90	—	—	90	—	$ —
Kelton at Preston	NC	56	33	2	21	—	$308,003
North Farms	NC	138	11	9	4	114	$179,145
Pine Hollow	NC	10	—	—	6	4	$ —
Providence-SF	NC	148	—	—	34	114	$ —
Riverbrooke	NC	66	11	6	49	—	$171,256
Strathaven	NC	6	—	1	4	1	$376,995
Wakefield Plantation	NC	77	35	6	36	—	$497,284
Wheatleigh Preserve	NC	28	—	10	18	—	$289,018
Sub-Total / Weighted Average:		872	114	44	351	363	$306,618
Carolina Waterway	SC	15	—	—	15	—	$ —
Sub-Total / Weighted Average:		15	—	—	15	—	$ —
Barrington Park	VA	148	—	12	136	—	$310,200
Beacon Park at Belmont Bay 8&9	VA	600	—	—	112	488	$ —
Blooms Mill Carriage	VA	91	90	—	1	—	$453,794
Carter Lake	VA	258	—	—	258	—	$ —
Commons at Bellemeade	VA	316	49	4	263	—	$218,039
Commons on Potomac Sq	VA	192	22	8	162	—	$255,593
Commons on Williams Sq	VA	180	88	3	89	—	$352,584
Countryside	VA	102	64	2	36	—	$287,308
Penderbrook	VA	424	223	5	196	—	$254,371
River Club at Belmont Bay 5	VA	84	76	1	7	—	$455,533

The Eclipse on Center Park	VA	465	—	413	52	—	$409,361
Woodlands at Round Hill	VA	46	23	2	21	—	$752,399
Sub-Total / Weighted Average:		2,906	635	450	1,333	488	$364,778
Total Active		**4,382**	**857**	**560**	**2,007**	**958**	**$356,139**
Status: Development							
East Capitol	DC	130	—	—	130	—	n/a
Sub-Total:		130	—	—	130	—	
Cedars Road	GA	109	—	—	—	109	n/a
Highland Avenue	GA	30	—	—	30	—	n/a
James Road	GA	49	—	—	49	—	n/a
Kelly Mill Road	GA	28	—	—	—	28	n/a
McGinnis Ferry SF	GA	48	—	—	—	48	n/a
Post Road	GA	59	—	—	59	—	n/a
Post Road II	GA	54	—	—	—	54	n/a
Settingdown Circle	GA	172	—	—	172	—	n/a
Shiloh Road	GA	61	—	—	61	—	n/a
Tribble Lakes	GA	200	—	—	200	—	n/a
Wyngate	GA	28	—	—	—	28	n/a
Sub-Total:		838	—	—	571	267	
Boyce Road	NC	33	—	—	—	33	n/a
Cleveland Springs	NC	88	—	—	—	88	n/a
Holland Road	NC	81	—	—	81	—	n/a
Lakeshore Hills	NC	34	—	—	—	34	n/a
Massey Preserve	NC	297	—	—	185	112	n/a
Providence-TH	NC	80	—	—	—	80	n/a
Stowe Road	NC	110	—	—	—	110	n/a
Sub-Total:		723	—	—	266	457	
Aldie Singles	VA	15	—	—	—	15	n/a
Blake Crossing	VA	130	—	—	130	—	n/a
Brandy Station	VA	350	—	—	—	350	n/a
Loudoun Station Condominiums	VA	484	—	—	—	484	n/a
Station View	VA	47	—	—	47	—	n/a
Sub-Total:		1,026	—	—	177	849	
Total Development		**2,717**	**—**	**—**	**1,144**	**1,573**	**n/a**
Total Active & Development		**7,099**	**857**	**560**	**3,151**	**2,531**	**$356,139**(4)
Status: Joint Venture							
North Shore Condominiums	NC	196	—	7	189	—	$286,361
North Shore Townhomes	NC	163	33	7	123	—	$239,107
Total Joint Venture		**359**	**33**	**14**	**312**	**—**	

(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 June 30, 2006.

(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” means the weighted average new order sale price

Results of Operations

Three and six months ended June 30, 2006 compared to three and six months ended June 30, 2005

Orders and Backlog

New orders for the three months ended June 30, 2006 decreased $3.1 million, or 5.2%, to $56.0 million on 199 homes, as compared to $59.1 million on 160 homes for the three months ended June 30, 2005. For the six months ended June 30, 2006, new orders decreased $47.2 million, or 29.1% to $115.2 million on 379 homes, as compared to $162.4 million on 406 homes for the six months ended June 30, 2005. This represents a 6.7% decrease in new home orders during the six months ended June 30, 2006, as compared to the six months ended June 30, 2005. The decrease in new orders is attributable to weaker market conditions in which we are experiencing reduced demand, the offering of increased price reductions and a general shift in product mix from higher priced single family and town homes to lower priced condominiums, single family, and town homes. The reduction also results from the Company's reduced inventory for sale at its Eclipse at Center Park (Potomac Yard) project during the six months ended June 30, 2006, as compared to the six months ended June 30, 2005. The Company's average sales price per new order for the three months ended June 30, 2006 decreased by $89,000 to $281,000, as compared to $370,000 for the same period in 2005. The average sales price per new order for the six months ended June 30, 2006 decreased $96,000 to $304,000, as compared to $400,000 for the six months ended June 30, 2005. Although total new order sales prices decreased for the three months ended June 30, 2005, total new order units increased as a result of the Company's recent acquisition of Parker Chandler Homes, Inc. and Capitol Homes, Inc.. Combined, the two acquisitions contributed 80 units in new orders, or $18.0 million for the three months ended June 30, 2006. For the six months ended June 30, 2006, the acquisitions contributed 148 units in new orders, or $36.5 million.

Our backlog at June 30, 2006 decreased $50.2 million, or 18.7%, to $218.4 million on 575 homes, as compared to our backlog at June 30, 2005 of $268.6 million on 666 homes. The decrease in backlog is primarily due to weaker market conditions and the shift in product mix from higher priced single family and town homes to lower priced condominiums (including condominium conversions), single family, and town homes. Our backlog at June 30, 2006 includes 413 units totaling $169.1 million at our Potomac Yard project.

Revenues

The number of homes delivered for the three months ended June 30, 2006 increased by 34.1% to 165 from 123 homes for the three months ended June 30, 2005. The number of homes delivered for the six months ended June 30, 2006, increased by 37.8% to 277 from 201 homes for the six months ended June 30, 2005.

Average revenue per home delivered decreased by approximately $17,000 to $305,000 for the three months ended June 30, 2006, as compared to $322,000 for the three months ended June 30, 2005. Average revenue per home delivered decreased by approximately $26,000 to $313,000 for the six months ended June 30, 2006, as compared to $339,000 for the six months ended June 30, 2005. The decrease in average revenue per home is due a shift in product mix from higher priced single family and town homes to lower priced condominiums (including condominium conversions), single family, and town homes. The reduction in average revenue per home is also attributable to a reduced geographic concentration within the Washington, DC metropolitan area.

Home building revenues increased by $10.8 million, or 27.3%, to $50.4 million for the three months ended June 30, 2006, as compared to $39.6 million for the three months ended June 30, 2005. Home building revenues increased by $18.6 million, or 27.3%, to $86.7 million for the six months ended June 30, 2006, as compared to $68.1 million for the six months ended June 30, 2005. The increase in deliveries and revenues for the three and six month ended June 30, 2006 is primarily attributable to increased settlements at Commons on the Potomac Square (Cascades) and Commons on Williams Square (Summerland) condominium projects, which had no settlements last year. These projects had deliveries of 43 and 54 units for the three and six months ended June 30, 2006, totaling $12.9 and $16.8 million respectively. Permitting issues the Company experienced during the six months ended June 30, 2005 also contributed to the higher revenues and deliveries during the six months ended June 30, 2006. Our recent acquisitions of Parker Chandler Homes, Inc. and Capitol Homes, Inc. attributed 35 and 56 combined deliveries for the three and six months ended June 30, 2006, with total revenues of $6.7 and $11.4 million, respectively.

Other Revenue

Other revenue for the three months ended June 30, 2006 decreased by $34,000 from the comparable period in 2005. For the six months ended June 30, 2006 and 2005 other revenue was $576,000. Other revenue for the three and six months ended June 30, 2006 and 2005 includes revenue associated with the Company's Settlement Title Services division, revenue from a mortgage marketing alliance and management fees received from Comstock Asset Management Inc. (as discussed in Note 15 to the accompanying notes to the financial statements).

Cost of sales

Cost of sales for the three months ended June 30, 2006 increased $11.6 million, or 39.1%, to $41.3 million, or 81.9% of homebuilding revenue, as compared to $29.7 million, or 75.0% of revenue, for the three months ended June 30, 2005. For the six months ended June 30, 2006 cost of sales increased $21.3 million, or 45.1% to $68.5 million, or 79.0% of revenue, as compared to $47.2 million or 69.3% of revenue for the six months ended June 30, 2005. The 7.2 and 9.6 percentage point increases in cost of sales as a percentage of revenue for the three and six months ended June 30, 2006, respectively, is the result of several factors including pricing concessions and increases in materials and labor costs. Due to weakening market conditions, we have also extended the sales cycle of many of our projects, which in turn has increased the cost per unit by increasing the amount real estate tax, interest and capitalized overhead. In addition, during the three and six months ended June 30, 2006, we have experienced increases in cost of sales, as a percentage of revenue, as a result of purchase price allocations to the carrying value of acquired real estate from our recent acquisition of Parker Chandler Homes, Inc. and Capitol Homes, Inc. Due to the factors stated above, the Company expects cost of sales as a percentage of revenue to continue to face additional upward pressure until general market conditions improve and new inventory is acquired.

Impairments and write-offs

As discussed in Note 2 in the accompanying notes to the financial statements, the Company, for the three months ended June 30, 2006, recorded an impairment charge of $9.5 million. The impairment charge include single family, town-homes, condominiums and condominium conversion projects located in the Company's Virginia, North Carolina and Atlanta markets. Based on current market conditions, the Company has estimated there are no other impairments warranted at this time. However, if market conditions continue to deteriorate, the Company will be required to re-evaluate the recoverability of its real estate held for development and sale and may incur additional impairment charges. The projects that would be most likely impaired if market conditions were to further deteriorate would be our condominium conversion projects. Although, it is difficult to estimate the exact amount of impairment, a 5% to 10% drop in average selling prices could lead to a future impairment charge of approximately $10 to $20 million.

In addition to the impairment charges, as a result of current market conditions, the Company wrote-off $3.4 million related to deposits on option contacts, value assigned to option contracts and related feasibility costs.

At June 30, 2006, the Company had approximately $5.5 million related to option deposits to purchase real estate of which $5.1 is not refundable. In addition the Company has approximately $2.6 million related to feasibility costs incurred on projects under option agreements or under feasibility study periods. The Company is in the process of re-negotiating certain remaining options contracts for price concessions and deferral of scheduled lot purchases. The Company could incur additional write-downs in the event the Company is not successful in renegotiating terms of existing option contracts.

Selling, general and administrative

Selling, general and administrative costs for the three months ended June 30, 2006 increased $2.8 million or 50.0% to $8.4 million, as compared to $5.6 million for the three months ended June 30, 2005. Selling, general and administrative expenses represented 16.6% of total revenue for the three months ended June 30, 2006, as compared to 14.0% for the three months ended June 30, 2005. This increase was the result of additional staffing and related costs of $552,000, media and other marketing related costs of $931,000, and the write-off of certain due diligence costs of $172,000 related to abandoned corporate transactions. In addition, our acquisition of both Parker Chandler

Homes and Capitol Homes increased our selling, general and administrative expenses by $991,000 and $254,000, respectively.

Selling, general and administrative costs for the six months ended June 30, 2006 increased $5.4 million or 50.5% to $16.1 million, as compared to $10.7 million, for the six months ended June 30, 2005. Selling, general and administrative expenses represented 18.4% of total revenue for the six months ended June 30, 2006, as compared to 15.6% for the six months ended June 30, 2005. This increase for the six months ended June 30, 2006 was the result of additional staffing and related costs of $1.0 million, media and other marketing related costs of $1.5 million, and the write-off of certain due diligence costs of $1.1 million related to abandoned corporate transactions. In addition, our acquisition of both Parker Chandler Homes and Capitol Homes increased our selling, general and administrative expenses by $1.6 million and $254,000, respectively.

Operating (loss) income

Operating income for the three months ended June 30, 2006 decreased by $16.6 million to a operating loss of ($12.0) million, as compared to $4.6 million for the three months ended June 30, 2005. Operating margin for the three months ended June 30, 2006, was (23.7%), as compared to 11.5% for the three months ended June 30, 2005. Operating income for the six months ended June 30, 2006 decreased by $20.9 million to an operating loss of ($10.2) million, as compared to $10.7 million for the six months ended June 30, 2005. Operating margin for the six months ended June 30, 2006, was (11.7%), as compared to 15.6% for the six months ended June 30, 2005. The 35.2 and 27.3 percentage point decrease in operating margin for the three and six months ended June 30, 2006 are attributable to lower gross profit margins, impairments and write-offs and the increases in selling, general and administrative expenses as discussed above.

Other (income) expense, net

Other (income) expense, net increased by $201,000 to net income of $355,000 for the three months ended June 30, 2006, as compared to $154,000 for the three months ended June 30, 2005. Other (income) expense, net increased by $397,000 to net income of $587,000 for the six months ended June 30, 2006, as compared to $190,000 for the six months ended June 30, 2005. The increase in other (income) expense is primarily attributable to reduced corporate interest expense as a result of the payoff of a note payable to certain founding shareholders resulting from the Company's restructuring concurrent with its initial public offering in December of 2004 and increased interest earned on the Company's cash balances generated as a result of the proceeds from the Company's recent stock and debt offerings.

Income taxes

For the three and six months ended June 30, 2006, the Company, due to net losses, recorded an income benefit of ($7.1) and ($5.8) million as compared to income tax expense of $3.1 and $6.8 million for the three months ended June 30, 2005.

As discussed in Note 12 in the accompanying notes to the financial statements, the company expects its effective tax rate to increase during the fourth quarter of 2006 as a result of non-realization of certain deferred tax assets related to employee stock compensation. The amount of the charge will be dependent on the Company's closing stock price on December 31, 2006, the date certain stock awards will vest

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 June 30, 2006, we had approximately $316.5 million of debt financing and $22.7 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 June 30, 2006, we had approximately $188.6 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 June 30, 2006, the one-month LIBOR and prime rates of interest were 5.33% and 8.25%, respectively, and the interest rates in effect under our existing secured revolving development and construction credit facilities ranged from 7.23% to 9.25%. 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. The Company is subject to certain financial covenants which require the Company to: (1) maintain a minimum tangible net worth, adjusted for certain items, in the amount of $65.0 million for fiscal year 2005, increasing by 50% of consolidated after tax net earnings for each year thereafter and (2) maintain an adjusted debt to adjusted tangible net worth (“leverage ratio”) below 2.25:1. In addition to the financial covenants mentioned above the Company had covenant limiting the amount of unsecured borrowings to $25.0 million in connection with a $15 million unsecured line of credit. However, the Company’s unsecured borrowings totaled $45.0 million as of June 30, 2006 through the combination of the $15 million unsecured line of credit and the $30 million junior subordinated notes. The Company received a covenant waiver from the lender of the $15 million facility. The Company was fully funded on the $15 million unsecured line of credit at June 30, 2006 with a maturity date of August 22, 2006.

On May 26, 2006, the Company entered into $40 million Secured Revolving Borrowing Base Credit Facility for the financing of entitled land, land under development, construction and letters of credit. All letters of credit issued will also be secured by collateral in the facility. Funding availability will be limited to compliance with a borrowing base and facility covenants. As of June 30, 2006, $11.6 million was outstanding with this facility and the Company was in compliance with the financial covenants set forth in the loan agreement.

On May 4, 2006, the Company closed on a $30 million Junior Subordinated Note Offering. The term of the note is thirty years and can be retired after five years with no penalty. The rate is fixed at 9.72% the first five years and Libor plus 420 basis points for the remaining twenty five years. As of June 30, 2006 we were in compliance with the financial covenants.

From time to time, we employ subordinated and unsecured credit facilities to supplement our capital resources or a particular project or group of projects. Our lenders under these credit facilities will typically charge interest rates that are substantially higher than those charged by the lenders under our senior and secured credit facilities. These credit facilities will vary with respect to terms and costs. As of June 30, 2006, the annual rate of interest on these facilities ranged from 7.2% to 16%. At June 30, 2006, we had approximately $75.1 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 used in operating activities was $118.6 million for the six months ended June 30, 2006, as compared to $99.7 million for the six months ended June 30, 2005. The $18.9 million increase is primarily the result of payments made related to accounts payable and accrued liabilities. The majority of the Company’s uses for cash are related to real estate held for development and sale. During the six months ended June 30, 2006, the Company purchased approximately $32.4 million of new real estate. The Company expects to make significant investment in

real estate over the foreseeable future.

Net cash used in investing activities was $16.7 million for the six months ended June 30, 2006, as compared to $61,000. The increase is due the Company's acquisition of Parker Chandler Homes, Inc. and Capitol Homes, Inc.

Net cash provided by financing activities was $115.9 million for the six months ended June 30, 2006 as compared to $102.6 million for the six months ended June 30, 2005. Net cash provided by financing for the six months ended June 30, 2006 included cash proceeds of $18.6 million related to a private placement, $30.0 million related to proceeds from the issuance of junior subordinated debt and $11.6 million related to a newly established credit facility with Wachovia bank. Net proceeds were offset by payments made on borrowings assumed in connection with our acquisition of Parker Chandler Homes, Inc. and Capitol Homes, Inc.

Recent Accounting Pronouncements

In June 2006, the FASB issued FASB Interpretation No. 48, "An Interpretation of FASB Statement No. 109," which clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." This Interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 reflects the benefit recognition approach, where a tax benefit is recognized when it is "more likely than not" to be sustained based on the technical merits of the position. This Interpretation is effective for fiscal years beginning after December 15, 2006. The Company is evaluating the impact of FIN No. 48 on its consolidated financial statements.

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.

Critical Accounting Policies and Estimates

There have been no significant changes to our critical accounting policies and estimates during the six months ended June 30, 2006 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, 2005.

Outlook

Our outlook is tempered with caution as conditions the markets we serve have become more challenging in recent months. A number of our markets have been affected by a build-up of new and resale home inventories. Higher interest rates and higher cancellation rates have adversely affected consumer demand for our homes, particularly in markets that have experienced rapid price appreciation or substantial investor activity, or both, in the past few years. As a result, our sales have been adversely affected during the three and six months ended June 30, 2006 as compared to the three and six months ended June 30, 2005. While we expect the current negative trends in the U.S. housing market to continue for the remainder of 2006 and, possibly, into 2007, we anticipate individual markets will normalize at different rates and over different periods of time. In the long run, we believe the underlying fundamentals of strong demographics and job growth continue to support favorable domestic housing demand.

Due to these fundamentals, expectations of an overall healthy U.S. economy and the recently expanded geographical diversity of our homebuilding operations, we remain optimistic about the long-term prospects for our business. In keeping with our current business model of focusing on our core region of the Southeastern United States, we expect that during the remainder of 2006 we will become more selective in the acquisition and retention of land. We also will remain focused on financial management, operational and purchasing efficiencies, cash flow generation and optimizing returns.

As previously announced, our board of directors authorized the repurchase of 1 million shares of common stock. During the first half of 2006, we repurchased 258,400 shares pursuant to this. We expect to continue to repurchase shares from time to time based on our assessment of market conditions and buying opportunities.

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 June 30, 2006, 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 $2.6 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.

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

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. In the normal course of its business, the Company and/or its subsidiaries are names as defendants in certain legal actions arising from its normal business activities. Management believes that none of these 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.

ITEM 1A. RISK FACTORS

There have been no material changes in our risk factors as previously disclosed in our Form 10-K for the year ended December 31, 2005 in response to Item 1A. to Part I of such Form 10-K, except as follows:

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

Home prices and sales activities in the Washington, D.C., Raleigh, North Carolina and Atlanta, Georgia geographic markets have a large impact on our profitability because we conduct substantially all of our business in these markets. Recently these markets have begun to exhibit signs of decreasing consumer demand, and as a result we are experiencing reduced traffic, weakening demand, higher cancellation rates and an over-supply of inventory, similar to what other homebuilders are experiencing. As a result of these economic conditions, we have offered, and may continue to offer, certain sales incentives. These economic conditions being experienced throughout the industry will likely continue to impact housing demand for the remainder of 2006 and into 2007. As a result of these conditions, we currently believe there may be a reduction in the number of new contracts compared to 2005 in most of our markets, and that gross margins on new contracts may be negatively impacted in all of our regions. This could adversely affect our results of operations and cash flows.

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

On May 12, 2006, we completed a private placement to certain accredited investors of an aggregate of 2,121,048 shares of our Class A common stock, at a purchase price of $9.43 per share, and warrants to purchase 636,316 shares of Class A common stock with an exercise price of $11.32 per share. We received net proceeds of approximately $18.6 million, which the Company will use for general corporate purposes, including working capital, and to fund new projects and acquisitions of assets and/or companies.

In connection with the private placement we were required to file with the Securities and Exchange Commission, within fifteen days from the closing date, a registration statement covering the resale of the Class A common shares issued and issuable in the offering. The Company was also required to cause the registration statement to go effective within a predetermined amount of time as defined in the Registration Rights Agreement and to exert its "best efforts" to maintain the effectiveness of the registration. The Company is subject to liquidated damages of two percent (2%) per month of the aggregate investment made by the investor with a 10% cap, as to the total liquidated damages, if the Company fails to cause the registration statement to become effective. Upon the registration statement being declared effective, the Company could be subject to the foregoing liquidated damages if it fails to maintain the effectiveness of the registration statement.

JPMorgan Securities, Inc. was the sole placement agent for this private placement and was paid an aggregate fee for acting as placement agents of cash equal to 6% of the proceeds from the sale of the common stock.

We believe that the issuance of the foregoing securities was exempt from registration under Section 4(2) of the Securities Act of 1933, as amended, as transactions not involving a public offering. Each of the recipients was an accredited investor, acquired the securities for investment purposes only and not with a view to distribution and had adequate information about us. The registration statement we filed covering the resale of the securities was declared effective by the Securities and Exchange Commission on July 7, 2006.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

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

The 2006 Annual Meeting of Stockholders of the Company was held on June 1, 2006, at which the following matters set forth in the Company's Proxy Statement dated April 14, 2006, which was filed with the Securities and Exchange Commission pursuant to Regulation 14A under the Securities Exchange Act of 1934, were voted upon with the results indicated below. All numbers reported are shares of the Company's common stock.

1. The nominees listed below were elected directors with the respective votes set forth opposite their names:

Nominee	For	Authority Withheld
Mr. Gregory V. Benson	9,778,018	1,883,118
Mr. Norman D. Chirite	11,507,491	153,645
Mr. Socrates Verses	11,507,091	153,045

Messrs. Benson, Chirite and Verses has been elected for a three-year term expiring in 2009. Christopher Clemente and A. Clayton Perfall are in the class of directors whose terms will expire in 2007 and David M. Guernsey, James A. MacCutcheon and Robert P. Pincus are in the class of directors whose terms will expire in 2008.

2. The appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of our Company for the fiscal year ending December 31, 2006 was ratified with 11,601,820 votes for the proposal, 54,127 votes against and 5,125 votes abstaining.

ITEM 5. OTHER INFORMATION.

None.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit
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	Note Purchase Agreement with Kodiak Warehouse LLC, dated as of May 4, 2006
10.2	Junior Subordinated Indenture with Wells Fargo Bank, N.A., dated as of May 4, 2006
10.3	Credit Agreement with Wachovia Bank, N.A., dated as of May 26, 2006
10.4	Stock Purchase Agreement with Capitol Homes, Inc. and the Selling Shareholders identified therein, dated as of May 1, 2006
31.1	Certification of Chairman and Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Act of 1934, as amended
32.1	Certification of Chairman and Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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: August 9, 2006

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

By: /s/ Bruce J. Labovitz
Bruce J. Labovitz
Chief Financial Officer

Exhibit 10.1

EXECUTION VERSION

NOTE PURCHASE AGREEMENT

by and between

COMSTOCK HOMEBUILDING COMPANIES, INC.

and

KODIAK WAREHOUSE LLC

Dated as of May 4, 2006

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actions in respect thereof) arise out of, are based upon or connected with (i) any untrue statement or alleged untrue statement of a material fact contained in any information or documents furnished or made available to the Purchaser by or on behalf of the Company, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the breach or alleged breach of any representation, warranty or agreement of the Company contained herein or (iv) the execution and delivery by the Company of this Purchase Agreement or any of the other Operative Documents and/or the consummation of the transactions contemplated hereby and thereby, and agrees to reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action. The indemnity agreements contained in this Section 8 are in addition to any liability which the Company may otherwise have. 15

9. Termination; Representations and Indemnities to Survive. This Purchase Agreement shall be subject to termination in the absolute discretion of the Purchaser, by notice given to the Company prior to delivery of and payment for the Notes, if prior to such time (i) a downgrading shall have occurred in the rating accorded the Company's debt securities by any "nationally recognized statistical rating organization," as that term is used by the Commission in Rule 15c3-l(c)(2)(vi)(F) under the Exchange Act, or such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of the Company's debt securities, (ii) the Company shall be unable to sell and deliver to the Purchaser at least Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Notes, (iii) a suspension or material limitation in trading in securities generally shall have occurred on the New York Stock Exchange, (iv) a suspension or material limitation in trading in any of the Company's securities shall have occurred on the exchange or quotation system upon which the Company' securities are traded, if any, (v) a general moratorium on commercial business activities shall have been declared either by federal or Delaware authorities or (vi) there shall have occurred any outbreak or escalation of hostilities, or declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the Purchaser's judgment, impracticable or inadvisable to proceed with the offering or purchase of the Notes. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers or trustees and of the Purchaser set forth in or made pursuant to this Purchase Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Purchaser or the Company or any of the their respective officers, directors or controlling persons, and will survive delivery of and payment for the Notes. The provisions of Sections 7 and 8 shall survive the termination or cancellation of this Purchase Agreement. 16

10. Amendments. This Purchase Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement by each of the parties hereto. 17

Schedule 4(u) — Certain Documents Subject to Future Filing as Exhibits to 1934 Act Reports

Schedule 4(x) — Claims Against Real Property

Schedule 4(ee) — Environmental Matters

Exhibit A — Form of Company Counsel's Opinion Pursuant to Section 3(b)(i)

Exhibit B — Form of General Counsel Opinion or Officers' Certificate Pursuant to Section 3(b)(ii)

Exhibit C — Form of Tax Counsel Opinion Pursuant to Section 3(c)

Exhibit D — Form of Trustee Counsel Opinion Pursuant to Section 3(d)

Exhibit E — Form of Officer's Financial Certificate Pursuant to Section 6(h)

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT, dated as of May 4, 2006 (this "Purchase Agreement"), is entered into by and between Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and Kodiak Warehouse LLC, a Delaware limited liability company, or its assignee (the "Purchaser").

W I T N E S S E T H:

WHEREAS, the Company proposes to issue and sell to the Purchaser Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Company's junior subordinated notes, bearing interest at a fixed rate of 9.72% per annum through the interest payment date in June, 2011 and thereafter at a variable rate, reset quarterly, equal to LIBOR (as defined in the Indenture (as defined below)) plus 4.20% per annum (the "Notes"); and

WHEREAS, the Notes will be issued pursuant to a Junior Subordinated Indenture, dated as of the Closing Date (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as indenture trustee (in such capacity, the "Trustee").

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and subject to the terms and conditions herein set forth, the parties hereto agree as follows:

1. Definitions. This Purchase Agreement, the Indenture and the Notes are collectively referred to herein as the "Operative Documents." All other capitalized terms used but not defined in this Purchase Agreement shall have the respective meanings ascribed thereto in the Indenture.

2. Purchase and Sale of the Notes.

(a) The Company agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Company, Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Notes for an amount (the "Purchase Price") equal to Thirty Million Dollars ($30,000,000). The Purchaser shall be responsible for the rating agency costs and expenses.

(b) Delivery or transfer of, and payment for, the Notes shall be made at 10:00 A.M. Chicago time (11:00 A.M. New York City time), on May 4, 2006 or such later date (not later than June 4, 2006) as the parties may designate (such date and time of delivery and payment for the Notes being herein called the "Closing Date"). The Notes shall be transferred and delivered to the Purchaser against the payment of the Purchase Price to the Company made by wire transfer in immediately available funds on the Closing Date to a U.S. account designated in writing by the Company at least two Business Days prior to the Closing Date.

(c) Delivery of the Notes shall be made at such location, and in such names and denominations, as the Purchaser shall designate at least two Business Days in advance of the Closing Date. The Company agrees to have the Notes available for inspection and checking by the Purchaser in Chicago, Illinois, not later than 1:00 P.M., Chicago time (2:00 P.M. New York City time), on the Business Day prior to the Closing Date. The closing for the purchase and sale

of the Notes (the "Closing") shall occur at the offices of Winston & Strawn LLP, 35 West Wacker Drive, Chicago, Illinois 60601, or such other place as the parties hereto shall agree.

3. Conditions. The obligations of the parties under this Purchase Agreement are subject to the following conditions:

(a) The representations and warranties contained herein shall be accurate as of the date of delivery of the Notes.

(b) (i) Greenberg Traurig LLP, counsel for the Company (the "Company Counsel"), shall have delivered an opinion, dated the Closing Date, addressed to the Purchaser, its successors and assigns and the Trustee, in substantially the form set out in Exhibit A hereto and (ii) the Company shall have furnished to the Purchaser the opinion of the Company's General Counsel or a certificate signed by the Company's Chief Executive Officer, President or an Executive Vice President and the Company's Chief Financial Officer, Treasurer or Assistant Treasurer, dated the Closing Date, addressed to the Purchaser, in substantially the form set out in Exhibit B hereto. In rendering their opinion, the Company Counsel may rely as to factual matters upon certificates or other documents furnished by officers and directors of the Company and by government officials (provided, however, that copies of any such certificates or documents are delivered to the Purchaser) and by and upon such other documents as such counsel may, in their reasonable opinion, deem appropriate as a basis for the Company Counsel's opinion. The Company Counsel may specify the jurisdictions in which they are admitted to practice and that they are not admitted to practice in any other jurisdiction and are not experts in the law of any other jurisdiction. Such Company Counsel opinions shall not state that they are to be governed or qualified by, or that they are otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of Business Law (1991).

(c) The Purchaser shall have been furnished the opinion of Winston & Strawn LLP, special tax counsel for the Purchaser, dated the Closing Date, addressed to the Purchaser and the Trustee, addressing the matters set out in Exhibit C hereto (subject to customary assumptions and qualifications).

(d) The Purchaser shall have received the opinion of Potter Anderson & Corroon LLP, special counsel for the Trustee, dated the Closing Date, addressed to the Purchaser and its successors and assigns, in substantially the form set out in Exhibit D hereto.

(e) The Company shall have furnished to the Purchaser a certificate of the Company, signed by the Chief Executive Officer, President or an Executive Vice President, and Chief Financial Officer or Treasurer of the Company, dated the Closing Date, as to clauses (i) and (ii) below:

(i) the representations and warranties of the Company in this Purchase Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(ii) since the date of the Financial Statements (as defined in Section 4(r)), there has been no occurrence that has or would prospectively result in a material adverse change in or had or would prospectively result in a material adverse effect on the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its subsidiaries, whether or not arising from transactions occurring in the ordinary course of business (a "Material Adverse Effect").

(f) Subsequent to the execution of this Purchase Agreement, there shall not have been any change in or affecting the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its subsidiaries, whether or not occurring in the ordinary course of business, the effect of which is, in the Purchaser's judgment, so material and adverse as to make it impractical or inadvisable to proceed with the purchase of the Notes.

(g) The purchase of and payment for the Notes as described in this Purchase Agreement shall (a) not be prohibited by any applicable law or governmental regulation, (b) not subject the Purchaser to any penalty or, in the reasonable judgment of the Purchaser, other onerous conditions under or pursuant to any applicable law or governmental regulation and (c) be permitted by the laws and regulations of the jurisdictions to which the Purchaser is subject.

(h) The Company shall have received all consents, permits and other authorizations, and made all such filings and declarations, as may be required on or before the Closing Date from any person or entity pursuant to any law, statute, regulation or rule (federal, state, local and foreign), or pursuant to any agreement, order or decree to which the Company is a party or to which it is subject, in connection with the transactions contemplated by this Purchase Agreement.

(i) Prior to the Closing Date, the Company shall have furnished to the Purchaser and its counsel such further information, certificates and documents as the Purchaser or its counsel may reasonably request.

If any of the conditions specified in this Section 3 shall not have been fulfilled when and as required by this Purchase Agreement, or if any of the opinions, certificates and documents mentioned above or elsewhere in this Purchase Agreement shall not be reasonably satisfactory in form and substance to the Purchaser or its counsel, this Purchase Agreement and all the Purchaser's obligations hereunder may be canceled at, or at any time prior to, the Closing Date by the Purchaser. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

Each certificate signed by any officer of the Company and delivered to the Purchaser or the Purchaser's counsel in connection with the Operative Documents and the transactions contemplated hereby and thereby shall be deemed to be a representation and warranty of the Company and not by such officer in any individual capacity.

4. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with the Purchaser, as of the date hereof and as of the Closing Date, as follows:

(a) Neither the Company nor any of its "Affiliates" (as defined in Rule 501(b) of Regulation D ("Regulation D") under the Securities Act (as defined below)), nor any person acting on its or their behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would require the registration of any of the Notes under the Securities Act of 1933, as amended (the "Securities Act").

(b) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has (i) offered for sale or solicited offers to purchase the Notes or (ii) engaged in any form of "general solicitation" or "general advertising" (within the meaning of Regulation D) in connection with any offer or sale of any of the Notes.

(c) The Notes (i) are not and have not been listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or quoted on a U.S. automated inter-dealer quotation system and (ii) are not of an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act of 1940, as amended (the "Investment Company Act"), and the Notes otherwise satisfy the eligibility requirements of Rule 144A(d)(3) promulgated pursuant to the Securities Act ("Rule 144A(d)(3)").

(d) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Notes.

(e) The Company is not, and, immediately following consummation of the transactions contemplated hereby and the other Operative Documents and the application of the net proceeds therefrom, will not be, an "investment company" or an entity "controlled" by an "investment company," in each case within the meaning of Section 3(a) of the Investment Company Act.

(f) The Company has not paid or agreed to pay to any person or entity, directly or indirectly, any fees or other compensation for soliciting another to purchase any of the Notes, except for the fee the Company has agreed to pay to TBC Securities, LLC pursuant to the letter agreement between the Company and TBC Securities, LLC, dated March 31, 2006.

(g) The Indenture has been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery thereof by the Trustee, will be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (the "Enforceability Exceptions").

(h) The Notes have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered to the Trustee for authentication in accordance with the Indenture and, when authenticated in the manner provided for in the Indenture and delivered to the Purchaser against payment therefor in accordance with this Purchase Agreement, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the

Indenture, enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions.

(i) This Purchase Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions and the effect of any applicable public policy against the enforcement of the indemnification provisions of this Purchase Agreement set forth in Section 8.

(j) Neither the issue and sale of the Notes, nor the execution and delivery of and compliance with the Operative Documents by the Company, nor the consummation of the transactions contemplated hereby or thereby, or the use of the proceeds therefrom, (i) will conflict with or constitute a violation or breach of the charter or bylaws or similar organizational documents of the Company or any subsidiary of the Company or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, governmental authority, agency or instrumentality or court, domestic or foreign (collectively, the "Governmental Entities"), or of any arbitrator, in each case having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets, (ii) will conflict with or constitute a violation or breach of, or a default or Repayment Event (as defined below) under, or result in the creation or imposition of any pledge, security interest, claim, lien or other encumbrance of any kind (each, a "Lien") upon any property or assets of the Company or any of its subsidiaries pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which (A) the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or (B) any of the property or assets of the Company or any of its subsidiaries is subject, except, in the case of this clause (ii), for such conflicts, violations, breaches, defaults, Repayment Events or Liens which (X) would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents and (Y) would not, singly or in the aggregate, have a Material Adverse Effect or (iii) require the consent, approval, authorization or order of any court or Governmental Entity. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries prior to its scheduled maturity.

(k) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws Delaware, with all requisite corporate power and authority to own, lease and operate its properties and conduct the business it transacts and proposes to transact, and is duly qualified to transact business and is in good standing as a foreign corporation in each jurisdiction where the nature of its activities requires such qualification, except where the failure of the Company to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

(l) The Company has no subsidiaries that are material to its business, financial condition or earnings other than those subsidiaries listed in Schedule 4(l) hereto (collectively, the "Significant Subsidiaries"). Each Significant Subsidiary has been duly organized and is validly existing as a corporation, limited liability company, limited partnership or statutory trust in good standing under the laws of the jurisdiction in which it is chartered,

organized or formed, with all requisite power and authority to own, lease and operate its properties and conduct the business it transacts and proposes to transact. Each Significant Subsidiary is duly qualified to transact business and is in good standing as a foreign corporation, limited liability company, limited partnership or statutory trust in each jurisdiction where the nature of its activities requires such qualification, except where the failure to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 4(1) hereto, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other Equity Interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(m) The Company and each of the Company's subsidiaries hold all necessary approvals, authorizations, orders, licenses, consents, registrations, qualifications, certificates and permits (collectively, the "Governmental Licenses") of and from Governmental Entities necessary to conduct their respective businesses as now being conducted, and neither the Company nor any of the Company's subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Government License, except where the failure to be so licensed or approved or the receipt of an unfavorable decision, ruling or finding, would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity or the failure of such Governmental Licenses to be in full force and effect, would not, singly or in the aggregate, have a Material Adverse Effect; and the Company and its subsidiaries are in compliance with all applicable laws, rules, regulations, judgments, orders, decrees and consents, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect.

(n) All of the issued and outstanding Equity Interests of the Company and each of its subsidiaries are validly issued, fully paid and nonassessable; all of the issued and outstanding Equity Interests of each subsidiary of the Company is owned by the Company, directly or through subsidiaries, free and clear of any Lien, claim or equitable right; and none of the issued and outstanding Equity Interests of the Company or any subsidiary of the Company was issued in violation of any preemptive or similar rights arising by operation of law, under the charter, by-laws, certificate of formation, limited liability company agreement, certificate of limited partnership, agreement of limited partnership or similar organizational document of such entity or under any agreement to which the Company or any of its subsidiaries is a party.

(o) Neither the Company nor any of its subsidiaries is (i) in violation of its respective charter, by-laws, certificate of formation, limited liability company agreement, certificate of limited partnership, agreement of limited partnership or similar organizational document or (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is subject, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect.

(p) Except as set forth on Schedule 4(p) hereto, there is no action, suit or proceeding before or by any Governmental Entity or arbitrator, now pending or, to the knowledge of the Company, threatened against or affecting the Company or any of the Company's subsidiaries, except for such actions, suits or proceedings that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents or have a Material Adverse Effect; and the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is subject, including ordinary routine litigation incidental to the Company's and its subsidiaries' business, are not expected to result in a Material Adverse Effect.

(q) The accountants of the Company who certified the Financial Statements are independent public accountants of the Company and its subsidiaries within the meaning of the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "Commission") thereunder.

(r) The audited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries for the three (3) fiscal years ended December 31, 2005 (the "Financial Statements") provided to the Purchaser are the most recent available audited and unaudited consolidated financial statements of the Company and its consolidated subsidiaries, respectively, and fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP''), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the dates and for the periods therein specified. Such consolidated financial statements and schedules have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise noted therein).

(s) Neither the Company nor any of its subsidiaries has any material liability, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes (and there is no past or present fact, situation, circumstance, condition or other basis for any present or future action, suit, proceeding, hearing, charge, complaint, claim or demand against the Company or its subsidiaries that could give rise to any such liability), except for (i) liabilities set forth in the Financial Statements and (ii) normal fluctuations in the amount of the liabilities referred to in clause (i) above occurring in the ordinary course of business of the Company and its subsidiaries since the date of the most recent balance sheet included in such Financial Statements.

(t) Since the date of the Financial Statements, there has not been (A) any Material Adverse Effect or (B) any dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(u) The documents of the Company filed with the Commission in accordance with the Exchange Act, from and including the commencement of the fiscal year covered by the Company's most recent Annual Report on Form 10-K, at the time they were or hereafter are filed by the Company with the Commission (collectively, the "1934 Act Reports"), complied and will comply in all material respects with the requirements of the Exchange Act and the rules and

regulations of the Commission thereunder (the "1934 Act Regulations"), and, at the date of this Purchase Agreement and on the Closing Date, do not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and other than such instruments, agreements, contracts and other documents as are filed as exhibits to the Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, there are no instruments, agreements, contracts or other documents of a character described in Item 601 of Regulation S-K promulgated by the Commission to which the Company or any of its subsidiaries is a party, and which the Company is required to file, other than such as are permitted to be filed with the Company's next periodic report under the 1934 Act Regulations, and set forth on Schedule 4(u) attached hereto. The Company is in compliance with all currently applicable requirements of the Exchange Act and the currently applicable rules and regulations promulgated thereunder that were added by or resulted from the Sarbanes-Oxley Act of 2002.

(v) No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the executive officers of the Company, is imminent, except those which would not, singly or in the aggregate, have a Material Adverse Effect.

(w) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity, other than those that have been made or obtained, is necessary or required for the performance by the Company of its obligations under the Operative Documents or the consummation by the Company of the transactions contemplated by the Operative Documents.

(x) Except as set forth on Schedule 4(x), the Company and each Significant Subsidiary have (a) good and marketable title in fee simple to all real property owned by them, (b) good and marketable title to all real property-related interests owned by them and (c) good and marketable title to all personal property owned by them, in each case free and clear of all Liens and defects, except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made by the Company and the Significant Subsidiaries; and all of the leases and subleases under which the Company or any subsidiary of the Company holds properties are in full force and effect, except where the failure of such leases and subleases to be in full force and effect would not, singly or in the aggregate, have a Material Adverse Effect, and none of the Company or any subsidiary of the Company has any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company or any subsidiary of the Company under any such leases or subleases, or affecting or questioning the rights of such entity to the continued possession of the leased or subleased premises under any such lease or sublease, except for such claims that would not, singly or in the aggregate, have a Material Adverse Effect.

(y) The Company and each of the Significant Subsidiaries have timely and duly filed all Tax Returns (as defined below) required to be filed by them, and all such Tax Returns are true, correct and complete in all material respects. The Company and each of the Significant Subsidiaries have timely and duly paid in full all material Taxes required to be paid by them (whether or not such amounts are shown as due on any Tax Return). To the knowledge of the Company, there are no federal, state or other Tax audits or deficiency assessments

proposed or pending with respect to the Company or any of the Significant Subsidiaries. As used herein, the terms "Tax" or "Taxes" mean (i) all federal, state, local and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax or penalties applicable thereto imposed by any Governmental Entity, and (ii) all liabilities in respect of such amounts arising as a result of being a member of any affiliated, consolidated, combined, unitary or similar group, as a successor to another person or by contract. As used herein, the term "Tax Returns" means all federal, state, local and foreign Tax returns, declarations, statements, reports, schedules, forms and information returns and any amendments thereto filed or required to be filed with any Governmental Entity.

(z) Interest payable by the Company on the Notes is deductible by the Company for United States federal income tax purposes. There are no rulemaking or similar proceedings before the United States Internal Revenue Service or comparable federal, state, local or foreign government bodies which involve or affect the Company or any of its subsidiaries, which, if the subject of an action unfavorable to the Company or any such subsidiary, could result in a Material Adverse Effect.

(aa) The books, records and accounts of the Company and its subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its subsidiaries. The Company and each of its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(bb) The Company and the Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts in all material respects as are customary in the businesses in which they are engaged. All policies of insurance and fidelity or surety bonds insuring the Company or any of the Significant Subsidiaries or the Company's or Significant Subsidiaries' respective businesses, assets, employees, officers and directors are in full force and effect. The Company and each of the subsidiaries are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor any Significant Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage in all material respects as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect. Within the past twelve months, neither the Company nor any Significant Subsidiary has been denied any insurance coverage which it has sought or for which it has applied.

(cc) The Company and its subsidiaries or any person acting on behalf of the Company and its subsidiaries including, without limitation, any director, officer, agent or employee of the Company or its subsidiaries has not, directly or indirectly, while acting on behalf of the Company and its subsidiaries (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii)

made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate funds, (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any other unlawful payment.

(dd) The information provided by the Company pursuant to this Purchase Agreement, the other Operative Documents and the transactions contemplated hereby and thereby does not, as of the date hereof, and will not as of the Closing Date, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(ee) Except as set forth on Schedule 4(ee) hereto, (i) the Company and its subsidiaries have been and are in material compliance with applicable Environmental Laws (as defined below), (ii) none of the Company, any of its subsidiaries or, to the best of the Company's knowledge, any other owners of any of the real properties currently or previously owned, leased or operated by the Company or any of its subsidiaries (collectively, the "Properties") at any time or any other party, has at any time "released" (as such term is defined in CERCLA (as defined below)) or otherwise disposed of a material quantity of Hazardous Materials (as defined below) on, to, in, under or from the Properties, (iii) neither the Company nor any of its subsidiaries has used or intends to use the Properties or any subsequently acquired properties, other than in material compliance with applicable Environmental Laws, (iv) neither the Company nor any of its subsidiaries has received any notice of, or has any knowledge of any occurrence or circumstance which, with notice or passage of time or both, would give rise to a material claim under or pursuant to any Environmental Law with respect to the Properties or their respective assets or arising out of the conduct of the Company or its subsidiaries, (v) none of the Properties are included or, to the best of the Company's knowledge, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency or, to the best of the Company's knowledge, proposed for inclusion on any similar list or inventory issued pursuant to any other Environmental Law or issued by any other Governmental Entity, (vi) none of the Company, any of its subsidiaries or agents or, to the best of the Company's knowledge, any other person or entity for whose conduct any of them is or may be held responsible, has generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced or processed any Hazardous Material at any of the Properties, except in material compliance with all applicable Environmental Laws, and has not transported or arranged for the transport of any Hazardous Material from the Properties to another property, except in material compliance with all applicable Environmental Laws, (vii) no lien has been imposed on the Properties by any Governmental Entity in connection with the presence on or off such Property of any Hazardous Material or with respect to an Environmental Law, and (viii) none of the Company, any of its subsidiaries or, to the best of the Company's knowledge, any other person or entity for whose conduct any of them is or may be held responsible, has entered into or been subject to any consent decree, compliance order, or administrative order with respect to material liabilities or violations at the Properties or any facilities or improvements or any operations or activities thereon.

As used herein, "Hazardous Material" shall include, without limitation, any flammable materials, explosives, radioactive materials, hazardous materials, hazardous substances, hazardous wastes, toxic substances or related materials, asbestos, petroleum,

petroleum products and any hazardous material as defined by any federal, state or local environmental law, statute, ordinance, rule or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101-5127, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k, the Emergency Planning and Community Right-to-Know Act of 1986, as amended, 42 U.S.C. §§ 11001-11050, the Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601-2692, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§ 136-136y, the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7642, the Clean Water Act, as amended (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300f-300j-26, and the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651-678, and any analogous state laws, as any of the above may be amended from time to time and in the regulations promulgated pursuant to each of the foregoing (including environmental statutes and laws not specifically defined herein) (individually, an "Environmental Law" and collectively, the "Environmental Laws") or by any Governmental Entity.

(ff) In the ordinary course of its business, the Company periodically reviews the effect of Environmental Laws on the business, operations and properties of the Company and its subsidiaries, and periodically identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such reviews and the amount of its established reserves, the Company has reasonably concluded that such associated costs and liabilities would not, individually or in the aggregate, result in a Material Adverse Effect.

5. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to, and agrees with, the Company as follows:

(a) The Purchaser is aware that the Notes have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to "U.S. persons" (as defined in Regulation S under the Securities Act) except in accordance with Rule 903 of Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act.

(b) The Purchaser is an "accredited investor," as such term is defined in Rule 501 (a) of Regulation D under the Securities Act.

(c) Neither the Purchaser, nor any of the Purchaser's Affiliates, nor any person acting on the Purchaser's or the Purchaser's Affiliate's behalf has engaged, or will engage, in any form of "general solicitation" or "general advertising" (within the meaning of Regulation D promulgated under the Securities Act) in connection with any offer or sale of the Notes.

(d) The Purchaser understands and acknowledges that (i) no public market exists for any of the Notes and that it is unlikely that a public market will ever exist for the Notes, (ii) the Purchaser is purchasing the Notes for its own account, for investment and not with

a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act or other applicable securities laws, subject to any requirement of law that the disposition of its property be at all times within its control and subject to its ability to resell such Notes pursuant to an effective registration statement under the Securities Act or pursuant to an exemption therefrom or in a transaction not subject thereto, and the Purchaser agrees to the legends and transfer restrictions applicable to the Notes contained in the Indenture, and (iii) the Purchaser has had the opportunity to ask questions of, and receive answers and request additional information from, the Company and is aware that it may be required to bear the economic risk of an investment in the Notes.

(e) The Purchaser is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware with all requisite limited liability company power and authority to execute, deliver and perform the Operative Documents to which it is a party, to make the representations and warranties specified herein and therein and to consummate the transactions contemplated herein.

(f) This Purchase Agreement has been duly authorized, executed and delivered by the Purchaser and no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any governmental body, agency or court having jurisdiction over the Purchaser, other than those that have been made or obtained, is necessary or required for the performance by the Purchaser of its obligations under this Purchase Agreement or to consummate the transactions contemplated herein.

6. Covenants and Agreements of the Company. The Company covenants and agrees with the Purchaser as follows:

(a) During the period from the date of this Purchase Agreement to the Closing Date, the Company shall use its best efforts and take all action necessary or appropriate to cause its representations and warranties contained in Section 4 to be true as of the Closing Date, after giving effect to the transactions contemplated by this Purchase Agreement, as if made on and as of the Closing Date.

(b) The Company will arrange for the qualification of the Notes for sale under the laws of such jurisdictions as the Purchaser may designate and will maintain such qualifications in effect so long as required for the sale of the Notes. The Company will promptly advise the Purchaser of the receipt by the Company of any notification with respect to the suspension of the qualification of the Notes for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(c) The Company will not, nor will it permit any of its Affiliates to, nor will the Company permit any person acting on its behalf (other than the Purchaser and its Affiliates) to, directly or indirectly, resell any Notes that have been acquired by any of them.

(d) The Company will not, nor will it permit any of its Affiliates or any person acting on its behalf (other than the Purchaser and its Affiliates) to, engage in any “directed selling efforts” within the meaning of Regulation S under the Securities Act with respect to the Notes.

(e) The Company will not, nor will it permit any of its Affiliates or any person acting on its behalf to, directly or indirectly, (i) sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) that would or could be integrated with the sale of the Notes in any manner that would require the registration of the Notes under the Securities Act or (ii) make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of any of the Notes under the Securities Act.

(f) The Company will not, nor will it permit any of its Affiliates or any person acting on its behalf (other than the Purchaser and its Affiliates) to, engage in any form of "general solicitation" or "general advertising" (within the meaning of Regulation D) in connection with any offer or sale of the any of the Notes.

(g) So long as any of the Notes are outstanding, (i) the Notes shall not be listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system, (ii) the Company shall not be an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act, and, the Notes shall otherwise satisfy the eligibility requirements of Rule 144A(d)(3) and (iii) the Company shall not engage, nor permit any of its subsidiaries to engage, in any activity that would cause it or any such subsidiary to be an "investment company" under the provisions of the Investment Company Act.

(h) The Company shall furnish to (i) the holder, and subsequent holders, of the Notes, (ii) Kodiak Capital Management Company LLC, 2107 Wilson Boulevard, Suite 450, Arlington, Virginia 22201, Attention: Robert M. Hurley, or such other address as designated by Kodiak Capital Management Company LLC) and (iii) any beneficial owner of the Notes reasonably identified to the Company (which identification may be made by either such beneficial owner or by Kodiak Capital Management Company LLC), a duly completed and executed officer's financial certificate in the form attached hereto as Exhibit E, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company, or, if applicable, such shorter respective periods as may then be required by the Commission for the filing by the Company of Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K.

(i) During any period in which the Company is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, or the Company is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, the Company shall provide to each holder of the Notes and to each prospective purchaser (as designated by such holder) of the Notes, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Securities Act, if applicable. Any information provided by the Company pursuant to this Section 6(i) will not, at the date thereof, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company is required to register under the

Exchange Act, such reports filed in compliance with Rule 12g3-2(b) shall be sufficient information as required above. This covenant is intended to be for the benefit of the Purchaser, the holders of the Notes, and the prospective purchasers designated by the Purchaser and such holders, from time to time, of the Notes.

(j) The Company covenants and agrees with Purchaser that the Company will not, without the prior written consent of Purchaser, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, (i) any Notes or junior subordinated notes or trust preferred securities or (ii) any other securities convertible into, or exercisable or exchangeable for, any Notes or junior subordinated notes or trust preferred securities unless the aggregate amount of Notes outstanding together with such Notes or junior subordinated notes, trust preferred securities or other securities proposed to be offered, sold, contracted for sale, granted or otherwise disposed of does not exceed twenty-five percent (25%) of the aggregate of (x) the Company's Consolidated Tangible Net Worth (after taking into account such Notes, junior subordinated notes, trust preferred securities or other securities proposed to be offered, sold, granted or otherwise disposed of). For purposes hereof, "Consolidated Tangible Net Worth" shall mean (i) the consolidated net worth of the Company and its consolidated subsidiaries minus (ii) the consolidated intangibles of the Company and its consolidated subsidiaries including, without limitation, goodwill, trademarks, trade names, copyrights, patents, patent applications, licenses, and rights in any of the foregoing and other items treated as intangibles in accordance with generally accepted accounting principles, as reported in the Company's balance sheet contained in its most recent 1934 Act Report.

(k) The Company will not identify any of Indemnified Parties (as defined below) in a press release or any other public statement without the consent of such Indemnified Party.

(l) The Purchaser shall have the right under this Purchase Agreement and the Indenture to request the substitution of new notes for all or a portion of the Notes held by the Purchaser (the "Replacement Notes"). The Replacement Notes shall bear terms identical to the Notes with the sole exception of interest payment dates (and corresponding redemption date and maturity date), which will be specified by the Purchaser. In no event will the interest payment dates (and corresponding redemption date and maturity date) on the Replacement Notes vary by more than sixty (60) calendar days from the original interest payment dates (and corresponding redemption date and maturity date) under the Notes. The Company agrees to cooperate with all reasonable requests of the Purchaser in connection with any of the foregoing; provided, that no action requested of the Company in connection with such cooperation shall materially increase the obligations or materially decrease the rights of the Company pursuant to such documents.

(m) Notwithstanding anything to the contrary otherwise contained herein or in any other Operative Document, prior to earlier of (i) the date eighteen (18) months from the date hereof and (ii) the occurrence of a Change-in-Control (as defined in the Indenture), the Company shall not offer to issue any other Debt (as such term is defined in the Indenture) which ranks *pari passu* with the Notes (including the Notes, any junior subordinated notes, trust preferred securities or securities convertible into, or exercisable or exchangeable for the same) to any other Person, unless the Company shall first offer to Purchaser the opportunity to purchase such Debt, and shall first provide to Purchaser a written notice thereof stating the proposed terms and

conditions (the "Offered Terms"). The Purchaser shall have the right to accept the Offered Terms by written notice to the Company given within ten (10) days after the Purchaser's receipt of the Offered Terms. If the Purchaser does not accept the Offered Terms within such period, the Purchaser shall be deemed to have rejected the Offered Terms and the Company may consummate such issuance of Debt during the sixty (60) month period beginning on the date of the expiration of the applicable period; provided, that such issuance of Debt shall be consummated on substantially the same terms as the Offered Terms and shall otherwise be in accordance with the terms hereof, including Section 6(j). If such issuance of Debt is not consummated within such sixty (60) month period, the provisions of this Section 6(m) shall again apply in respect of any issuance of Debt which ranks *pari passu* with the Notes whether made during such sixty (60) month period or thereafter.

7. Payment of Expenses. The Company agrees to pay all costs and expenses incident to the performance of the obligations of the Company under this Purchase Agreement, whether or not the transactions contemplated herein are consummated or this Purchase Agreement is terminated, including all costs and expenses incident to (i) the fees and expenses of qualifying the Notes under the securities laws of the several jurisdictions as provided in Section 6(b), (iii) the fees and expenses of the counsel, the accountants and any other experts or advisors retained by the Company, (iv) the fees and all reasonable expenses of the Trustee and any other trustee or paying agent appointed under the Operative Documents, including the fees and disbursements of counsel for such trustees or paying agent, which fees shall not exceed a $2,000 acceptance fee, $4,000 in administrative fees annually and the fees and expenses of Potter Anderson & Corroon LLP, (v) the fees and expenses of Winston & Strawn LLP, special counsel retained by the Purchaser, not to exceed $30,000 and (vi) a due diligence fee in an amount equal to $12,500 payable as the Purchaser directs.

If the sale of the Notes provided for in this Purchase Agreement is not consummated because any condition set forth in Section 3 to be satisfied by the Company is not satisfied, because this Purchase Agreement is terminated pursuant to Section 9 or because of any failure, refusal or inability on the part of the Company to perform all obligations and satisfy all conditions on its part to be performed or satisfied hereunder other than by reason of a default by the Purchaser, the Company will reimburse the Purchaser upon demand for all reasonable out-of-pocket expenses (including the fees and expenses of the Purchaser's counsel specified in clause (v) and the due diligence fee specified in clause (vi), in each case, of the immediately preceding paragraph) that shall have been incurred by the Purchaser in connection with the proposed purchase and sale of the Notes.

8. Indemnification. (a) The Company agrees to indemnify and hold harmless the Purchaser, the Purchaser's Affiliates and Kodiak Capital Management Company LLC (collectively, the "Indemnified Parties"), each person, if any, who "controls" any of the Indemnified Parties within the meaning of either the Securities Act or the Exchange Act, and the Indemnified Parties' respective directors, officers, employees and agents, against any and all losses, claims, damages or liabilities, joint or several, to which the Indemnified Parties or any of them may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of, are based upon or connected with (i) any untrue statement or alleged untrue statement of a material fact contained in any information or

documents furnished or made available to the Purchaser by or on behalf of the Company, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the breach or alleged breach of any representation, warranty or agreement of the Company contained herein or (iv) the execution and delivery by the Company of this Purchase Agreement or any of the other Operative Documents and/or the consummation of the transactions contemplated hereby and thereby, and agrees to reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action. The indemnity agreements contained in this Section 8 are in addition to any liability which the Company may otherwise have.

(b) Promptly after receipt by an Indemnified Party under this Section 8 of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the Company under this Section 8, promptly notify the Company in writing of the commencement thereof; but the failure so to notify the Company (i) will not relieve the Company from liability under paragraph (a) above unless and to the extent that such failure results in the forfeiture by the Company of material rights and defenses and (ii) will not, in any event, relieve the Company from any obligations to any Indemnified Party other than the indemnification obligation provided in paragraph (a) above. The Purchaser shall be entitled to appoint counsel to represent the Indemnified Party in any action for which indemnification is sought. The Company may participate at its own expense in the defense of any such action; provided, that counsel to the Company shall not (except with the consent of the Indemnified Party) also be counsel to the Indemnified Party. In no event shall the Company be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, unless an Indemnified Party believes that his, her or its interests are not aligned with the interests of another Indemnified Party or that a conflict of interest might result. The Company will not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not the Indemnified Parties are actual or potential parties to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

9. Termination; Representations and Indemnities to Survive; This Purchase Agreement shall be subject to termination in the absolute discretion of the Purchaser, by notice given to the Company prior to delivery of and payment for the Notes, if prior to such time (i) a downgrading shall have occurred in the rating accorded the Company's debt securities by any "nationally recognized statistical rating organization," as that term is used by the Commission in Rule 15c3-l(c)(2)(vi)(F) under the Exchange Act, or such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of the Company's debt securities, (ii) the Company shall be unable to sell and deliver to the Purchaser at least Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Notes, (iii) a suspension or material limitation in trading in securities generally shall have occurred on the New York Stock Exchange, (iv) a suspension or material limitation in trading in any of the Company's securities shall have occurred on the exchange or quotation system upon

which the Company' securities are traded, if any, (v) a general moratorium on commercial business activities shall have been declared either by federal or Delaware authorities or (vi) there shall have occurred any outbreak or escalation of hostilities, or declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the Purchaser's judgment, impracticable or inadvisable to proceed with the offering or purchase of the Notes. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers or trustees and of the Purchaser set forth in or made pursuant to this Purchase Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Purchaser or the Company or any of the their respective officers, directors or controlling persons, and will survive delivery of and payment for the Notes. The provisions of Sections 7 and *8* shall survive the termination or cancellation of this Purchase Agreement.

10. Amendments. This Purchase Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement by each of the parties hereto.

11. Notices. All communications hereunder shall be in writing and effective only on receipt, and shall be mailed, delivered by hand or courier or sent by facsimile and confirmed:

If to the Purchaser, to:

c/o Kodiak Capital Management Company, LLC
2107 Wilson Boulevard
Suite 450
Arlington, Virginia 22201
Attention: Robert M. Hurley
Facsimile: (703) 351-7901

with a copy to:

Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
Attention: Wayne D. Boberg
Facsimile: (312) 558-5700

if to the Company, to:

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road
Suite 510
Reston, Virginia 20190
Facsimile: (703) 760-1520
Attention: Bruce Labovitz, Chief Financial Officer

with a copy to:

Greenberg Traurig, LLP
800 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20006
Facsimile: (202) 331-3101
Attention: Stephen A. Riddick, Esq.

All such notices and communications shall be deemed to have been duly given (i) at the time delivered by hand, if personally delivered, (ii) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed, (iii) the next Business Day after being telecopied or (iv) the next Business Day after timely delivery to a courier, if sent by overnight air courier guaranteeing next-day delivery. From and after the Closing, the foregoing notice provisions shall be superseded by any notice provisions of the Operative Documents under which notice is given. The Purchaser and the Company, and their respective counsel, may change their respective notice addresses, from time to time, by written notice to all of the foregoing persons.

12. Parties in Interest; Successors and Assigns. This Purchase Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing expressed or mentioned in this Purchase Agreement is intended or shall be construed to give any person other than the parties hereto and the affiliates, directors, officers, employees, agents and controlling persons referred to in Section 8 and their successors, assigns, heirs and legal representatives, any right or obligation hereunder. None of the rights or obligations of the Company under this Purchase Agreement may be assigned, whether by operation of law or otherwise, without the Purchaser's prior written consent. The rights and obligations of the Purchaser under this Purchase Agreement may be assigned by the Purchaser without the Company's consent; provided, that the assignee assumes the obligations of the Purchaser under this Purchase Agreement.

13. Applicable Law. **This Purchase Agreement will be governed by and construed and enforced in accordance with the law of the State of New York without reference to principles of conflicts of law (other than Section 5-1401 of the General Obligations Law).**

14. Submission to Jurisdiction. ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS PURCHASE AGREEMENT MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS PURCHASE AGREEMENT, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS PURCHASE AGREEMENT.

15. Counterparts and Facsimile. This Purchase Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. This Purchase Agreement may be executed by any one or more of the parties hereto by facsimile.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Note Purchase Agreement as of the day and year first written above.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: /s/ Bruce Labovitz
Name: Bruce Labovitz
Title: Chief Financial Officer

KODIAK WAREHOUSE LLC

By: Kodiak Funding, LP
Its: Sole Member

By: Kodiak Funding Company, Inc.
Its: General Partner

By: /s/ Robert M. Hurley
Name: Robert M. Hurley
Title: Chief Financial Officer

Schedule 4(1)

List of Significant Subsidiaries

Name	State of Incorporation or Organization
1. Buckhead Overlook, LLC	Georgia
2. Comstock Acquisitions, L.C.	Virginia
3. Comstock Station View, L.C.	Virginia
4. Comstock Aldie, L.C.	Virginia
5. Comstock Barrington Park, L.C.	Virginia
6. Comstock Bellemeade, L.C.	Virginia
7. Comstock Belmont Bay 5, L.C.	Virginia
8. Comstock Belmont Bay 89, L.C.	Virginia
9. Comstock East Capitol, L.L.C.	Virginia
10. Comstock Blooms Mill II, L.C.	Virginia
11. Comstock Brandy Station, L.C.	Virginia
12. Comstock Carter Lake, L.C.	Virginia
13. Comstock Cascades, L.C.	Virginia
14. Comstock Communities, L.C.	Virginia
15. Comstock Countryside, L.C.	Virginia
16. Comstock Culpeper, L.C.	Virginia
17. Comstock Delta Ridge II, L.L.C.	Virginia
18. Comstock Emerald Farm, L.C.	Virginia
19. Comstock Fairfax I, L.C.	Virginia
20. Comstock Flynn’s Crossing, L.C.	Virginia
21. Comstock Hamlets of Blue Ridge, L.C.	Virginia
22. Comstock Holland Road, L.L.C.	Virginia
23. Comstock Homes of North Carolina, L.L.C.	North Carolina
24. Comstock Homes of Raleigh, L.L.C.	North Carolina
25. Comstock Homes of Washington, L.C.	Virginia
26. Comstock Investors III, L.P.	Virginia
27. Comstock Investors V, L.C.	Virginia
28. Comstock Investors VI, L.C.	Virginia
29. Comstock Kelton II, L.C.	Virginia
30. Comstock Lake Pelham, L.C.	Virginia
31. Comstock Landing, L.L.C.	Virginia
32. Comstock Loudoun Condos 1, L.C.	Virginia
33. Comstock North Carolina, L.L.C.	North Carolina
34. Comstock Penderbrook, L.C.	Virginia
35. Comstock Potomac Yard, L.C.	Virginia
36. Comstock Ryan Park, L.C.	Virginia
37. Comstock Sherbrooke, L.C.	Virginia
38. Comstock Summerland, L.C.	Virginia
39. Comstock Wakefield, L.L.C.	Virginia
40. Comstock Wakefield II, L.L.C.	Virginia
41. Highland Avenue Properties, LLC	Georgia
42. Highland Station Partners, LLC	Georgia
43. Mathis Partners, LLC	Georgia

44. North Shore Investors, L.L.C.	Virginia
45. North Shore Raleigh, L.L.C.	Virginia
46. North Shore Raleigh II, L.L.C.	Virginia
47. Parker-Chandler Homes, Inc.	Georgia
48. Parker Chandler Homes/Florida, LLC	Florida
49. Parker Chandler Homes/North Carolina, LLC	North Carolina
50. Parker Chandler Homes/South Carolina, LLC	South Carolina
51. Parker Chandler Realty, LLC	Georgia
52. PCH Development, LLC	Georgia
53. PCH James Road, LLC	Georgia
54. Post Preserve, LLC	Georgia
55. Raleigh Resolution, L.L.C.	Virginia
56. Settlement Title Services, L.L.C.	Virginia
57. TCG Debt Fund II, L.C.	Virginia
58. TCG Fund I, L.C.	Virginia
59. Tribble Road Development, LLC	Georgia

Certain Prohibitions Against the Payment of
Distributions, the Repayment of Debt or
the Transfer of Assets

[to follow, if any]

Schedule 4(p)

Legal Proceedings

None.

Schedule 4(u)

Certain Documents Subject to Future
Filing as Exhibits to 1934 Act Reports

None.

Schedule 4(x)

Claims Against Real Property

The Company is involved in a disagreement with its 50% joint venture partner in the North Shore project located in Raleigh, North Carolina, whereby the Company's joint venture partner has filed a lis pendens asserting a right to the Company's membership interest in the joint venture.

Schedule 4(ee)

Environmental Matters

None.

Exhibit A

FORM OF COMPANY COUNSEL'S OPINION

Pursuant to Section 3(b)(i) of the Note Purchase Agreement, Greenberg Traurig LLP, special counsel for the Company, shall deliver an opinion to the effect that:

(i) the Company and each Significant Subsidiary is validly existing as a corporation, limited liability company, limited partnership or statutory trust in good standing under the laws of the jurisdiction in which it is chartered or organized; each of the Company and the Significant Subsidiaries has full corporate, limited liability company, limited partnership or statutory trust power and authority to own or lease its properties and to conduct its business as such business is currently conducted in all material respects; all outstanding shares of capital stock, equity or membership interests of the Significant Subsidiaries have been duly authorized and validly issued, and are fully paid and nonassessable and owned of record and beneficially, directly or indirectly by the Company; the Company has the corporate, limited liability company, limited partnership or statutory trust power and authority to (A) execute and deliver, and to perform its obligations under, the Operative Documents to which it is a party and (B) issue and perform its obligations under the Notes;

(ii) neither the issue and sale of the Notes, nor the execution and delivery of and compliance with the Operative Documents by the Company nor the consummation of the transactions contemplated thereby will constitute a breach or violation of the charter, by-laws, certificate of formation, limited liability company agreement, certificate of limited partnership or agreement of limited partnership, as applicable, of the Company;

(iii) the Indenture has been duly authorized, executed and delivered by the Company and, assuming it has been duly authorized, executed and delivered by the Trustee, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity;

(iv) the Notes have been duly authorized and executed by the Company and delivered to the Trustee for authentication in accordance with the Indenture and, when authenticated by the Trustee in accordance with the provisions of the Indenture and delivered to the Purchaser against payment therefor, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity;

(v) the Company is not, and, following the issuance of the Notes and the consummation of the transactions contemplated by the Operative Documents and the application of the proceeds therefrom, the Company will not be, an "investment

company" or, to such counsel's knowledge, an entity "controlled" by an "investment company," in each case within the meaning of Section 3(a) of the Investment Company Act of 1940, as amended;

(vi) assuming the truth and accuracy of the representations and warranties of the Purchaser in the Purchase Agreement, it is not necessary in connection with the offer, sale and delivery of the Notes to register the Notes under the Securities Act of 1933, as amended, under the circumstances contemplated in the Purchase Agreement, or to require qualification of the Indenture under the Trust Indenture Act of 1939, as amended;

(vii) the Purchase Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity and the effect of any applicable public policy against the enforcement of the indemnification provisions of the Purchase Agreement set forth in Section 8 thereof;

(viii) the execution and delivery by the Company of, and the performance by the Company of its obligations under, the Operative Documents and the consummation of the transactions contemplated by the Purchase Agreement and the other Operative Documents, do not and will not (A) result in the creation or imposition of any lien, claim, charge, encumbrance or restriction upon any property or assets of the Company or the Significant Subsidiaries, or (B) conflict with, constitute a breach or violation of, or constitute a default under, with or without notice or lapse of time or both, any of the terms, provisions or conditions of (x) the charter, by-laws or similar organizational documents of the Company or any Significant Subsidiary, or (y) any material contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease, franchise, license or any other agreement or instrument to which the Company or any Significant Subsidiary is a party or by which any of them or any of their respective properties may be bound or (z) any order, decree, judgment, franchise, license, permit, rule or regulation known to such counsel of any court, arbitrator, government, or governmental agency or instrumentality, domestic or foreign, having jurisdiction over the Company or any Significant Subsidiary or any of their respective properties;

(ix) except for filings, registrations or qualifications that may be required by applicable federal securities laws, no authorization, approval, consent or order of, or filing, registration or qualification with, any person (including, without limitation, any court, governmental body or authority) is required under the laws of the State of Delaware in connection with the transactions contemplated by the Operative Documents (including the offer and sale of the Notes); and

(x) to such counsel's knowledge, (A) no action, suit or proceeding at law or in equity is pending or threatened to which the Company or any Significant Subsidiary is or may be a party, and (B) no action, suit or proceeding is pending or threatened against or affecting the Company or the Significant Subsidiaries or any of

their respective properties, before or by any court or governmental official, commission, board or other administrative agency, authority or body, or any arbitrator, wherein an unfavorable decision, ruling or finding could reasonably be expected to have a material adverse effect on (x) the consummation of the transactions contemplated by the Operative Documents or the issuance and sale of the Notes as contemplated therein or (y) the condition (financial or otherwise), earnings, business, liabilities, assets or results of operations of the Company and the Significant Subsidiaries on a consolidated basis.

In rendering such opinions, such counsel may (A) provide for customary assumptions and qualifications and (B) rely as to matters of fact, to the extent deemed appropriate, on certificates of responsible officers of the Company and public officials.

FORM OF GENERAL COUNSEL OPINION
OR OFFICERS' CERTIFICATE

Pursuant to Section 3(b)(ii) of the Note Purchase Agreement, General Counsel for the Company shall deliver an opinion, or the **[CHIEF EXECUTIVE OFFICER/PRESIDENT/EXECUTIVE VICE PRESIDENT]** and the **[CHIEF FINANCIAL OFFICER/TREASURER/ASSISTANT TREASURER]** of the Company shall provide an Officers' Certificate, to the effect that:

(i) all of the issued and outstanding shares of capital stock, equity or membership interests of each Significant Subsidiary are owned of record by the Company;

(ii) no consent, approval, authorization or order of any court or Governmental Entity is required for the issue and sale of the Notes, the execution and delivery of and compliance with the Operative Documents by the Company or the consummation of the transactions contemplated in the Operative Documents, except such approvals (specified in such certificate) as have been obtained;

(iii) to the knowledge of such officers, there is no action, suit or proceeding before or by any government, governmental instrumentality, arbitrator or court, domestic or foreign, now pending or threatened against or affecting the Company or any Significant Subsidiary that could adversely affect the consummation of the transactions contemplated by the Operative Documents or could have a Material Adverse Effect; and

(iv) the execution and delivery by the Company of, and the performance by the Company of its obligations under, the Operative Documents and the consummation by the Company of the transactions contemplated by the Operative Documents, (i) will not result in any violation of the charter or bylaws of the Company, the charter, bylaws or similar organizational documents of the Company's subsidiaries, and (ii) will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the creation or imposition of any lien, charge and encumbrance upon any assets or properties of the Company or any Significant Subsidiary under, (a) any agreement, indenture, mortgage or instrument that the Company or any Significant Subsidiary of the Company is a party to or by which it may be bound or to which any of its assets or properties may be subject, or (b) any existing applicable law, rule or administrative regulation of any court or governmental agency or authority having jurisdiction over the Company or any Significant Subsidiary of the Company or any of their respective assets or properties, except in case of (ii), where any such violation, conflict, breach, default, lien, charge or encumbrance, would not have a material adverse effect on the assets, liabilities, properties, business, results of operations or condition (financial or otherwise) of the Company and its subsidiaries, taken as whole.

Exhibit C

FORM OF TAX COUNSEL OPINION

Pursuant to Section 3(c) of the Note Purchase Agreement, Winston & Strawn LLP, special tax counsel for the Purchaser shall deliver an opinion to the effect that, for United States federal income tax purposes, the Notes will constitute indebtedness of the Company.

In rendering such opinion, such counsel may (A) provide for customary assumptions and qualifications, (B) state that its opinion is limited to the federal income tax laws of the United States and (C) rely as to matters of fact, to the extent deemed appropriate, on certificates of responsible officers of the Company and public officials.

FORM OF TRUSTEE COUNSEL OPINION

Pursuant to Section 3(d) of the Note Purchase Agreement, special counsel for the Trustee shall deliver an opinion to the effect that:

(i) Wells Fargo Bank, N.A. is a national banking association with trust powers, duly and validly existing under the laws of the United States of America, with corporate power and authority to execute, deliver and perform its obligations under the Indenture and to authenticate and deliver the Notes, and is duly eligible and qualified to act as Trustee under the Indenture pursuant to Section 6.1 thereof;

(ii) the Indenture has been duly authorized, executed and delivered by Wells Fargo Bank, N.A. and constitutes the valid and binding obligation of Wells Fargo Bank, N.A., enforceable against it in accordance with its terms except (A) as may be limited by bankruptcy, fraudulent conveyance, fraudulent transfer, insolvency, reorganization, liquidation, receivership, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and by general equitable principles, regardless of whether considered in a proceeding in equity or at law and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought;

(iii) neither the execution or delivery by Wells Fargo Bank, N.A. of the Indenture, the authentication and delivery of the Notes by Wells Fargo Bank, N.A. pursuant to the terms of the Indenture, nor the performance by Wells Fargo Bank, N.A. of its obligations under the Indenture (A) requires the consent or approval of, the giving of notice to or the registration or filing with, any Governmental Entity or agency under any existing law of the State of New York governing the banking or trust powers of Wells Fargo Bank, N.A. or (B) violates or conflicts with the Charter or By-laws of Wells Fargo Bank, N.A. or any law or regulation of the State of New York governing the banking or trust powers of Wells Fargo Bank, N.A.; and

(iv) the Notes have been duly authenticated and delivered by Wells Fargo Bank, N.A..

In rendering such opinions, such counsel may (A) provide for customary assumptions and qualifications, (B) state that its opinion is limited to the laws of the State of New York and (C) rely as to matters of fact, to the extent deemed proper, on certificates of responsible officers of Wells Fargo Bank, N.A., the Company and public officials.

Exhibit E

FORM OF OFFICER'S FINANCIAL CERTIFICATE

The undersigned, the **[CHAIRMAN/VICE CHAIRMAN/CHIEF EXECUTIVE OFFICER/PRESIDENT/ VICE PRESIDENT/CHIEF FINANCIAL OFFICER/TREASURER]** of **[COMPANY]** (the "Company"), hereby certifies, pursuant to Section 6(h) of the Note Purchase Agreement, dated as of May 4, 2006, by and between the Company and Kodiak Warehouse LLC, that, as of **[DATE], [YEAR],** the Company and its subsidiaries had the following ratios and balances:

As of **[QUARTERLY/ANNUAL FINANCIAL DATE], [YEAR]**

Senior secured indebtedness for borrowed money ("Debt")	$_____
Senior unsecured Debt	$_____
Subordinated Debt	$_____
Total Debt	$_____
Ratio of (x) senior secured and unsecured Debt to (y) total Debt	_____%

[FOR FISCAL YEAR END: Attached hereto are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three years ended [DATE], [YEAR].]

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated and consolidating financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries for the fiscal quarter ended [DATE], [YEAR].]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the **[QUARTER] [YEAR]** ended **[DATE], [YEAR],** and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (expect as otherwise noted therein).

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within thirty (30) days of the occurrence of the same) **[except as set forth below:].**

Attached hereto is a current organizational chart of the Company and its subsidiaries as of the date hereof.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this **[DAY]** of **[MONTH], [YEAR].**

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____

Name: _____

Title: _____

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road
Suite 510
Reston, Virginia 20190
(703) 883-1700

Exhibit 10.2

EXECUTION VERSION

JUNIOR SUBORDINATED INDENTURE

between

COMSTOCK HOMEBUILDING COMPANIES, INC.

and

WELLSFARGO BANK, N.A.,
as Trustee

Dated as of May 4,2006

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JUNIOR SUBORDINATED INDENTURE

This JUNIOR SUBORDINATED INDENTURE, dated as of May 4, 2006, is between Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and Wells Fargo Bank, N.A., as Trustee (in such capacity, the "Trustee").

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its junior subordinated notes, and to provide the terms and conditions upon which such junior subordinated notes are to be authenticated, issued and delivered; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article I have the meanings assigned to them in this Article I;

(b) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(c) all accounting terms used but not defined herein have the meanings assigned to them in accordance with GAAP;

(d) unless the context otherwise requires, any reference to an "Article," a "Section," a "Schedule" or an "Exhibit" refers to an Article, a Section, a Schedule or an Exhibit, as the case may be, of or to this Indenture;

(e) the words "hereby," "herein," "hereof and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(f) a reference to the singular includes the plural and *vice versa;* and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

"Act" when used with respect to any Holder, has the meaning specified in Section 1.4(a).

"Additional Interest" means the interest, if any, that shall accrue on any amounts payable on the Securities, the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Security, in each case to the extent legally enforceable.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control." when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Depositary Procedures" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 6.11 to act on behalf of the Trustee to authenticate the Securities.

"Board of Directors" means the board of directors of the Company or any duly authorized committee of that board.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

"Breakage Costs" means any and all reasonable costs and fees of any Holder of Securities (including, without limitation, the reasonable fees and expenses of any counsel engaged by such Holder to enforce the obligations of the Company hereunder) (as determined by such Holder), directly associated or incurred in connection with unwinding, terminating, modifying or otherwise breaking of any interest rate swap or other interest rate hedging arrangement entered into with respect to the interest rate on the Securities prior to the expiration of the Fixed Rate Period where such unwinding, termination, modification or breaking is caused by the payment or defeasance of principal on the Securities prior to the expiration of the Fixed Rate Period in connection with a Change-in-Control Election.

"Breakage Gains" means the amount of gain actually realized by any Holder of Securities (as determined by such Holder), directly associated or incurred in connection with unwinding, terminating, modifying or otherwise breaking any interest rate swap or other interest rate hedging arrangement entered into with respect to the interest rate on the Securities prior to the expiration

of the Fixed Rate Period where such unwinding, termination, modification or breaking is caused by the payment or defeasance of principal on the Securities prior to the expiration of the Fixed Rate Period in connection with a Change-in-Control Election.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

"Calculation Agent" has the meaning specified in Section 10.4(a).

"Capital Lease" means lease of (or other agreement conveying the right to use) any real or personal property by a Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person

"Change-in-Control" means (i) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), including a "group" as defined in Section 13(d)(3) of the Exchange Act (but excluding a director or other fiduciary holding securities under an employee benefit plan of the Company), becomes the beneficial owner of Equity Interests of the Company having at least fifty percent (50%) of the total number of votes that may be cast for the election of directors of the Company; (ii) the merger or other business combination of the Company, sale of all or substantially all of the Company's assets or combination of the foregoing transactions (a "Transaction"), other than a Transaction immediately following which the shareholders of the Company immediately prior to the Transaction continue to have a majority of the voting power in the resulting entity (excluding for this purpose any shareholder owning directly or indirectly more than ten percent (10%) of the shares of the other company involved in the Transaction); or (iii) the persons who were directors of the Company on the date hereof (the "Incumbent Directors") shall cease to constitute at least a majority of the Board or a majority of the board of directors of any successor to the Company; provided, that, any director who was not a director as of the date hereof shall be deemed to be an Incumbent Director if such director was elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of this provision, unless such election, recommendation or approval was the result of an actual or threatened election contest of the type contemplated by Regulation 14a-ll promulgated under the Exchange Act or any successor provision.

"Change-in-Control Election" has the meaning specified in Section 10.5(b).

"Change-in-Control Event" means the occurrence of (i) a Change-in-Control and (ii) a Ratings Downgrade.

"Change-in-Control Event Notice" has the meaning specified in Section 10.5(b).

"Change-in-Control Notice" has the meaning specified in Section 10.(b).

"Code" means the Internal Revenue Code of 1986 or any successor statute thereto, in each case as amended from time to time.

"Commission" has the meaning specified in Section 7.3(c).

"Company" means the Person named as the "Company" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Request" and "Company Order" mean, respectively, the written request or order signed in the name of the Company by its Chairman of the Board of Directors, its Vice Chairman of the Board of Directors, its Chief Executive Officer, President or a Vice President, and by its Chief Financial Officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Consolidated Tangible Net Worth" means (i) the consolidated net worth of the Company and its consolidated subsidiaries minus (ii) the consolidated intangibles of the Company and its consolidated subsidiaries including, without limitation, goodwill, trademarks, trade names, copyrights, patents, patent applications, licenses, and rights in any of the foregoing and other items treated as intangibles in accordance with generally accepted accounting principles.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of this Indenture is located at 919 North Market Street, Suite 700, Wilmington, Delaware 19801.

"Debt" means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the types referred to in clauses (i) through (vii).

"Defaulted Interest" has the meaning specified in Section 3.1(c).

"Defeasance" has the meaning specified in Section 13.1.

"Defeasance Maturity Date" has the meaning specified in Section 13.2.

"Depositary" means an organization registered as a clearing agency under the Exchange Act that is designated as Depositary by the Company or any successor thereto. DTC will be the initial Depositary.

"Depositary Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Depositary effects book-entry transfers and pledges of securities deposited with the Depositary.

"Dollar" or "$" means the currency of the United States of America that, as at the time of payment, is legal tender for the payment of public and private debts.

"DTC" means The Depository Trust Company, a New York corporation, or any successor thereto.

"EBITDA" means, for any period, the net income (or loss) of the Company and its Subsidiaries for such period, excluding (a) any gains from the sale, lease, assignment or other transfer for value (each, a "Disposition") by the Company or any Subsidiary to any Person (other than the Company or any Subsidiary) of any asset or right of the Company or such Subsidiary (including, the loss, destruction or damage of any thereof or any actual or threatened (in writing to the Company or any Subsidiary) condemnation, confiscation, requisition, seizure or taking thereof) other than (i) the Disposition of any asset which is to be replaced, and is in fact replaced, within thirty (30) days with another asset performing the same or a similar function, (ii) the sale or lease of inventory in the ordinary course of business and (iii) other Dispositions in any fiscal year the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance or by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by the Company or any Subsidiary pursuant to such Disposition net of (A) the direct costs relating to such sale, transfer or other disposition (including sales commissions and legal, accounting and investment banking fees), (B) taxes paid or reasonably estimated by the Company to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) and (C) amounts required to be applied to the repayment of any Debt secured by a Lien on the asset subject to such Disposition (other than the Securities)) do not in the aggregate exceed $1,000,000, (b) any extraordinary gains and (c) any gains from discontinued operations, plus, to the extent deducted in determining such net income (or loss), Interest Expense, income tax expense, depreciation and amortization and non-cash management compensation expense for such period.

"EDGAR" has the meaning specified in Section 7.3(c).

"Equity Interests" means (a) the partnership interests (both common and preferred partnership interests) in a partnership (whether a general or limited partnership), (b) the membership interests in a limited liability company (both common and preferred membership interests) and (c) the shares or stock interest (both common stock and preferred stock) in a corporation.

"ERISA" means the Employee Retirement Income Security Act of 1974 or any successor statute thereto, in each case as amended from time to time.

"Event of Default" has the meaning specified in Section 5.1.

"Exchange Act" means the Securities Exchange Act of 1934 or any successor statute thereto, in each case as amended from time to time.

"Expiration Date" has the meaning specified in Section 1.4(h).

"Fixed Rate Period" shall have the meaning specified in the form of Security set forth in Section 2.1.

"Fixed Charge Coverage Ratio" means, for each period of four consecutive fiscal quarters ending on the last day of a fiscal quarter, the ratio of (a) the total for such period of EBITDA minus the sum of (i) income taxes paid in cash by the Company and each of its Subsidiaries and (ii) all unfinanced expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Company, including expenditures in respect of any Capital Lease to (b) the sum for such period of (i) cash Interest Expense plus (ii) required payments of principal of all Debt of the Company and its Subsidiaries that matures more than one year from the date of its creation (or is renewable or extendible, at the option of such Person, to a date more than one year from such date) (including the Securities) plus (iii) management fees paid in cash.

"GAAP" means United States generally accepted accounting principles, consistently applied, from time to time in effect.

"Global Security" means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depositary.

"Government Obligation" means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case of clause (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a "bank" (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any Government Obligation that is so specified and held; provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

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

"Indenture" means this Junior Subordinated Indenture as originally executed or as it may from time to tune be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"Interest Expense" means consolidated interest expense of the Company and its Subsidiaries for such period (including all imputed interest on Capital Leases)

"Interest Payment Date" means March 30, June 30, September 30 and December 30 of each year, commencing on June 30,2006, during the term of this Indenture.

"Investment Company Act" means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

"Investment Company Event" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Company is or, within ninety (90) days of the date of such opinion will be, considered an "investment company" that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Securities.

"Leverage Ratio" means at any time, the ratio of Debt (excluding obligations related to inventory not owned resulting from consolidations required pursuant to Financial Accounting Standards Board Interpretation No. 46 entitled "Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin (ARB) No. 51" issued in January 2003 and revised December 2003, as the same may be revised and amended from time to time) at such time to Consolidated Tangible Net Worth (as reported in the Company's balance sheet contained in the most recent periodic report filed with the Commission) for the most recently ended four fiscal quarters of the Company.

"LIBOR" has the meaning specified in Schedule A.

"LIBOR Business Day" has the meaning specified in Schedule A.

"LIBOR Determination Date" has the meaning specified in Schedule A.

"Mandatory Redemption Price" has the meaning set forth in Section 11.1(b).

"Maturity" when used with respect to any Security, means the date on which the principal of such Security or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Notice of Default" means a written notice of the kind specified in Section 5.1(c).

"Officers' Certificate" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

"Optional Redemption Price" has the meaning set forth in Section 11.1.

"Original Issue Date" means the date of original issuance of each Security.

"Outstanding" means, when used in reference to any Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company and/or its Affiliate shall act as its own Paying Agent) for the Holders of such Securities; provided, that if the Company is acting as Paying Agent, Securities for which payment or redemption money has been so deposited in trust with the Paying Agent shall be considered to remain Outstanding until such time as such payment or redemption money has actually been paid in full to the Holders of such Securities; and provided, further, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

provided, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Securities, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"Paying Agent" means the Trustee or any Person authorized by the Company to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

"Person" means a legal person, including any individual, corporation, estate, partnership (general or limited), joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association or government, or any agency or political subdivision thereof, or any other entity of whatever nature.

"Place of Payment" means, with respect to the Securities, the Corporate Trust Office of the Trustee.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

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

"Purchase Agreement" means the Note Purchase Agreement, dated as of the date hereof, between the Company and the Purchaser.

"Purchaser" means Kodiak Warehouse LLC, a Delaware limited liability company.

"Rating Agencies" shall mean (i) Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., (ii) Moody's Investor Services, Inc. and (iii) Fitch/IBCA, or, in each case its respective successor.

"Ratings Downgrade" means a downgrading in or withdrawal of the Company's general corporate rating or the rating accorded to the Company's debt securities or preferred stock, if any, by any two of the Rating Agencies as a result of a Change-in-Control.

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

"Redemption Price" means, when used with respect to any Security to be redeemed, in whole or in part, the Special Redemption Price, the Mandatory Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

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

"Regular Record Date" for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

"Responsible Officer" means, when used with respect to the Trustee, the officer in the corporate trust department of the Trustee having direct responsibility for the administration of this Indenture.

"Rights Plan" means a plan of the Company providing for the issuance by the Company to all holders of its common Equity Interests of rights entitling the holders thereof to subscribe for or purchase shares or units of any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

"Securities" or "Security." means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

"Securities Act" means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

"Securities Register" and "Securities Registrar" have the respective meanings specified in Section 3.5(a).

"Senior Debt" means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing such Debt or pursuant to which such Debt is outstanding, that such obligations are subordinate or *pan passu* in right of payment to the Securities issued under this Indenture; provided, that Senior Debt shall not be deemed to include (x) any other Debt (and guarantees, if any, in respect of such Debt) issued to any trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a "financing entity") in connection with the issuance by such financing entity of equity securities or other securities pursuant to an instrument that ranks *pari passu* with or junior in right of payment to this Indenture or (y) any Debt issued to any third party that is not affiliated with the Company, has terms and conditions that are substantially similar to the Securities issued under this Indenture and is ranked junior in right of payment to the Senior Debt.

"Special Event" means the occurrence of an Investment Company Event or a Tax Event.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.l(c).

"Special Redemption Price" has the meaning set forth in Section 11.2.

"Stated Maturity" means June 30, 2036.

"Subsidiary" means a Person more than fifty percent (50%) of the outstanding voting stock or other voting interests of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For purposes of this definition, "voting stock" means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"Tax Event" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "Administrative Action"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"Trust Indenture Act" means the Trust Indenture Act of 1939 or any successor statute thereto, in each case as amended from time to time.

Section 1.2 Compliance Certificate and Opinions.

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with, except that, in the case of any application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

(i) a statement by each individual signing such certificate or opinion that such individual has read such condition or covenant and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such condition or covenant has been complied with; and

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

Section 1.3 Forms of Documents Delivered to Trustee.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

Section 1.4 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing and, except as herein otherwise expressly

provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4. the party hereto that sets such record date may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90th) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180th) day after the applicable record date.

Section 1.5 Notices, Etc. to Trustee and Company.

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

(a) the Trustee by any Holder or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office; or

(b) the Company by the Trustee or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 11465 Sunset Hills Road, Suite 510, Reston, Virginia 20190 or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.6 Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 1.7 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

Section 1.8 Successors and Assigns.

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

Section 1.9 Separability.

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

Section 1.10 Benefits of Indenture.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the holders of Senior Debt and the Holders of the Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.11 Governing Law.

This Indenture and the rights and obligations of each of the Holders, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).

Section 1.12 Submission to Jurisdiction.

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS INDENTURE MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS INDENTURE, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE.

Section 1.13 Non-Business Days.

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day (and interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

Section 1.14 Counterparts.

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

ARTICLE II

SECURITY FORMS

Section 2.1 Form of Security.

Any Security issued hereunder shall be in substantially the following form:

COMSTOCK HOMEBUILDING COMPANIES, INC.

No. _____ $ _____

Comstock Homebuilding Companies, Inc., a corporation organized and existing under the laws of Delaware (hereinafter called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to [_____], or registered assigns, the principal sum of **[PRINCIPAL AMOUNT]** ($[_____]) **[IF THE SECURITY IS A GLOBAL SECURITY, THEN INSERT: or such other principal amount represented hereby as may be set forth in the records of the Securities Registrar hereinafter referred to in accordance with the Indenture]** on June 30, 2036. The Company further promises to pay interest on said principal sum from and including May 4,2006, or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly in arrears, to but excluding the succeeding Interest Payment Date, on March 30, June 30, September 30 and December 30 of each year, commencing June 30, 2006, or if any such day is not a Business Day, on the next succeeding Business Day (and interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to 9.72% per annum through the Interest Payment Date in June 2011 ("Fixed Rate Period") and thereafter at a variable rate, reset quarterly, equal to LIBOR plus 4.20% per annum, until the principal hereof is paid or duly provided for or made available for payment; provided, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to 9.72% per annum through the interest payment date in June 2011 and thereafter at a variable rate, reset quarterly, equal to LIBOR plus 4.20% per annum (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from and including the dates such amounts are due to but excluding the dates such amounts are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest payable for any interest period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months and the amount payable for any partial period shall be computed on the basis of the actual number of days elapsed in a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any interest period will be computed on the basis of a three hundred sixty (360)-day year and the actual number of days elapsed in the relevant interest period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the

Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities may be listed, traded or quoted and upon such notice as may be required by such exchange or automated quotation system, all as more fully provided in the Indenture.

During an Event of Default, the Company shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any Equity Interests of the Company, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any preferred Equity Interests of such Subsidiaries or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred Equity Interests are perpetual or otherwise) or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rark *pari passu* in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, (2) a dividend reinvestment or Equity Interests purchase plan or (3) the issuance of Equity Interests in the Company (or securities convertible into or exercisable for such Equity Interests) as consideration in an acquisition transaction entered into prior to the applicable Event of Default, (B) as a result of an exchange, conversion reclassification or combination of any class or series of the Company's Equity Interests (or any Equity Interests in a Subsidiary of the Company) for, of or with any class or series of the Company's Equity Interests or of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in the Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto or (E) any dividend in the form of Equity Interests, warrants, options or other rights where the dividend Equity Interest or the Equity Interest issuable upon exercise of such warrants, options or other rights is the same Equity Interest as that on which the dividend is being paid or ranks *pari passu* with or junior to such Equity Interest).

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his, her or its behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his, her or its attorney-in-fact for any and all such purposes. Each Holder hereof, by his, her or its acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

[FORM OF REVERSE OF SECURITY]

This Security is one of a duly authorized issue of securities of the Company (the "Securities") issued under the Junior Subordinated Indenture, dated as of May 4, 2006 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as Trustee (in such capacity, the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the Holders of the Securities and the holders of Senior Debt, and of the terms upon which the Securities are, and are to be, authenticated and delivered. All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after June 30, 2011 and subject to the terms and conditions of Article XI of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date.

In addition, prior to June 30, 2011, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part and subject to the terms and conditions of Article XI of the Indenture, at a Redemption Price equal to one hundred seven and one-half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date.

Further, the Company shall, upon receipt of a Change-in-Control Election after June 30, 2011, redeem the Securities in whole on a date no more than thirty (30) days after receipt of the

Change-in-Control Election, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers to “Qualified Purchasers” (as such term is defined in the Investment Company Act of 1940, as amended) and is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder’s attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Security or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed on this **[DAY]** day of **[MONTH], [YEAR].**

COMSTOCK HOMEBUILDING
COMPANIES, INC.

By: _____
Name: _____
Title: _____

Section 2.2 Restrictive Legend.

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

[IF THIS SECURITY IS A GLOBAL SECURITY INSERT: "THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A

NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY OR (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN $100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN $100,000 AND MULTIPLES OF $1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH

PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA''), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR SIMILAR LAW (EACH A "PLAN"). OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law. Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

Section 2.3 Form of Trustee's Certificate of Authentication.

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

Dated:

WELLS FARGO BANK, N.A., not in its individual capacity, but solely as Trustee

By: _____
Name:
Title:

Section 2.4 Temporary Securities.

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.5 Definitive Securities.

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

ARTICLE III

THE SECURITIES

Section 3.1 Payment of Principal and Interest.

(a) The unpaid principal amount of the Securities shall bear interest at a fixed rate equal to 9.72% per annum through the Interest Payment Date in June 2011 and thereafter at a variable rate equal to LIBOR plus 4.20% per annum until paid or duly provided for, such interest to accrue from and including the Original Issue Date or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for to but excluding the succeeding Interest Payment Date, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at the rate equal to a fixed rate equal to 9.72% per annum through the Interest Payment Date in June 2011 and thereafter at a variable rate, reset quarterly, equal to LIBOR plus 4.20% per annum (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly from and including the dates such amounts are due to but excluding the dates such amounts are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for Securities (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days

and not less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities may be listed, traded or quoted and, upon such notice as may be required by such exchange or automated quotation system (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable for any interest period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months and the amount payable for any partial period shall be computed on the basis of the actual number of days elapsed in a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any interest period will be computed on the basis of a three hundred sixty (360)-day year and the actual number of days elapsed in the relevant interest period.

(e) Payment of principal of, premium, if any, and interest on the Securities shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of such Securities shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

(f) The parties hereto acknowledge and agree that the Holders have certain rights to direct the Company to modify the Interest Payment Dates and corresponding Redemption Date and Stated Maturity of the Securities or a portion of the Securities pursuant to the Purchase Agreement. In the event any such modifications are made to the Securities or a portion of the Securities, appropriate changes to the form of Security set forth in Article II hereof shall be made

prior to the issuance and authentication of new or replacement Securities. Any such modification of the Interest Payment Dates and corresponding Redemption Date and Stated Maturity with respect to any Securities or tranche of Securities shall not require or be subject to the consent of the Trustee.

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

Section 3.2 Denominations.

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof.

Section 3.3 Execution, Authentication, Delivery and Dating.

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of Thirty Million Dollars ($30,000,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall have delivered such Security to the Trustee for cancellation as provided in Section 3.8, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(d) Each Security shall be dated the date of its authentication.

Section 3.4 Global Securities.

(a) Upon the election of the Holder after (and, in the case of the Purchase, prior to) the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the name of the Depositary or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor (which may be the Trustee), and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for registered Securities, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above in this Section 3.4(b), the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled or (y) the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary, accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) The Depositary or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depositary Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Depositary Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depositary for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Security and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depositary.

(f) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Depositary Participants.

(g) No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving

effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

Section 3.5 Registration, Transfer and Exchange Generally.

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "Securities Register") in which the registrar and transfer agent with respect to the Securities (the "Securities Registrar"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(e) Every Security presented or surrendered for transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this Section 3.5: (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Securities may only be transferred to a "Qualified Purchaser" as such term is defined in Section 2(a)(51) of the Investment Company Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the Code or the Investment Company Act; provided, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Security, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

Section 3.6 Mutilated, Destroyed, Lost and Stolen Securities.

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Company or the Trustee to save each of them harmless, the Company shall execute and upon receipt thereof the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of

the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 3.7 Persons Deemed Owners.

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.8 Cancellation.

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Securities shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

Section 3.9 Agreed Tax Treatment.

Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States federal, state and local tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

Section 3.10 CUSIP Numbers.

The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption and other similar or related materials as a convenience to Holders; provided, that any such notice or other materials may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or other materials and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section 4.1) and the Trustee, on written demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

(A) have become due and payable; or

(B) will become due and payable at their Stated Maturity within one (1) year of the date of deposit; or

(C) are to be called for redemption within one (1) year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

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

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

Section 4.2 Application of Trust Money.

Subject to the provisions of Section 10.2(e), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this Section 4.2 shall not be subject to the claims of holders of Senior Debt under Article XII.

ARTICLE V

REMEDIES

Section 5.1 Events of Default.

"Event of Default" means, wherever used herein with respect to the Securities, any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days; or

(b) default in the payment of the principal of or any premium on any Security at its Maturity; or

(c) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Purchase Agreement and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty-

five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder (a "Notice of Default"); provided that any default in the performance or breach of the covenant set forth in Section 10.8 shall constitute an Event of Default immediately upon such default or breach (without any obligation of the Trustee or the Holders to deliver a Notice of Default) and the Holders shall have the immediate right to exercise all remedies granted to the Holders under this Indenture; or

(d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action.

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be immediately due and payable, by a notice in writing to the Company (and to the Trustee if given by Holders).

(b) At any time after such a declaration of acceleration with respect to Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article V, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Securities;

(B) any accrued Additional Interest on all Securities;

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities; and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days; or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof;

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

(c) If an Event of Default with respect to Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 5.4 Trustee May File Proofs of Claim.

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

Section 5.5 Trustee May Enforce Claim Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to Article XII and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 5.6 Application of Money Collected.

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article XII;

THIRD: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto pursuant to the terms hereof.

Section 5.7 Limitation on Suits.

Subject to Section 5.8, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding for sixty (60) days; and

(e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 5.8 Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

Section 5.9 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Holder, then and in every such case the

Company, the Trustee and such Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative.

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Holders, as the case may be.

Section 5.12 Control by Holders.

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided, that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture;

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction; and

(c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

Section 5.13 Waiver of Past Defaults.

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

(i) in the payment of the principal of, premium, if any, or interest (including any Additional Interest) on any Outstanding Security (unless such Event of Default has been

cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and premium, if any, on all Securities due otherwise than by acceleration); or

(ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Securities.

(c) Upon any such waiver, such Event of Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 5.14 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or premium, if any, on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

Section 5.15 Waiver of Usury, Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE

Section 6.1 Corporate Trustee Required.

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by federal or state authority and having an office within the United States. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 6.1, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

Section 6.2 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; provided, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the

extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities (or such other percentage as may be required by the terms hereof) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee under this Indenture; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

Section 6.3 Notice of Defaults.

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; provided, that except in the case of a default in the payment of the principal of or any premium or interest on any Securities, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of Holders; and provided, further, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

Section 6.4 Certain Rights of Trustee.

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond,

debenture, note or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; provided, that if the Trustee does not receive such instructions from the Company within ten (10) Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(d) the Trustee may consult with counsel (which counsel may be counsel to the Trustee, the Company or any of its Affiliates, and may include any of its employees) and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustees (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default specified in Section 5.1, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent or Securities Registrar.

Section 6.5 May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

Section 6.6 Compensation; Reimbursement; Indemnity.

(a) The Company agrees:

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee (including in its individual capacity) and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to clause (i) or (ii) of this Section 6.6(a)), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

Section 6.7 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time by giving written notice thereof to the Company.

(c) Unless an Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Company by a Board Resolution. If an Event of Default shall have occurred and be continuing, the Trustee may be removed by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities, delivered to the Trustee and to the Company.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when no Event of Default shall have occurred and be continuing, the Company, by a Board Resolution, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when an Event of Default shall have occurred and be continuing, the Holders, by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8. any Holder who has been a *bona fide* Holder of a Security for at least six (6) months may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) The Company shall give notice to all Holders in the manner provided in Section 1.6 of each resignation and each removal of the Trustee and each appointment of a successor Trustee. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Section 6.8 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee, each successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; provided, that on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

Section 6.9 Merger, Conversion, Consolidation or Succession to Business.

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

Section 6.10 Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

Section 6.11 Appointment of Authenticating Agent.

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be an entity organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its

combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder; provided, that such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.1.1, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within mentioned Indenture.

Dated:

WELLS FARGO BANK, N.A., not in its individual capacity, but solely as Trustee

By: _____
Authenticating Agent

By: _____
Authorized Signatory

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY COMPANY

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee:

(a) semiannually, on or before June 30 and December 31 of each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof; and

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished;

in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

Section 7.2 Preservation of Information, Communications to Holders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

Section 7.3 Reports by Company.

(a) The Company shall furnish to the Holders and to prospective purchasers of Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3 (b).

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Kodiak Capital Management Company LLC, 2107 Wilson Boulevard, Suite 450, Arlington, Virginia 22201, Attention: N. David Doyle or such other address as designated by Kodiak Capital Management Company LLC) and (iv) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made

either by such beneficial owner or by Kodiak Capital Management Company LLC), a duly completed and executed officer's financial certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company, or, if applicable, such shorter respective periods as may then be required by the Commission for the filing by the Company of quarterly reports on Form 10-Q and annual reports on Form 10-K.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "Commission") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act, and shall not relieve the Company of the requirement to deliver the certificate referred to in Section 7.3 (b). The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.1 Company May Consolidate, Etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably

satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture, comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

(d) Notwithstanding the foregoing, if the Company shall consolidate with or merge into an unaffiliated entity or convey, transfer or lease its properties and assets substantially as an entirety to an unaffiliated entity, the rights granted to the Purchaser under Sections 60(j) of the Purchase Agreement and Section 10.8 shall automatically terminate upon the closing of such consolidation or merger or conveyance, transfer or lease of its properties and assets so long as the aggregate amount of Securities or junior subordinated notes, trust preferred securities or other securities convertible into, or exercisable or exchangeable for Securities or other junior subordinated notes or trust preferred securities of the successor entity does not exceed five percent (5%) of the Consolidated Tangible Net Worth of such successor entity as of the date of such consolidation or merger or conveyance, transfer or lease of its properties and assets.

Section 8.2 Successor Company Substituted.

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.l(a), the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person to the Company may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor

Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures without Consent of Holders.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(b) to evidence and provide for the acceptance of appointment hereunder by a successor trustee; or

(c) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture; provided, that such action pursuant to this clause (c) shall not be effected unless the Company has delivered a written notice of such amendment to the Holders at least twenty (20) days prior to the effective date of such amendment; provided, further, that such action pursuant to this clause (c) shall not adversely affect in any material respect the interests of any Holders; or

(d) to comply with the rules and regulations of any securities exchange or automated quotation system on which any of the Securities may be listed, traded or quoted; or

(e) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default; provided, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders; or

(f) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States federal income tax purposes; provided, that such action pursuant to this clause (f) shall not adversely affect in any material respect the interests of any Holders.

Section 9.2 Supplemental Indentures with Consent of Holders.

(a) Subject to Section 9.1, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; provided, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security:

(i) except as set forth in Section 3.1(f), change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date; or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture; or

(iii) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.6, except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security.

(b) It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.3 Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder promptly after the execution thereof.

Section 9.4 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.5 Reference in Securities to Supplemental Indentures.

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE X

COVENANTS

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

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture.

Section 10.2 Money for Security Payments to be Held in Trust.

(a) If the Company shall at any time act as its own Paying Agent with respect to the Securities, it will, on or before each due date of the principal of and any premium or interest (including any Additional Interest) on the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium or interest (including Additional Interest) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee in writing of its failure so to act.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 A.M., New York City time, on each due date of the principal of and any premium or interest (including any Additional Interest) on any Securities, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent for the Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.2, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a

Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two (2) years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.3 Statement as to Compliance.

The Company shall deliver to the Trustee, within one hundred twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate (substantially in the form attached hereto as Exhibit B) covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.4 Calculation Agent.

(a) The Company hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "Calculation Agent").

The Company has initially appointed the Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. Notwithstanding the foregoing, so long as the Securities are Outstanding, the Calculation Agent shall be the Trustee. If the Calculation Agent is unable or unwilling to act as such or is removed by the Company, the Company will promptly appoint as a replacement Calculation Agent the London office of a leading bank which is engaged in transactions in three (3)-month Eurodollar deposits in the international Eurodollar market and which does not control or is not controlled by or under common control with the Company or its Affiliates. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 A.M. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 A.M. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the interest payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Trustee, each Paying Agent and the Depositary. The Calculation Agent will also specify to the Company the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company before 5:00 P.M. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

Section 10.5 Additional Covenants.

(a) The Company covenants and agrees with each Holder of Securities that if an Event of Default shall have occurred and be continuing, it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any Equity Interests of the Company, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any preferred Equity Interests of such Subsidiaries or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred Equity Interests are perpetual or otherwise), or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or Equity Interests purchase plan or in connection with the issuance of Equity Interests in the Company (or securities convertible into or exercisable for such Equity Interests) as consideration in an acquisition transaction entered into prior to the applicable Event of Default, (B) as a result of an exchange, conversion reclassification or combination of any class or series of the

Company's Equity Interests (or any Equity Interests in a Subsidiary of the Company) for any class or series of the Company's Equity Interests or of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in the Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto or (E) any dividend in the form of Equity Interests, warrants, options or other rights where the dividend Equity Interest or the Equity Interest issuable upon exercise of such warrants, options or other rights is the same Equity Interest as that on which the dividend is being paid or ranks *pari passu* with or junior to such Equity Interest).

(b) The Company shall notify in writing, within five (5) Business Days of the occurrence thereof, the Trustee and each Holder of Securities of the occurrence of a Change-in-Control (the "Change-in-Control Notice"). Within thirty (30) days of the occurrence of a Change-in-Control, the Depositor shall initiate a ratings affirmation process with the Ratings Agencies to determine if a Ratings Downgrade has occurred as a result of such Change-in-Control. Within five (5) Business Days of the completions of such ratings affirmation process, the Company shall notify in writing the Trustee and each holder of Securities of the occurrence of a Change-in-Control Event (the "Change-in-Control Event Notice"). If the Company shall have received, within thirty (30) days from the Holders of Securities' receipt of the Change-in-Control Event Notice, written notice from any Holder of Securities of such Holder's election to cause the Defeasance or redemption, as applicable, of the Securities as provided in this Section 10.5(b) (the "Change-in-Control Election"), then the Company shall (i) if such Change-in-Control Election is received on or prior to June 30, 2011, cause Article XIII to be applied to the Outstanding Securities or (ii) if such Change-in-Control Election is received after June 30,2011, redeem the Securities pursuant to Section ll.l(b).

(c) The Company hereby covenants and agrees that the Company shall maintain, as of the end of each fiscal quarter, a Consolidated Tangible Net Worth (as reported in the Company's balance sheet contained in the most recent periodic report filed with the Commission) in excess of $120,000,000.

(d) The Company will not permit the Leverage Ratio, as of the end of each fiscal quarter, to be greater than 3.00 to 1.00.

(e) The Company will not permit the Fixed Charge Coverage Ratio, as of the end of each fiscal quarter, to be less than 2.00 to 1.00.

Section 10.6 Waiver of Covenants.

The Company may omit in any particular instance to comply with any covenant or condition contained in Section 10.5 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective,

the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

Section 10.7 Treatment of Securities.

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all U.S. federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W-9 or W-8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. federal income tax purposes, or any other applicable form establishing a complete exemption from U.S. withholding tax.

Section 10.8 Limitation on Issuance of Securities.

The Company covenants and agrees with each Holder of Securities that the Company will not, without the prior written consent of Holders of a majority in interest of Securities, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, (i) any Securities or other junior subordinated notes or trust preferred securities or (ii) any other securities convertible into, or exercisable or exchangeable for, any Securities or other junior subordinated notes or trust preferred securities unless the aggregate amount of Securities outstanding together with such Securities or junior subordinated notes, trust preferred securities or other securities proposed to be offered, sold, contracted for sale, granted or otherwise disposed of does not exceed twenty-five percent (25%) of the aggregate of (x) the Company's Consolidated Tangible Net Worth (as reported in the Company's balance sheet contained in the most recent periodic report filed with the Commission and after taking into account such Securities, junior subordinated notes, trust preferred securities or other securities proposed to be offered, sold, granted or otherwise disposed of).

ARTICLE XI

REDEMPTION OF SECURITIES

Section 11.1 Optional Redemption and Mandatory Redemption.

(a) The Company may, at its option, on any Interest Payment Date, on or after June 30, 2011, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date (the "Optional Redemption Price").

(b) The Company shall, upon receipt of a Change-in-Control Election after June 30, 2011, redeem the Securities in whole on a date no more than thirty (30) days after receipt of the Change-in-Control Election, at a Redemption Price equal to one hundred percent (100%) of the outstanding principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date (the "Mandatory Redemption Price").

Section 11.2 Special Event Redemption.

Prior to June 30, 2011, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred seven and one-half percent (107.5%) of the principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date (the "Special Redemption Price").

Section 11.3 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.5. In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

Section 11.4 Selection of Securities to be Redeemed.

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on *a pro rata* basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption; provided, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

Section 11.5 Notice of Redemption.

(a) Notice of redemption shall be given not later than the thirtieth (30th) day, and not earlier than the sixtieth (60th) day, prior to the Redemption Date to each Holder of Securities to be redeemed, in whole or in part.

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

Section 11.6 Deposit of Redemption Price.

Prior to 10:00 A.M., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.2) an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

Section 11.7 Payment of Securities Called for Redemption.

(a) If any notice of redemption has been given as provided in Section 11.5, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Security shall, until paid, bear interest from and including the Redemption Date at the rate prescribed therefor in the Security.

ARTICLE XII

SUBORDINATION OF SECURITIES

Section 12.1 Securities Subordinate to Senior Debt.

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities is hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

Section 12.2 No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.

(a) In the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default specified in Section 5.1 (each such event, if any, herein sometimes referred to as a "Proceeding"), all Senior Debt (including any interest thereon

accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

Section 12.3 Payment Permitted if No Default.

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of Section 12.2 or of any Proceeding referred to in Section 12.2, from making payments at any time of principal of, premium, if any, or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of, premium, if any, or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

Section 12.4 Subrogation to Rights of Holders of Senior Debt.

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

Section 12.5 Provisions Solely to Define Relative Rights.

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional

Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

Section 12.6 Trustee to Effectuate Subordination.

Each Holder of a Security by his, her or its acceptance thereof authorizes and directs the Trustee on his, her or its behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his, her or its attorney-in-fact for any and all such purposes.

Section 12.7 No Waiver of Subordination Provisions.

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

Section 12.8 Notice to Trustee.

(a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee,

agent or representative therefor; provided, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself, herself or itself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 12.9 Reliance on Judicial Order or Certificate of Liquidating Agent.

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

Section 12.10 Trustee Not Fiduciary for Holders of Senior Debt.

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XII or otherwise.

Section 12.11 Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Senior Debt that may at any time be held by it, to the same extent

as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Section 12.12 Article Applicable to Paying Agents.

If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article XII in addition to or in place of the Trustee; provided, that Sections 12.8 and 12.11 shall not apply to the Company or any Affiliate of the Company if the Company or such Affiliate acts as Paying Agent.

ARTICLE XIII

DEFEASANCE

Section 13.1 Defeasance and Discharge.

Upon the exercise of the option provided in Section 10.50(b) by a Holder of the Securities as a result of the receipt of a Change-in-Control Election on or prior to June 30, 2011, to have this Section 13.1 applied to the Outstanding Securities, the Company shall, within thirty (30) days following its receipt of the Change-in-Control Election satisfy the conditions set forth in Section 13.2. The Company shall be deemed to have been discharged from its obligations with respect to the Outstanding Securities as provided in this Section 13.1 on and after the date the conditions set forth in the Section 13.2 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities and to have satisfied all of its other obligations under the Securities and this Indenture insofar as the Securities are concerned (and the Trustee, upon written request and at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following, which shall survive until otherwise terminated or discharged hereunder (1) the rights of Holders of the Securities to receive, solely from the trust fund described in Section 13.2 and as more fully set forth in such Section 13.2, payments in respect of the principal of, premium, if any, and interest on the Securities when payments are due, (2) the Company's obligations with respect to the Securities under Sections 2.4, 3.5, 3.6, and 10.2, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article XIII.

Section 13.2 Conditions to Defeasance.

The following shall be the conditions to application of Section 13.1 to the Outstanding Securities:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee that satisfies the requirements contemplated by Section 6.1 and agree to comply with the provisions of this Article XIII applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Outstanding

Securities, (A) money in an amount in Dollars, (B) Government Obligations that through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount in Dollars, or (C) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying Trustee) to pay and discharge, one hundred percent (100%) of the principal amount of the Securities on June 30, 2011 (the "Defeasance Maturity Date")plus interest on the Securities due and payable on the Interest Payment Dates occurring prior to and including the Defeasance Maturity Date and Breakage Costs, if any, less Breakage Gains, if any, in accordance with the terms of this Indenture and the Securities.

(2) Such Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act.

(3) Such Defeasance shall not result in the trust arising from such deposit constituting an "investment company" within the meaning of the Investment Company Act of 1940, unless such trust shall be qualified or exempt from regulation thereunder.

(4) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance have been complied with.

Section 13.3 Deposited Money and U.S. Government Obligations to be Held in Trust: Other Miscellaneous Provisions.

Subject to the provisions of Section 10.2(e), all money and Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section 13.3 and Section 13.4, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to Section 13.2 in respect of the Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of the Securities, of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 13.2 or the principal and interest received in respect thereof other than any such tax, fee or other charge that by law is for the account of the Holders of Outstanding Securities.

Anything in this Article XIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations held by it as provided in Section 13.2 with respect to the Securities that,

in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Defeasance with respect to the Securities.

Section 13.4 Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article XIII with respect to the Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article XIII with respect to Securities until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 13.3 with respect to the Securities in accordance with this Article XIII; provided, however, that if the Company makes any payment of principal of, premium, if any, or interest on any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of Securities to receive such payment from the money so held in trust.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Junior Subordinated Indenture to be duly executed as of the day and year first above written.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: /s/ Bruce Labovitz
Name: Bruce Labovitz
Title: Chief Financial Officer

WELLS FARGO BANK, N.A., as Trustee

By: /s/ Tracy Mclamb
Name: Tracy Mclamb
Title: Vice President

Schedule A

DETERMINATION OF LIBOR

With respect to the Securities, the London interbank offered rate ("LIBOR") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest .000001%):

(1) On the second LIBOR Business Day (as defined below) prior to an Interest Payment Date occurring after the expiration of the Fixed Rate Period (each such day, a "LIBOR Determination Date"), LIBOR for any given security shall for the following interest payment period equal the rate, as obtained by the Calculation Agent from Bloomberg Financial Markets Commodities News, for three (3)-month Eurodollar deposits that appears on Dow Jones Telerate Page 3750 (as defined in the International Swaps and Derivatives Association, Inc. 2000 Interest Rate and Currency Exchange Definitions, as the same may be amended from time to time), or such other page as may replace such Page 3750 (as any such replacement may be amended from time to time), as of 11:00 A.M. (London time) on such LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three (3)-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 A.M. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for three (3)-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; provided, that if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above or adequate and fair means do not exist for ascertaining the applicable interest rate on the basis set forth above (due to changes arising in the interbank Eurocurrency market or otherwise), then the Securities shall not bear interest in respect of LIBOR but shall instead bear interest with reference to a floating rate equal to the Base Rate (as defined below).

(3) As used herein: "Reference Banks" means four (4) major banks in the London interbank market selected by the Calculation Agent; "LIBOR Business Day" means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London; the "Base Rate" on any day shall equal the greater of the arithmetic mean of (i) the "prime rate" for dollar denominated loans quoted by leading banks in the City of New York selected by the Calculation Agent and (ii) the Federal Funds Rate (as defined below) plus 0.50% per annum; and the "Federal Funds Rate" on any day equals the rate per annum equal to the weighted average (rounded upwards to the nearest 0.000001) of the rate on overnight federal funds transactions with members of the Federal Reserve System only arranged by federal funds brokers, as published as of such day by the Federal Reserve Bank of New York.

FORM OF OFFICER'S FINANCIAL CERTIFICATE

The undersigned, the **[CHIEF FINANCIAL OFFICER/TREASURER/ASSISTANT TREASURER/ SECRETARY/ASSISTANT SECRETARY, CHAIRMAN/VICE CHAIRMAN/CHIEF EXECUTIVE OFFICER/ PRESIDENT/VICE PRESIDENT]** of Comstock Homebuilding Companies, Inc. (the "Company") hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture, dated as of May 4, 2006 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as trustee, that, as of **[DATE], [YEAR]** , the Company, if applicable, and its subsidiaries had the following ratios and balances:

As of **[QUARTERLY/ANNUAL FINANCIAL DATE], [YEAR]**

Senior secured indebtedness for borrowed money ("Debt")	$	—
Senior unsecured Debt	$	—
Subordinated Debt	$	—
Total Debt	$	—
Ratio of (x) senior secured and unsecured Debt to (y) total Debt		—%

[FOR FISCAL YEAR END: Attached hereto are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three (3) years ended [DATE], [YEAR].]

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated and consolidating financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries for the fiscal quarter ended [DATE], [YEAR].]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the **[QUARTER] [YEAR]** ended **[DATE], [YEAR]**, and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (expect as otherwise noted therein).

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within thirty (30) days of the occurrence of the same) **[except as set forth below:]**.

Attached hereto is a current organizational chart of the Company and its subsidiaries as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this **[DAY]** day of **[MONTH], [YEAR]**.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____

Name: _____

Title: _____

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road
Suite 510
Reston, Virginia 20190
(703)883-1700

FORM OF
OFFICERS' CERTIFICATE
PURSUANT TO SECTION 10.3

Pursuant to Section 10.3 of the Junior Subordinated Indenture, dated as of May 4, 2006 (as modified, supplemented or amended from time to time, the "Indenture") among Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company") and Wells Fargo Bank, N.A., as Trustee, each of the undersigned hereby certifies that, to the knowledge of the undersigned, the Company is not in default in the performance or observance of any of the terms, provisions and conditions of the Indenture (without regard to any period of grace or requirement of notice provided under the Indenture) for the fiscal period ending on **[DATE], [YEAR] [, except as follows: SPECIFY EACH SUCH DEFAULT AND THE NATURE AND STATUS THEREOF].**

Capitalized terms used herein, and not otherwise defined herein, have the respective meanings assigned thereto in the Indenture.

[signatures page follows]

IN WITNESS WHEREOF, the undersigned have executed this Officers' Certificate as of **[DATE], [YEAR].**

By: _____

Name: _____

Title: **[Must be the CHIEF EXECUTIVE OFFICER, the PRESIDENT or a SENIOR VICE PRESIDENT]** of Comstock Homebuilding Companies, Inc.

By: _____

Name: _____

Title: **[Must be the CHIEF FINANCIAL OFFICER, the CHIEF ACCOUNTING OFFICER, the TREASURER or an ASSISTANT TREASURER]** of Comstock Homebuilding Companies, Inc.

Exhibit 10.3

CREDIT AGREEMENT

among

WACHOVIA BANK, NATIONAL ASSOCIATION ("Lender")

and

COMSTOCK HOMEBUILDING COMPANIES, INC.
("Borrower")

joined in by

CAPITOL HOMES INC. and COMSTOCK WESEL, L.L.C.

(Collectively, "Guarantor")

FOR $40,000,000 SENIOR SECURED REVOLVING CREDIT FACILITY

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT (the "Agreement") is dated as of _____, 2006, between Lender and Borrower joined into by Guarantor and to be joined into from time to time by each Future Guarantor.

Lender has agreed to extend a senior secured revolving credit facility to Borrower and Borrower has agreed to accept the proceeds thereof of up to the principal amount of Forty Million Dollars ($40,000,000) on a revolving basis (the "Facility"), on the terms and conditions set forth in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledges, and intending to be legally bound, the parties agree as follows:

ARTICLE 1

DEFINITIONS AND REFERENCE TERMS

In addition to any other terms defined in this Agreement, the following terms shall have the meanings indicated below:

Accounting Terms. All accounting terms not specifically defined or specified in this Agreement shall have the meanings generally attributed to them under generally accepted accounting principles ("**GAAP**"), as in effect from time to time, consistently applied.

Advance. An advance of Facility proceeds to or for the benefit of Borrower subject to the terms and conditions of this Agreement.

Amenities. With respect to a particular project, the improvements to be constructed on common areas, such as entrance monuments, landscaping and recreational facilities.

Authorized Signatory. Christopher Clemente.

Borrower. Comstock Homebuilding Companies, Inc., a Delaware corporation.

Borrowing Base. All Lender-approved Projects existing from time to time as specified in the Borrowing Base Certificate approved by Lender.

Borrowing Base Certificate. The certificate attached as **Schedule A**, which shall be delivered from Borrower to Lender from time to time under this Agreement.

Borrowing Base Availability. The amount available under the Facility from time to time, as determined under **Section 3.04.**

Borrowing Base Maximum Eligibility. The amount that would be available under the Facility from time to time, as determined under **Section 3.04,** but assuming 100% completion of LUD and Units.

Borrowing Date. The date on which an Advance is made.

Budgeted Project Cost. The actual cost incurred to purchase Projects and obtain all required governmental approvals plus the cost to be incurred on the total approved budget, including hard costs of labor, materials, land improvements, Amenities, utility installation and other work to be performed and Project related soft costs (survey costs, permit fees, insurance, impact fees, interest, overhead and professional fees) in connection with the construction and completion of the improvements in substantial compliance with the construction plans and specifications, all as approved by Lender.

Business Day. A day that is not a Saturday, Sunday or a day on which Lender is closed pursuant to authorization or requirement of law.

Closing. The date that this Agreement and the other Loan Documents are executed and delivered by the parties.

Collateral Pool. All Projects comprising the Borrowing Base as specified in the Borrowing Base Certificate as approved by Lender from time to time.

Commitment. Lender's commitment to make Advances to Borrower up to the Commitment Amount.

Commitment Amount. The aggregate principal amount of Advances which Lender shall make available and is permitted to be outstanding at any one time under the Facility up to Forty Million Dollars ($40,000,000).

Contingent Liability. Without reference to the Indebtedness as to any Person: (a) any guaranty obligation of that Person; and (b) any direct or indirect recourse obligation or liability, contingent or otherwise, of that Person: (i) relating to any letter of credit, bond or similar instrument issued for the account of that Person or for which that Person is otherwise liable for reimbursement, (ii) to purchase any materials, supplies or other property from, or to obtain the services of, another Person if the relevant contract or other related document or obligation requires that payment for those materials, supplies or other property, or for those services, shall be made if delivery of those materials, supplies or other property is not made or tendered, or the services are never performed or tendered or (iii) incurred pursuant to any interest rate swap or similar agreement. The amount of any Contingent Liability shall be deemed equal to the maximum anticipated liability in respect thereof as determined by Lender in its sole discretion. Contingent Liabilities will be computed at the amount which, in light of all the facts and circumstances existing at a given time, represents the amount that can reasonably be expected to become an actual or matured liability.

Debt Service. During the relevant accounting period: (a) interest paid (whether expensed or capitalized); plus (b) required principal payments on any debt of Borrower excluding any lump sum principal payments at maturity.

Deed of Trust. Individually and collectively, the Deed of Trust (or Mortgage, as applicable), Security Agreement and Financing Statement encumbering each Project executed by Borrower, Guarantor or a Future Guarantor in favor of Lender which secures the Note and any sums advanced by Lender pursuant to this Agreement or the other Loan Documents. Future Guarantors shall from time to time, at Land Closings, execute Deeds of Trust in favor of Lender securing their applicable Guarantees.

Default. Any event or condition which, with the giving of notice or the passage of time or both, would become an Event of Default.

Default Rate. Four percent (4%) per annum above the then current Interest Rate under the Note, not to exceed the highest non-usurious interest rate permitted by law.

Development Agreement. Any agreement between Borrower, Guarantor and any Future Guarantors, if applicable and any governmental or quasi-governmental entity or any utility company or authority relating to a Project.

Dollars and/or the symbol $. Lawful money of the United States of America.

Effective Tangible Net Worth. Total assets minus Senior Liabilities. For purposes of this computation, the aggregate amount of any intangible assets of Borrower including without limitation, goodwill, franchises, licenses, patents, trademarks, trade names, copyrights, service marks, and brand names, shall be subtracted from total assets.

Entitled Land. Land owned by Borrower, Guarantor or a Future Guarantor that is to be acquired or held for future development that is zoned to allow for the development of single-family residential Lots, and that does not meet the definitions of Land Under Development or Finished Lots.

Event of Default. The meaning set forth in **Article 7.**

Facility. The extension of credit (whether through Advances or letters of credit) made by Lender to Borrower pursuant to the terms and conditions of this Agreement and the other Loan Documents.

Financing Statements. The UCC-1 financing statements (including fixture filings), amendments and continuations in favor of Lender with respect to any Project. Borrower, Guarantor and any Future Guarantor authorize Lender to file the Financing Statements.

Finished Lots. Any Lot (A) with respect to which all off-site and on-site infrastructure improvements (other than final paving) have been completed, including: (i) all utilities (water, sewer and electric) being installed to the Lots (or bonded for completion); and (ii) all conditions to subdivision approval imposed by the applicable governmental authorities being satisfied (or bonded for completion) so that a building permit for a Unit can be obtained, and (B) located in a subdivision approved by Lender. Under subsections (A)(i) and (ii) above, the bonding must be acceptable to Lender in its discretion.

Future Guarantors. The Facility shall require the joint and several unconditional guarantees (the "**Guarantees**") of any fee simple owners (other than Borrower) of any real property added to the Collateral Pool ("**Future Guarantors**") for the payment and performance of all obligations of Borrower to Lender under the Facility. Each Future Guarantor shall acknowledge upon execution of its Guarantee at a Land Closing that it is solvent, it is receiving equivalent value in return for guaranteeing the obligations of Borrower and the Guarantee does not violate any lending restrictions imposed on the Future Guarantor by a third party.

Guarantor. Capitol Homes Inc. and Comstock Wesel, L.L.C., jointly and severally, with the guaranty of the Indebtedness and Obligations of Borrower owed to Lender under this Agreement and the other Loan Documents executed by Guarantor as of Closing collectively referred to as the "**Guaranty.**" The term "Guarantor" shall apply to either Capitol Homes Inc. or Comstock Wesel, L.L.C. or both as applicable in this Agreement.

Hazardous Materials. All materials defined as hazardous or biohazardous wastes or substances under any local, state or federal environmental laws, rules or regulations, and petroleum, petroleum products, oil and asbestos.

Indebtedness. All obligations now or in the future owed to Lender by Borrower under the terms of the Note, this Agreement or the other Loan Documents, together with all interest accruing thereon, all fees, all costs of collection, attorneys' fees and expenses of or advances by Lender which Lender pays or incurs in discharge of obligations of Borrower, whether the amounts are now due or in the future become due, direct or indirect and whether the amounts due are from time to time reduced or extinguished and thereafter re-incurred.

Land Closing. Those times during the Term of the Facility when real property (each a Project) becomes encumbered by the lien and operation of the Deed of Trust.

Land Under Development or LUD. Land acquired by Borrower, Guarantor or a Future Guarantor which is (A) zoned for its intended use, (B) has a preliminary plan approval (or its equivalent) by the appropriate governmental authorities in the jurisdiction in which the land is located, (C) is under development as determined by Lender, meaning that it is expected, in Lender's sole discretion, to commence development work within ninety (90) days and (D) is expected by Borrower, and by Lender in its sole discretion, to be developed into Finished Lots within 36 months of admittance to the Borrowing Base as LUD.

Liquidation Proceeds. All amounts received by Lender in the exercise of the rights and remedies under the Loan Documents (including upon foreclosure of the Deed of Trust and/or realization on the Financing Statements), but not including either: (a) any amount bid at a foreclosure sale by a Lender or otherwise credited to Borrower in any deed-in-lieu of foreclosure or similar transaction or (b) any breakage amount due to Borrower under any Swap agreement after the acceleration of the Facility, which breakage amount may be retained by Lender and applied toward Lender's portion of the Advances then outstanding after the application of all Liquidation Proceeds.

Loan Documents. This Agreement, the Note, the Deed of Trust, Financing Statements, and all other documents executed and/or delivered by Borrower, Guarantor or a Future Guarantor or any third party in connection with the Facility.

Lot. Any single-family residential lot, or building site for a residential condominium or townhome building, located in a Project approved by Lender and (A) created pursuant to a duly recorded plat or (B) if allowed under applicable subdivision laws or ordinances, described by metes and bounds description in designated platted tracts.

Material Adverse Effect. A material adverse effect (as determined in Lender's sole discretion) upon: (i) the business, assets, operating ability or condition (financial or otherwise) of Borrower taken as a whole, Guarantor or any Future Guarantor; or (ii) the ability of Borrower, Guarantor and any Future Guarantor to repay the Obligations or other Indebtedness or otherwise perform Obligations under the Loan Documents.

Maturity Date. May ___, 2009, at which time the entire outstanding principal balance of the Note plus all accrued unpaid interest and all other fees and amounts for which Borrower is obligated to pay under this Agreement and the other Loan Documents shall be due and payable by Borrower to Lender. Borrower shall have the right, upon written notice given to Lender no earlier than one hundred twenty (120) days and no later than sixty (60) days prior to the annual anniversary date of this Facility, to request that the Maturity Date be extended for one (1) year, but the extension shall be subject to Lender's approval (in its sole discretion). If Borrower fails to extend the Maturity Date, as provided above, Lender shall not permit (i) the addition of Entitled Land, LUD or Finished Lots into the Facility, or (ii) the addition of any Units into the Facility from the date that is six (6) months prior to the Maturity Date.

Model Units. Any Unit which is not a Sold Unit and which is located on a Lot intended to be used as a model or sales office to conduct the business of marketing and selling Units.

Note. The promissory note of Borrower payable to Lender in the stated principal amount of $40,000,000.

Obligations. The performance obligations of Borrower, Guarantor and any Future Guarantor created under this Agreement and the other Loan Documents, including any expenses incurred by Lender to cure any non-performance by Borrower, Guarantor or any Future Guarantor, whether primary or secondary, absolute or contingent, direct or indirect, sole, joint or several, secured or unsecured, due or to become due, contractual or tortious, arising by operation of law or otherwise, or now or in the future, existing, and whether incurred by Borrower, Guarantor or any Future Guarantor as principal, surety, endorser, guarantor, accommodation party or otherwise, including principal, interest, fees, late charges and expenses, including reasonable attorneys' fees. Obligations shall also include, the

obligation of Borrower to pay the Indebtedness and the obligations of Borrower in favor of Lender (or its affiliates) now or in the future, existing or arising under Swap agreements (as defined in 11 U.S.C. §101).

Permitted Liabilities. (a) The indebtedness under the Facility; (b) normal operating liabilities such as trade accounts payable, accrued expenses, taxes payable, lease obligations, customer deposits and estimated cost to complete; (c) reimbursement obligations under surety bonds; (d) monies owed pursuant to the terms of any Swap that is contracted by Borrower with respect to the Facility; and (e) liabilities associated with financings other than the Facility for the Borrower's real estate business, including, without limitation,acquisition of land, Finished Lots or for-sale residential housing developments.

Person. Any natural person, entity, corporation, limited liability partnership or company, unincorporated organization, trust, joint-stock company, joint venture, association, company, partnership or government, or any agency or political subdivision of any government.

Project. The real property and improvements located thereon which constitute Lender-approved Land Under Development or a Lender-approved group of Finished Lots. Each Project shall be encumbered by a Deed of Trust and Financing Statements and shall collectively constitute the Collateral Pool and/or the Borrowing Base.

Secured Debt. The aggregate amount of all liabilities of Borrower, as determined in accordance with Accounting Terms, that are supported by a mortgage, pledge of collateral, or other lien, including those for which a creditor has the right to pursue specific pledged property upon default.

Senior Liabilities. The sum of Total Liabilities, including capitalized leases and all reserves for deferred taxes and other deferred sums appearing on the liabilities side of a balance sheet, in accordance with generally accepted accounting principles applied on a consistent basis, excluding debt fully subordinated to Bank on terms and conditions acceptable to Bank and FIN 46 items.

Sold Units. A Unit, located on a Lot, which is subject to a valid, bona-fide contract of sale that: (a) is with an unrelated third-party purchaser, for fair market value; (b) provides for a cash deposit of at least $1,000.00; and (c) provides for construction completion and closing within 12 months from the contract execution date.

Solvent. With respect to any Person on a particular date (i) the fair value of the assets of the Person is greater than the total amount of liabilities, including Contingent Liabilities, of the Person, (ii) the present fair saleable value of the assets of the Person is not less than the amount that will be required to pay the probable liability of the Person on its debts as they become absolute and matured, (iii) the Person is able to realize upon its assets and pay its debts and other liabilities, Contingent Liabilities and other commitments as they mature in the normal course of business, (iv) the Person does not intend to, and does not believe that it will, incur debts or liabilities beyond the Person's ability to pay as the debts and liabilities mature, and (v) the Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which the Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which the Person is engaged.

Speculative Condos/Townhomes. Any Unit that is subject to a common ownership regime and that is part of a newly constructed four story or less wood frame building(s) and Lender has advanced funds for the construction of the foundation or slab for that Unit. Speculative Condos/Townhomes specifically excludes any rented condominiums or townhomes.

Speculative Units. Any Unit, located on a Lot, that is not a Sold Unit, Model Unit or Speculative Condo/Townhome and Lender has advanced funds for the construction of the foundation or slab for that Unit.

Submission Package. Any information required by Lender in its sole discretion in order to add a proposed Project into the Borrowing Base. This would include, but not be limited to: (a) purchase contract; (b) appraisal; (c) environmental study; and (d) title, platting and entitlement status.

Tangible Net Worth. Total Net Tangible Assets less Total Liabilities and less those assets qualified on the Borrower's balance sheet as "obligations to real estate not owned" or a similar designation. Total Net Tangible Assets means Total Assets less any Intangible Assets. Total Assets means the sum of the Borrower's assets, current and noncurrent, as shown on Borrower's balance sheet prepared in accordance with GAAP. Intangible Assets means all nonphysical, long-lived legal rights, entitlements, competitive advantages and goodwill developed or acquired by Borrower and shown on Borrower's audited balance sheet as one or more noncurrent assets in accordance with GAAP, including patents, trademarks, trade names, licenses and goodwill.

Term. The period during which the Facility is scheduled to be outstanding, commencing as of Closing and ending on the Maturity Date.

Total Liabilities. (a) All liabilities shown on Borrower's balance sheet in accordance with Accounting Terms and FASB Interpretation No. 46, excluding accounts payables in the normal course of business; (b) all outstanding loan balances associated with obligations for which Borrower is responsible, but which are not shown on Borrower's balance sheet; (c) the principal amount of all surety bonds, letters of credit and/or tri-party agreements whether presented for payment or not but excluding performance related liabilities for which payment has not been demanded by the beneficiary and for which reimbursement by Borrower has not been made; (d) net liabilities under interest rate swaps or cap agreements; (e) any liabilities of partnerships or joint ventures that should be included in accordance with FIN 46 other than as qualified on the Borrower's balance sheet as "obligations to real estate not owned" or a similar designation; and (f) any non-option related purchase agreements for which Borrower is obligated to pay at a future date.

Unit. A single family residential house, condominium or townhome, whether completed or under construction and located within a Project.

Unsubordinated Total Liabilities. All Total Liabilities, other than those Total Liabilities which are expressly and unconditionally subordinate to the Facility as determined by Lender in its sole discretion.

ARTICLE 2

DESCRIPTION OF FACILITY

2.01 Facility.

(a) **Obligation to Make Advances.** Subject to the terms and conditions of this Agreement, Lender will make Advances to Borrower in an aggregate amount not to exceed the lesser of (i) the Borrowing Base Availability or (ii) the Commitment Amount (less the amount of Lender's letters of credit issued under this Agreement). Borrower's obligation to repay the Facility is evidenced by the Note. Borrower may draw up to $40,000,000.00 from time to time on a revolving basis to finance (i) land acquisition, (ii) the purchase of Finished Lots, (iii) the development of land into Finished Lots, and (iv) the construction of single-family residential Units on Finished Lots. If all conditions for Advances are met and subject to the other terms and conditions of this Agreement, Lender will make Advances to Borrower or disburse to third parties as Borrower may direct and Lender may approve, commencing on the date of this Agreement and continuing until the Maturity Date.

(b) **Security for Facility.** As security for the payment and performance of the Indebtedness and Obligations of Borrower to Lender under the Loan Documents, Borrower has delivered

to Lender the Deed of Trust and Financing Statements encumbering the Projects comprising the Collateral Pool. Borrower grants to Lender a continuing security interest in all personal property of Borrower, now or in the future, in the possession of Lender, as security for the payment of the Note and any other liabilities of Borrower arising under the other Loan Documents, which security interest shall be enforceable as if the property were specifically pledged under this Agreement excluding any swap agreements (as defined in 11 U.S.C. §101) to Lender or any of its affiliates.

(c) **Interest Rate.** Advances outstanding under the Note (principal) shall bear interest at the interest rate set forth in the Note ("Interest Rate"), subject to the conditions and limitations contained in this Agreement and in the Note.

(d) **Termination of Facility.** The Facility shall terminate at the close of business (5:00 p.m.) on the day prior to the Maturity Date unless Lender has exercised its demand right or there shall have sooner occurred an Event of Default under this Agreement, in which event Lender may immediately accelerate the Facility without prior notice to Borrower; in any event, that, notwithstanding the foregoing, this Agreement shall continue in full force and effect until the Obligations are paid in full and the Facility has been terminated.

2.02 Additional Provisions Related to Principal, Interest and Costs.

(a) **Increased Costs.** If, due to one or more of: (i) the introduction of any applicable law or regulation or any change in the interpretation or application of any law or regulation by any applicable governmental authority; or (ii) the compliance with any guideline or request from any governmental authority, there shall be an increase in the cost to Lender of agreeing to, issuing or participating in letters of credit, including changes which affect or would affect the amount of capital or reserves required or expected to be maintained by Lender, or any corporation controlling Lender, with respect to any portion of this Facility, then Borrower, from time to time, shall, on written demand by Lender, pay Lender additional amounts sufficient to indemnify Lender against the increased cost. A certificate as to the amount of the increased cost and the reason for that increase submitted to Borrower by Lender, in the absence of manifest error, shall be conclusive and binding for all purposes.

(b) **Payments Net of Taxes.** All payments and prepayments of principal and interest under the Note shall be made net of any taxes and costs resulting from having principal outstanding. Without limiting the generality of the preceding obligation, taxes shall include illustrations of the taxes and costs, the withholding of amounts for taxes, of any nature whatsoever including income, excise, interest equalization taxes (other than United States or state income taxes), as well as all levies, imposts, duties or fees whether now in existence or as the result of a change in or promulgation of any treaty, statute, regulation or interpretation thereof or any directive guideline or otherwise by a central bank or fiscal authority (whether or not having the force of law) or a change in the basis of, or the time of payment of, those taxes or other amounts resulting therefrom.

(c) **Repayment of Principal and Interest.** Commencing on the 10th day of June, 2006, and continuing on the 10th day of each succeeding month until the Maturity Date (each, a "**Payment Date**"), interest only on the outstanding principal advances under the Note based on the Interest Rate shall be due and payable in arrears by Borrower to Lender.

(d) **Prepayment.** Subject to the terms and conditions of this Agreement and the other Loan Documents, Borrower may prepay the Note at any time. Any prepayment shall include accrued and unpaid interest to the date of prepayment on the principal amount prepaid and all other sums due and payable under the Note. Any prepayment shall not affect Borrower's obligation to continue making payments under any swap agreement (as defined in 11 U.S.C. §101), which shall remain in full force and effect notwithstanding prepayment, subject to the terms of the swap agreement.

(e) **Application of Payments.** Each payment or prepayment, if any, made under the Note shall be applied to pay late charges, accrued and unpaid interest, principal, escrows (if any), and

any other fees, costs and expenses which Borrower is obligated to pay under the Note, in the order as Lender may elect from time to time in its sole discretion.

(f) **Late Charge.** If any installment of principal or interest required to be made by Borrower under the Note shall not be received by Lender within fifteen (15) days of when due, then Borrower shall pay to Lender, without further demand, a late charge of five percent (5%) of the delinquent payment. The foregoing right is in addition to, and not in limitation of, any other rights which Lender may have upon Borrower's failure to make timely payment of any amount due.

(g) **Default Rate.** Any payment of principal or interest or both not made when due shall itself bear interest on the principal and interest amount of the payment at the Default Rate, commencing on the due date until payment, maturity or the occurrence of an Event of Default. After the maturity of the Note or the occurrence of an Event of Default, interest shall accrue on the entire outstanding balance of principal at the Default Rate.

(h) **Letters of Credit Sub-limit Under the Facility.** At Borrower's request, Lender may issue letters of credit (subject to compliance with Lender's standard procedures for issuance of letters of credit and in form and substance satisfactory to Lender) if required by a governmental authority or utility or as required under Borrower's purchase contract to secure Borrower's obligations under a Development Agreement and to secure the performance of improvements benefiting a Project ("**Work**") (collectively referred to as "**Letters of Credit**"), but the aggregate amount of all Letters of Credit outstanding shall not exceed $1,000,000 at any one time ("**Letters of Credit Sub-Limit**"), and the aggregate amount of all Letters of Credit outstanding and all outstanding Advances shall not exceed the Commitment Amount.

All cost estimates for the Work are subject to an acceptable review by a third-party engineer or Lender's in-house engineer prior to the issuance of any Letters of Credit. Each Letter of Credit shall be reduced from time to time as the Work is completed with the consent of the beneficiary thereof. Letters of Credit shall be governed by Borrowing Base Availability. Any amounts paid by Lender under Letters of Credit shall be treated for all purposes as an Advance.

When a Letter of Credit is required, (a) Borrower shall execute an Application and Agreement For Irrevocable Standby Letter of Credit; (b) the Letter of Credit will be deemed secured by the Deed of Trust and Financing Statements and guaranteed by Guarantor and any applicable Future Guarantor; (c) the Letter of Credit shall have an expiration date no later than twelve (12) months (with annual renewal options upon payment of a renewal fee), or such other expiration date as the Lender may agree; (d) any sums paid by Lender under the Letter of Credit shall initially accrue interest at the Interest Rate and that sum, together with accrued interest, shall be repaid by Borrower within two (2) days from receipt of notice from Lender that the Letter of Credit (or portions thereof) have been paid; (e) if the Letter of Credit is paid (and not repaid by Borrower as provided immediately above), then the payment may be deemed by Lender as a default by Borrower under the Facility and interest shall commence to accrue on the amount of the payment at the Default Rate; and (f) the Deed of Trust shall not be released until all Letter of Credit are returned to Lender or the Letter of Credit are cash secured. Borrower shall pay to Lender a fee of the greater of (i) $500.00 or (ii) one percent (1.00%) of the face amount of a Letter of Credit for each new Letter of Credit and $150.00 for each automatic renewal of a Letter of Credit, the initial fee payable upon issuance and the renewal fee upon each renewal.

(i) **Swap.** Lender (or its affiliate) will offer Borrower an opportunity to hedge the floating interest expense under the Note by entering into an interest rate swap (the "Swap") on or after Closing. If Borrower chooses to obtain the Swap from Lender (or its affiliate), then Borrower shall execute documentation required by Lender (or its affiliate), including the ISDA Master Agreement. Lender reserves the right not to release any portion of the Collateral Pool while Borrower's obligations under the ISDA Master Agreement remain unsatisfied if Lender determines it is not adequately secured. If Borrower chooses to obtain the Swap from Lender, the Deed of Trust and all other security documents securing the Note shall also secure Borrower's obligation under the ISDA Master Agreement and any

amounts due and payable by Borrower under the Swap, including early termination payments. Any payments shall include amounts payable in connection with the disposition of any collateral encumbered by the Deed of Trust and other security documents. Additionally, Borrower's attorney shall furnish an opinion of counsel relating to those documents in substantially the same form provided by Lender or alternatively shall provide appropriate corporate resolutions.

2.03 Revolving Credit Feature. The outstanding balance of the Facility may increase and decrease from time to time, and Advances thereunder may be borrowed, repaid and reborrowed, but the total of Advances outstanding at any one time under the Facility shall never exceed the lesser of (i) the Borrowing Base Availability or (ii) the Commitment Amount. Borrower shall immediately pay to Lender any amount by which the Facility exceeds the Commitment Amount.

2.04 Commitment Fee. Borrower shall pay to Lender an annual commitment fee ("**Commitment Fee**") equal to 25 basis points (.25%) of the Commitment Amount, with the first (1st) payment of the Commitment Fee due at Closing and each subsequent payment of the Commitment Fee due at the succeeding annual anniversaries of Closing. Beginning on the 1st day of the 13th month after Closing, if the average amount of principal outstanding under the Note is less than $20,000,000, as determined by Lender on a quarterly basis by averaging the amount of principal outstanding under the Note on the 1st day of each month in each applicable quarter, then a non-use fee of 0.15% ("**Non-Use Fee**") will be charged to Borrower on the difference between the average amount of principal outstanding under the Note and $20,000,000. The quarterly average will be calculated beginning with the 13th, 14th and 15th month's outstanding principal balance under the Note.

2.05 Conditions Precedent. The obligation of Lender to make the Advances and issue Letters of Credit under the Facility is subject to the following additional conditions:

(a) **No Default.** As of the date of this Agreement, and at the date of each Advance and Letter of Credit after giving effect to the Advance and Letter of Credit, Borrower, Gurantor and each Future Guarantor shall have observed and performed all their respective obligations under the Loan Documents, all warranties of Borrower, Guarantor and each Future Guarantor in the Loan Documents shall be true and correct in all material respects, and no Default or Event of Default shall have occurred and be continuing.

(b) **Opinions of Counsel.** As of the date of this Agreement and as of each Land Closing, Lender shall have received from counsel for Borrower, Guarantor and any Future Guarantor, as the case may be, an opinion addressed to Lender (in form and substance satisfactory to Lender).

(c) **Loan Documents.** As of the date of this Agreement and each Land Closing, all of the Loan Documents shall have been executed by Borrower, Guarantor and any Future Guarantor, as the case may be, and delivered to Lender.

(d) **Appraisal.** An independent appraisal or evaluation for each Project in form and substance acceptable to Lender showing: (i) standard floor plan appraisals or evaluations on each floor plan constructed, if applicable and required by Lender; (ii) Subdivision appraisal or evaluation on typical Lots, including values of Lot premiums; and (iii) acquisition and development property value including bulk value and "as is" valuations. The "appraised value" for Units means the sum of the value from the applicable floor plan appraisal plus the value of the typical Lot within the subdivision plus any applicable premium value placed upon that Lot. MAI appraisals will be required for: Entitled Land, LUD, and for bulk purchases of Finished Lots, as required by Lender. Lender will require an annual master appraisal or evaluation for all Finished Lots and Model Units. However, copies of recent HUD-1 statements for each model type may be substituted for obtaining new appraisals annually. Borrower shall pay all appraisal costs.

(e) **Environmental Assessment.** If required by Lender, a Phase I environmental assessment or other required environmental assessment on all Entitled Land, LUD and otherwise as

determined by Lender in its sole discretion, and ordered, at Borrower's expense, from an environmental engineering company acceptable to Lender, assessing the environmental condition and certified to Lender. For Finished Lots, the Environmental Assessment may be as to the overall acreage from which the Finished Lots originated. Lender may require additional environmental investigations, including a Phase II environmental assessment, which additional work shall constitute a part of the Environmental Assessment. Lender shall have the right to reject any Project if the Environmental Assessment discloses environmental concerns as determined by Lender in its sole discretion. Borrower, Guarantor and any Future Guarantor shall execute an Affidavit and Indemnity of Mortgagor and Guarantor Regarding Hazardous Waste or Toxic Materials at each Land Closing.

(f) **Title Insurance and Survey.** A mortgagee title insurance commitment with all endorsements requested by Lender and otherwise acceptable to Lender in its sole discretion (the "**Title Commitment**") in the initial amount of $_____ (policy increases will be required as Projects are added to the Facility) covering each Project from a title company (the "**Title Company**") that is acceptable to Lender (subject to any reinsurance requirements of Lender). Lender is to be named as the insured mortgagee. The Deed of Trust must constitute a perfected, first lien with no other financial liens of record. There are to be no exceptions other than current year's taxes not yet due and payable and those approved by Lender in writing in its sole discretion. No secondary financing shall be allowed without the Lender's written consent. The title insurance, searches and survey requirements of Lender have been provided to Borrower, the terms of which are incorporated in this Agreement by reference. As required by Lender, a non-expiring mortgagee title insurance policy is to be submitted to Lender naming Lender as insured mortgagee (the "**Policy**"). All exceptions to the Policy are subject to the approval of Lender. No Notice of Contract under NCGS §44A-23 or equivalent shall be filed prior to the Deed of Trust. Prior to a Project being included in the Collateral Pool, Borrower must furnish a survey and a surveyor's certificate in accordance with Lender's survey requirements and subject to Lender's approval (i) reflecting all matters shown on the Title Commitment and (ii) certified to Lender, the Title Company and any title agent. The Lender's form of surveyor's certificate has been provided to Borrower, the terms of which are incorporated in this Agreement by reference.

(g) **Insurance.** Original or duplicate policies of insurance or evidence of insurance on an ACORD 27 (in the case of property insurance) or ACORD 25 (in the case of liability insurance) form of certificate (satisfactory to Lender), each with a term of not less than one year and in effect as of the date of this Agreement as follows: (i) builders' all-risk extended coverage insurance (non-reporting Completed Value with Special Cause of Loss form) in amounts based on the completed replacement value of the improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements), endorsed to provide that occupancy by any person shall not void the coverage and naming Lender (and its successors and assigns) as their interests may appear, as the first mortgagee under a standard Mortgagee endorsement clause; (ii) upon completion of construction of each Unit, All-Risk fire and extended coverage hazard insurance (non-reporting Commercial Property Policy with Special Cause of Loss form) covering that Unit in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of that Unit, and naming Lender and its successors and assigns as their interests may appear, as the first mortgagee under a standard mortgagee endorsement clause; (iii) comprehensive general public liability insurance of at least $5,000,000 covering injury and damage to persons and property with limits acceptable to Lender and naming Lender (and its successors and assigns) as their interests may appear, as an additional insured; (iv) if the applicable real property is located within a special flood hazard area as identified by the Secretary of Housing and Urban Development under the National Flood Insurance Reform Act of 1994, flood insurance in the amount equal to the lesser of (A) the agreed upon full insurable replacement value of each Unit (less any value attributable to the applicable real property), or if agreed to in writing by Lender (B) the maximum available amount through the Federal Flood Insurance Program, and naming Lender (and its successors and assigns) as their interests may appear, as the first mortgagee under a standard mortgagee endorsement clause; (v) insurance which complies with the workers' compensation and employers' liability laws of all states in which the Projects are located and, if required by Lender, such other states as Borrower is required to maintain insurance; and (vi) other insurance as Lender may require in amounts and with carriers satisfactory to Lender.

Each policy or certificate shall indicate Lender's address as Wachovia Bank, National Association, Insurance Department, P.O. Box 700308, Dallas, TX 75370. In addition, each insurance policy or certificate shall include a provision that the policy will not be cancelled, altered or in any way limited in coverage or reduced in amount unless Lender is notified of same in writing at least thirty (30) days prior to cancellation or change. Each insurance policy will be written on forms as are acceptable to Lender by insurance companies authorized or licensed to do business in North Carolina having an Alfred M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than IX, and which companies are otherwise acceptable to Lender.

The above insurance requirements may be satisfied by appropriate endorsements to a blanket policy covering the Projects and other property.

(h) **Flood Zone Certification.** If the applicable Unit to be included in the Collateral Pool is located in an area that has been identified as a Special Flood Hazard Area as that term is used in the National Flood Insurance Reform Act of 1994, flood insurance shall be required.

(i) **Organizational Documents.** Copies of the organizational documents of Borrower, Guarantor and each Future Guarantor.

(j) **Governmental Permits.** Prior to adding any Project to the Collateral Pool, Borrower must submit evidence satisfactory to Lender that the Project has received zoning approvals and master site plan approval consistent with the intended residential development, including full compliance with any applicable comprehensive land use plan. All governmental approvals must be legally valid and remain in full force and effect throughout the term of the Facility. If any approval or permit is invalidated, rescinded or suspended, then Lender may exclude the Project from the Collateral Pool during the period that any invalidation, rescission or suspension continues.

(l) **Other Documents.** Other documents, instruments, certificates and opinions as Lender or Lender's counsel may reasonably require.

(m) **Supporting Documents and Other Conditions.** Lender shall have received a certificate from Borrower, Guarantor and each Future Guarantor, as the case may be, in the form attached as **Schedule B** ("Certificate of Compliance") as of the date of each Advance or Letter of Credit.

(n) **Litigation.** There shall be no order, injunction, decree, judgment or verdict prohibiting or restraining Lender from making Advances or issuing Letters of Credit, or Borrower, Guarantor or any Future Guarantor from performing its Obligations as of the date of each Advance or Letter of Credit.

(o) **Documents.** This Agreement and the other necessary Loan Documents must be simultaneously executed and delivered to Lender as of the date of this Agreement. At each Land Closing, the applicable Guarantor or Future Guarantor shall execute a Guaranty (if Future Guarantor), Deed of Trust and other Loan Documents as required by Lender and Borrower shall execute the Loan Documents required by Lender.

(p) **Subordination to Loan.** Except as may otherwise be specifically provided in the Loan Documents, all loans to Borrower, Guarantor and/or any Future Guarantor from any parties in any way related to or affiliated with Borrower, Guarantor or any Future Guarantor (including, without limitation, trustees, beneficiaries, shareholders, and partners of Borrower, Guarantor or Future Guarantor), if applicable, shall be subordinated to the Facility.

(q) **Inspections.** Inspections may be made by Lender, solely for the benefit of Lender, at the expense of Borrower, subject to the following: (i) Lender may inspect up to approximately 15% of all Units each quarter; and (ii) inspections of Land Under Development may be made by Lender to

coincide with each of Borrower's requests for an Advance; however, Lender may inspect Land Under Development on a quarterly basis at a minimum. If Unit inspections reveal material differences from the percentage of work completed as identified on the most recently submitted Borrowing Base Certificate, then Lender may elect to conduct additional inspections of up to 100% of all Units at the expense of Borrower. In addition, Lender may inspect any asset at Borrower's expense at the time a proposed asset is added to the Borrowing Base.

ARTICLE 3

ADVANCE CONDITIONS

3.01 Procedures for Advances. Any request for an Advance must be received in writing by Lender prior to 11:00 a.m. North Carolina Time on a Business Day which is five (5) Business Days prior to the Borrowing Date. If each of the other conditions precedent to the Advance have been satisfied, then the Advance will be available prior to 2:00 p.m. North Carolina Time on the Borrowing Date. Unless Lender is notified otherwise by Borrower in a signed writing from an Authorized Signatory which is accepted and agreed to by Lender, Lender shall cause the amount of any Advance requested by Borrower to be paid to the credit of Borrower's account with Lender approved by Lender. Advances shall be limited to no more than two (2) per month.

(a) All requests for Advances shall be in the form attached as **Schedule C** ("**Request for Advance**" or "**Advance Request**"). Any notice delivered or given by Borrower to Lender as provided shall be irrevocable and binding on Borrower upon receipt by Lender.

(b) All Advances by Lender, whether or not in excess of the Commitment Amount, shall be considered part of the Indebtedness under the Note and shall bear interest as provided in the Note. Borrower shall not request and Lender will not consider requests for Advances after the Maturity Date.

(c) **Borrowing Base Compliance.** At any time the outstanding principal balance of the Facility (including outstanding Letters of Credit) exceeds the Borrowing Base Availability on the most recently submitted Borrowing Base Certificate, Borrower will have fifteen (15) days (without notice from Lender) from the date the Borrowing Base Certificate was delivered to either: (a) make a principal payment in an amount that restores compliance; or (b) deliver a new Borrowing Base Certificate that demonstrates compliance with the then current outstanding principal balance. No new Advances will be made or Letters of Credit issued during the time period the Borrowing Base is not in compliance. The business records of Lender shall be conclusive as to the date and amount of any Advance and any payment or prepayment of interest or principal, absent manifest error.

3.02 Repayment of Advances. All funds paid to Lender under the Facility shall be paid to Lender in Dollars at its office set forth below or any other office in the United States as Lender may designate, in actually and finally collected federal funds or equivalent and shall be deemed paid only if received by Lender on or before 2:00 p.m. (North Carolina local time) on the date when due. Payments shall not be deemed made or received until they are received by Lender as actually and finally collected federal funds or equivalent. If any payment is received after 2:00 p.m. (North Carolina local time) on any Business Day, then it shall, for the purposes of determining time of payment under this Agreement as between Borrower and Lender only, be treated as received on the next following Business Day; but, that the treatment shall not postpone the time of receipt for any other purpose or computation, such as preference periods applicable to bankruptcy laws, or dates relative to priority between creditors. Payments shall be directed to Lender at the following address:

Wachovia Bank, NA
Commercial Loan Payment Center
PO Box 2715
Winston-Salem, NC 27102-2715

The outstanding principal balance under the Note as of any day shall be the outstanding principal balance as of the beginning of the day (exclusive of interest), plus any Advances made for that day, and less any payments of principal credited to the account on that day.

3.03 Advance Rates. The Facility shall be subject to the advance rates shown on **Schedule One**.

3.04 Borrowing Base Availability. Borrowing Base Availability will be based on a Borrowing Base Certificate, acceptable to Lender, prepared by and submitted by Borrower on a monthly basis. The Borrowing Base Certificate will recap all Projects in the Borrowing Base and will provide specific component breakdowns by collateral type and on a per Lot and per Unit basis, as applicable, to determine aggregate Borrowing Base Availability based on the Advance Rates shown on **Schedule One**.

(a) Borrowing Base Availability for:

(i) Entitled Land is based on the applicable Advance Rate multiplied by the lesser of: (a) the appraised value, or (b) the actual costs incurred for purchase of the Entitled Land. The Advance Rate for Entitled Land applies only to Entitled Land with entitlements (i.e., applicable zoning is in place and all utilities are expected to be available at the time the Entitled Land is to be developed). The Advance Rate for any Entitled Land asset owned more than one year will be zero, except to the extent it has been converted to Land Under Development or Finished Lots.

(ii) Land Under Development within Projects is based on the applicable Advance Rate multiplied by the lesser of: (a) the appraised value of Lots to be developed on that Land Under Development, or (b) the Budgeted Project Cost. Any Land Under Development asset owned more than 36 months shall be excluded from the Borrowing Base Availability, except to the extent it has been converted to Finished Lots.

(iii) Speculative Condos/Townhomes, Model Units, Speculative Units, Sold Units and Finished Lots are based on the applicable Advance Rate multiplied by the lesser of: (a) hard costs for the acquisition of those Finished Lots and construction of the Unit to be constructed on said Finished Lots, as approved by Lender, (b) the appraised or evaluated value, or (c) the purchase price of that Unit or Lot plus Budgeted Project Cost, as applicable. The maximum time a Finished Lot may remain in the Borrowing Base as Finished Lot is 18 months. The maximum time a Sold Unit may remain in the Borrowing Base as a Sold Unit is 12 months. The maximum time a Speculative Unit may remain in the Borrowing Base as a Speculative Unit is 18 months. The maximum time a Model Unit may remain in the Borrowing Base as a Model Unit is 60 months. The maximum time a Speculative Condo/Townhome may remain in the Borrowing Base as a Speculative Condo/Townhome is 15 months.

(b) The Advance Rates for certain categories of assets change over time as shown under the Aging Elimination portion of **Schedule One**, and subject to the following additional provisions:

- Aging Elimination on Entitled Land begins on the date the Entitled Land is admitted to the Borrowing Base, and resets when the Entitled Land becomes LUD.
- Aging Elimination on LUD begins when the LUD first enters the Land Under Development category, and resets when LUD becomes Finished Lots.

- Aging Elimination on a Finished Lot resets when the Finished Lot becomes a Speculative Condo/Townhome, Model, Speculative or Sold Unit.
- Aging Elimination on a Speculative Condo/Townhome, Speculative Unit or Sold Unit begins when the Unit is added to the Borrowing Base as a Speculative Condo/Townhome, Speculative Unit or Sold Unit, and does not reset when a Speculative Condo/Townhome or Speculative Unit becomes a Sold Unit.

For purposes of "Aging Elimination", Projects are deemed to enter into the Borrowing Base on the closing date for each Project.

(c) Borrowing Base Certificate cost data for Land Under Development and Sold Units must be updated at least quarterly. Borrowing Base Certificate cost data for Finished Lots, Speculative Condos/Townhomes, Model Units and Speculative Units must be updated at least monthly.

(d) Collateral that remains in a Borrowing Base category longer than the maximum time permitted will be excluded from Borrowing Base Availability and Lender will agree to release that Collateral from the Deed of Trust, provided: (a) no Default or Event of Default exists; and (b) Borrower is in compliance under its most recent Borrowing Base Certificate without that Collateral.

(e) Borrowing Base Limitations:

(i) Model Units and Speculative Units may not exceed 65% of the principal amount outstanding under the Note designated by Lender for Units. A Unit may not remain in the Borrowing Base longer than 36 months.

(ii) Entitled Land, LUD and Finished Lots may not exceed the greater of (i) 50% of the principal amount outstanding under the Note or (ii) $20,000,000.

(iii) Entitled Land may not exceed 10% of the principal amount outstanding under the Note.

(f) Borrower shall deliver to Lender a Submission Package with all relevant information concerning a proposed Project. A proposed Project will be added to the Borrowing Base as Entitled Land, Land Under Development, Finished Lots, Speculative Condos/Townhomes, Model Units, Speculative Units or Sold Units, unless rejected by Lender as provided in the next sentence. Lender must notify Borrower in writing of its decision to reject a proposed Project within thirty (30) days of receiving a complete Submission Package; provided, Lender not responding within the above timeframe shall be deemed rejection of the proposed Project. Regarding each Project added to the Borrowing Base, Borrower, Guarantor or the Future Guarantor holding title to the added Project (as the case may be) shall execute and deliver at each Land Closing the following: documents as deemed necessary to encumber the added Project by a first priority deed of trust lien and a first priority collateral assignment of all presently existing and future sales contracts, construction, architectural and engineering contracts relating to the added Project and all presently existing and future developmental approvals, density allocations, land development, building permits, utility agreements and any concurrency exemptions relating to the added Project as well as a first lien security interest in all documents, books records, computer disks and other personal property relating solely to the added Project. Projects that do not conform to the conditions above may be admitted to the Borrowing Base, but only with the approval of Lender in its sole discretion.

(g) A Project may remain in the Borrowing Base only so long as it continues to qualify as Entitled Land, Land Under Development, Finished Lots, Model Units, Speculative Condos/Townhomes, Speculative Units or Sold Units.

3.05 Partial Releases. Within seven (7) Business Days from receipt by Lender from Borrower of a letter detailing which Lots, Units or parcels of land and other related encumbered assets should be released in the ordinary course of business, Lender will release (or confirm to Borrower in writing that Lender will release) those Lots, Units or land parcels from the Facility, provided that:

(a) There is no Default or Event of Default; and

(b) No more than fifteen percent (15%) of assets in the Borrowing Base may be released in a monthly cycle unless: (i) Borrower pays down the portion of the outstanding balance of the Facility associated with the released Lots and/or land such that outstanding Advances after the pay-down do not exceed the Borrowing Base Availability; or (ii) Borrower submits to Lender a new Borrowing Base Certificate that demonstrates Borrower remains in compliance.

Borrower, at its cost, shall prepare and furnish to Lender the documentation for the releases, and shall pay Lender's third party costs incurred in connection with the releases, including reasonable attorneys' fees.

3.06 Periodic Appraisals. In addition to the initial appraisals required under **Section 2.05(d)**, Lender may, as often as Lender shall deem necessary, obtain appraisals of any or all of the Projects prepared by an appraisal firm or firms chosen by Lender and ordered by Lender. The appraisals shall be at the expense of Borrower if Borrower is in default under this Agreement or any of the other Loan Documents.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

In order to induce Lender to enter into this Agreement, Borrower, Guarantor and each Future Guarantor (as the case may be) make the following representations and warranties, all of which shall survive the execution and delivery of the applicable Loan Documents. The representations and warranties shall be deemed made as of the date of this Agreement and as of the date of any Advance by Lender to Borrower or the issuance of any Letters of Credit for the account of Borrower as to the following in respect of Borrower or the issuance of any Letters of Credit for the account of Borrower, Guarantor or a Future Guarantor (as the case may be):

4.01 Good Standing. Borrower, Guarantor and each Future Guarantor (and any Person constituting a part of Borrower, Guarantor or any Future Guarantor that is a corporation or limited partnership or limited liability company) is duly organized, validly existing and in good standing under the laws of its state of incorporation and/or formation and have the power and authority to own its property and to carry on its respective business in each jurisdiction in which it does business.

4.02 Authority and Compliance. Borrower, Guarantor and each Future Guarantor have full power and authority to execute and deliver the Loan Documents and to incur and perform the obligations provided in the Loan Documents, all of which have been duly authorized by all proper and necessary action of the appropriate governing body of Borrower, Guarantor and each Future Guarantor. No consent or approval of any public authority or other third party is required as a condition to the validity of any Loan Document, and Borrower, Guarantor and each Future Guarantor are in compliance in all material respects with all laws and regulatory requirements.

4.03 Binding Agreement. This Agreement and the other Loan Documents executed by Borrower, Guarantor and each Future Guarantor constitute the valid and legally binding Obligations of Borrower, Guarantor and each Future Guarantor, enforceable in accordance with their terms. The execution, delivery and performance by Borrower, Guarantor and each Future Guarantor of the Loan Documents will not violate any indenture, agreement or other instrument to which Borrower, Guarantor or

each Future Guarantor 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 a default under any indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on any of its property or assets, except as contemplated by the provisions of the Loan Documents.

4.04 Litigation. There is no proceeding involving Borrower, Guarantor or each Future Guarantor pending or, to the knowledge of Borrower, Guarantor or Future Guarantor, threatened before any court or governmental authority, agency or arbitration authority, that materially and adversely affects Borrower's ability to repay the loan, except as disclosed to Lender in writing and acknowledged by Lender prior to the date of this Agreement.

4.05 No Conflicting Agreements. There is no charter, bylaw, stock provision, shareholder agreement, trust agreement or other document pertaining to the organization, power or authority of Borrower, Guarantor or Future Guarantor and no provision of any existing agreement, mortgage, deed of trust, indenture or contract binding on Borrower, Guarantor or Future Guarantor or affecting any of their respective properties, which would conflict with or in any way prevent the execution, delivery or carrying out of the terms of this Agreement and the other Loan Documents.

4.06 Ownership of Assets. Borrower, Guarantor and any Future Guarantors (as the case may be) have good title to the Projects constituting the Collateral Pool.

4.07 Financial Statements. The financial statements of Borrower delivered to Lender fairly present the financial condition of Borrower as of the date of delivery of each financial statement to Lender, and there has been no Material Adverse Effect in the financial condition or operations since the financial statements furnished to Lender at Closing. All factual information furnished by Borrower to Lender in connection with this Agreement and the other Loan Documents is and will be accurate and complete in all material respects on the date as of which the information is delivered to Lender and is not and will not be incomplete in any material respect by the omission of any material fact necessary to make the information not misleading. All financial projections represent the best estimate of future financial performance and those assumptions are reasonable and believed by Borrower to be fair in light of current business conditions.

4.08 Place of Business. As of the date of this Agreement, the chief executive office and business address of Borrower is 11465 Sunset Hills Road, Reston, Virginia 20190. Borrower shall notify Lender in writing of any address changes no later than thirty (30) days prior to the change.

4.09 Environmental Matters. Except as disclosed in writing to the Lender, the conduct of business operations by Borrower, Guarantor and each Future Guarantor do not and will not violate any federal laws, rules or ordinances for environmental protection, regulations of the Environmental Protection Agency and any applicable local or state law, rule, regulation or rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Materials. Neither Borrower, nor Guarantor, nor any Future Guarantor shall use or permit any other party to use any Hazardous Materials at or upon a Project except those materials as are incidental to Borrower's or Future Guarantor's normal course of business, maintenance and repairs and which are handled in compliance with all applicable environmental laws.

4.10 Federal Reserve Regulations.

(a) Borrower is not engaged principally, or as one of Borrower's important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States);

(b) no part of the Advances or Letters of Credit shall be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock; and

(c) no part of the Advances or Letters of Credit shall be used for any purpose that violates, or which is inconsistent with, the provisions of Regulation T, U or X of said Board of Governors.

4.11 Consents, Etc. No consent, approval, authorization of, or registration, declaration or filing with, any governmental authority (federal, state or local, domestic or foreign) is required in connection with the execution or delivery by Borrower, Guarantor or any Future Guarantor of the Loan Documents or the performance of or compliance with the Loan Documents.

4.12 Governmental Authorizations. Except for development approvals and building permits to be obtained by Borrower, Guarantor or any of the Future Guarantors in the ordinary course of business, all authorizations, consents, approvals, licenses, and permits required under applicable law or regulation for the ownership or operation of the property owned or operated by Borrower, Guarantor or any Future Guarantor or for the conduct of the business in which Borrower, Guarantor or any Future Guarantor are engaged have been duly issued (or if not issued, the failure to have obtained same are of an immaterial nature and would not have a Material Adverse Effect on Borrower, Guarantor or any Future Guarantor) and are in full force and effect and neither Borrower, nor Guarantor nor any Future Guarantor is in default under any order, decree, rule and regulation, closing agreement or other decision or instrument of any Governmental Authority, which default could reasonably be expected to have a Material Adverse Effect.

4.13 Title to Properties. Borrower, Guarantor and any Future Guarantor, as the case may be, shall have good and marketable fee title to all real property, and good and marketable title to all other property (including leases) and assets reflected in the financial statements delivered to Lender or purported to have been acquired by Borrower, Guarantor or Future Guarantor subsequent to that date, except as disclosed in said financial statements, and except as to the property or assets sold or otherwise disposed of by Borrower, Guarantor and any Future Guarantor subsequent to that date in the ordinary course of business. All of the property and assets of any kind of Borrower, Guarantor and Future Guarantor are free from any liens, except as otherwise set forth on their financial statement delivered to Lender. As to any Projects comprising the Collateral Pool, there shall be no secondary financing without the prior written approval of Lender.

4.14 Solvent. Each of Borrower, Guarantor and each Future Guarantor is, and after having given effect to all Indebtedness incurred in connection with the Facility, will be Solvent.

4.15 Intent and Effect of Transactions. This Agreement and the transactions contemplated in this Agreement (a) are not made or incurred with intent to hinder, delay or defraud any person to whom Borrower, Guarantor or any Future Guarantor has been, is now, or may in the future become indebted; (b) do not render Borrower, Guarantor or any Future Guarantor insolvent nor is Borrower, Guarantor or Future Guarantor insolvent on the date of this Agreement; (c) do not leave Borrower, Guarantor or Future Guarantor with an unreasonably small capital with which to engage in its business or in any business or transaction in which it intends to engage; and (d) are not entered into with the intent to incur, or with the belief that Borrower, Guarantor or Future Guarantor would incur, debts that would be beyond its ability to pay as the debts mature.

4.16 Incorporation of Representations and Warranties. The representations and warranties made by Borrower, Guarantor or each Future Guarantor to Lender pursuant to the other Loan Documents are incorporated by reference and made a part of this Agreement. A breach by Borrower, Guarantor or any Future Guarantor of any representation or warranty under the other Loan Documents shall constitute a breach of a representation or warranty by Borrower, Guarantor or any Future Guarantor under this Agreement. No Loan Document or other document, certificate or statement furnished to Lender by or on behalf of Borrower, Guarantor or any Future Guarantor contains any untrue statement of a material fact or, to Borrower's, Guarantor's and any Future Guarantor's knowledge, omits to state a material fact necessary to make the statements contained in this Agreement and the Loan Documents not misleading. Borrower, Guarantor and each Future Guarantor acknowledge that all statements,

representations and warranties shall be deemed to have been relied on by Lender as an inducement to extend the Facility to Borrower and to make Advances and issue Letters of Credit.

4.17 Material Contracts. Neither the execution and delivery of the Loan Documents, nor the consummation of the Facility or the performance by Borrower, Guarantor or any Future Guarantor of any obligations under the Loan Documents shall constitute a default or right of termination under any agreement to which Borrower, Guarantor or Future Guarantor is a party.

4.18 Use of Proceeds. The proceeds of the Facility shall be used by Borrower solely for the purposes stated in this Agreement.

4.19 Tax Returns and Payment. Borrower, Guarantor and each Future Guarantor have filed all federal, state, local and other tax returns which are required to be filed and have paid prior to delinquency all taxes which have become due pursuant to those returns and all other taxes, assessments, fees and other governmental charges upon Borrower, Guarantor and each Future Guarantor and upon its respective properties, assets, income and franchises which have become due and payable by Borrower, Guarantor or any Future Guarantor, except those wherein the amount, applicability or validity are being contested by Borrower, Guarantor or Future Guarantor and by appropriate proceedings being diligently conducted in good faith and in respect of which adequate reserves have been established (in accordance with Accounting Terms should Lender so require after a default by Borrower). All material tax liabilities of Borrower, Guarantor and Future Guarantor were adequately provided for as of the year 2005, and are now so provided for on the books of Borrower. There is no known proposed, asserted or assessed tax deficiency against Borrower, Guarantor or any Future Guarantor which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

4.20 Investment Company Act of 1940. Neither Borrower, nor Guarantor nor any Future Guarantor is an investment company as that term is defined in, and is not otherwise subject to regulation under, the Investment Company Act of 1940, as amended.

4.21 Management and Other Agreements. There are no material agreements for managerial, consulting or similar services to which Borrower, Guarantor or any Future Guarantor is a party or by which Borrower, Guarantor or any Future Guarantor is bound except as disclosed to Lender in writing.

ARTICLE 5

AFFIRMATIVE COVENANTS

Until full payment and performance of all Indebtedness and Obligations of Borrower to Lender under the Loan Documents and the termination of any obligation of Lender to make any Advances or to issue Letters of Credit, Borrower, Guarantor and each Future Guarantor (as the case may be) shall maintain the following covenants, conditions and restrictions (and without limiting any requirement of any other Loan Documents):

5.01 Financial Statements and Other Information. Maintain a system of accounting satisfactory to Lender (in accordance with Accounting Terms applied on a consistent basis) throughout the period involved, permit Lender's officers or authorized representatives to visit and inspect Borrower's and any Future Guarantor's books of account and other records at times and as often as Lender may desire, and pay the reasonable fees and disbursements of any accountants or other agents of Lender selected by Lender for the foregoing purposes. The foregoing shall include Lender's performing a field audit, at times during normal business hours and as often as Lender may request, of Borrower's and any Future Guarantor's assets and systems. Borrower's books and records will be located at the address set forth in **Section 4.09** above.

Borrower, Guarantor and each Future Guarantor shall furnish to Lender the following financial information, in each instance prepared in accordance with Accounting Terms and in form and substance satisfactory to Lender (collectively, "**Financial Reporting**"):

(a) Not later than 45 days after the end of each fiscal quarter, company-prepared financial statements signed by Borrower's Chief Financial Officer in the form required to be reported to the Securities and Exchange Commission and if the Securities and Exchange Commission no longer applies to the Borrower, then in the form and substance acceptable to Lender in its sole discretion. An audited financial statement for Borrower, Guarantor and any Future Guarantor (if Future Guarantor is an entity) shall be presented to Lender not later than 120 days after the end of each fiscal year. Any Future Guarantor (if Future Guarantor is a person) shall provide to Lender their personal financial statements (to the extent said guarantors' financial statements are not consolidated with those of Borrower), including a schedule of that Person's Contingent Liabilities, within 90 days after the end of each calendar year.

(b) Not later than 30 days after filing with the Internal Revenue Service, a true and complete copy of the federal tax returns, including all applicable schedules of Borrower, Guarantor and any Future Guarantor.

(c) Borrower shall submit to Lender quarterly inventory reports within fifteen (15) Business Days of each quarter end on all residential communities of Borrower and its subsidiaries and partnerships existing now or formed in the future that are subject to the Global Sold / Unsold Ratio. The inventory reports shall include a recap of all Lots and Units.

(d) Borrower shall submit to Lender monthly Borrowing Base Certificates and Lot and Unit contract reports including advance availability calculations within fifteen (15) Business Days of each month end and quarterly Financial Covenants calculations as stated below in **Section 5.02** hereof, all to be signed by the Chief Financial Officer, and other information as required by Lender from time to time.

(e) On request, Management prepared annual business plan and annual budget of Borrower with business plan results (actual vs. budget).

(f) Borrower shall provide to Lender a copy of all Securities and Exchange Commission filings (if applicable and if requested by Lender) within fifteen (15) days following filing.

(g) Furnish to Lender promptly additional information, reports and statements respecting the business operations and financial condition of Borrower, Guarantor and each Future Guarantor, respectively, from time to time, as Lender may request.

(h) Borrower, Guarantor and any Future Guarantor shall furnish to Lender, with each set of financial statements described above, a Certificate of Compliance certificate signed by Borrower's chief financial officer and, Guarantor and any Future Guarantor (as applicable). In addition, Borrower, Guarantor and any Future Guarantor shall promptly notify Lender of the occurrence of any Event of Default, adverse litigation or material adverse change in its financial condition.

5.02 Financial Covenants. Borrower shall maintain the following financial covenants ("Financial Covenants") during the Term, compliance of which shall be determined on the basis of the Financial Reporting and other information to be provided to Lender by Borrower as described below. Except as may be specifically noted otherwise, review of the Financial Covenants shall be completed quarterly within forty-five (45) days of the end of the first three (3) annual quarters and one hundred twenty (120) days of fiscal year-end (12/31) by a compliance certificate signed by Borrower's Chief Financial Officer certifying that the certificate is true and correct subject to Lender's receipt of the Financial Reporting on a timely basis. Notwithstanding anything contained to the contrary in this Agreement or in the other Loan Documents, the Financial Covenants must be complied with by Borrower

regardless of which Projects comprise the Collateral Pool at any given time and regardless of which, Guarantor or Future Guarantors own fee simple title to the Projects comprising the Collateral Pool.

(a) **Senior Liabilities to Effective Tangible Net Worth Ratio.** Borrower shall maintain a ratio of Senior Liabilities to Effective Tangible Net Worth that is less than or equal to 2.50:1.

(b) **Global Sold/Un-sold Unit Ratio.** Borrower shall maintain a global ratio of Sold Units to Speculative Condos/Townhomes, Speculative Units and Model Units (excluding any Units financed on a non-recourse basis) of less than or equal to 1.00:2. For purposes of this **Section 5.02(b)**, all Speculative condos/Townhomes and Speculative, Model and Sold Units of Borrower shall be included, not just those in a Project under this Facility.

(c) **EBITDA/Debt Service Ratio.** Borrower shall maintain a ratio of EBITDA to Debt Service that is equal to or greater than 2.50:1 to be calculated quarterly on a rolling four-quarter basis. EBITDA means the sum of net income plus interest incurred, income tax expense, depreciation and amortization.

(d) **Tangible Net Worth.** Borrower shall maintain its Tangible Net Worth at a minimum of $125,000,000. This minimum amount shall increase each year by 25% of the Net Income Before Taxes, as shown on Borrower's audited year-end financial statements provided to Lender, beginning with the 2006 fiscal year.

(e) **Deposit Accounts.** All deposit accounts for North Carolina and South Carolina of Borrower shall be maintained by Lender.

5.03 Restrictions on Investment. Borrower shall not directly or indirectly make any investments that may have a Material Adverse Effect on Borrower's ability to repay the advances made under this Facility (provided, however, that Lender shall determine Material Adverse Effect in its reasonable discretion as it pertains to this Section).

5.04 Restrictions on Liabilities. Borrower shall have no liabilities other than the Permitted Liabilities.

5.05 Existence and Compliance. Maintain its existence, good standing and qualification to do business, where required and comply with all laws, regulations and governmental requirements including environmental laws applicable to it or to any of its property, business operations and transactions.

5.06 Adverse Conditions or Events. Advise Lender in writing within three (3) days of: (a) any condition, event or act (other than general economic conditions or events which generally affect economic conditions) which comes to its attention that would or might materially adversely affect its financial condition or operations, the Collateral Pool, or Lender's rights under the Loan Documents; (b) any litigation filed by or against it which, if determined against it, would be materially adverse to it; (c) any event that has occurred that would constitute a Default or an Event of Default under any Loan Documents; or (d) any uninsured or partially uninsured loss through fire, theft, liability or property damage in excess of an aggregate of Fifty Thousand Dollars ($50,000).

5.07 Taxes and Other Obligations. Pay all of its respective taxes, assessments and other obligations, including taxes, costs or other expenses arising out of this transaction, prior to delinquency, except to the extent the same are being contested in good faith by appropriate proceedings in a diligent manner and with appropriate security posted.

5.08 Maintenance. Maintain all of its respective relevant tangible property in good condition and repair and make all necessary replacements thereof, and preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates and the like necessary for the operation of their

respective business. The aforesaid shall not apply where it is not commercially reasonable to do so, nor a good business practice.

5.09 Notification. Immediately notify Lender of the occurrence of any Default or Event of Default of which it has knowledge and immediately advise Lender in writing of: (a) all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state or local laws, ordinances or regulations relating to any Hazardous Materials affecting any Project; and (b) all claims made or threatened by any third party against it relating to damages, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials located on or under any Project.

5.10 Organizational Structure. Without the prior written consent of Lender: (i) a material alteration in the kind or type of Borrower's, Guarantor's or any Future Guarantor's business; (ii) the sale of substantially all of the business or assets of Borrower or Guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower or Guarantor, or (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity which may have a Material Adverse Effect on Borrower's ability to repay the advances under this Facility (provided, however, that Lender shall determine Material Adverse Effect in its reasonable discretion as it pertains to this Section); or (iv) should Borrower or any Guarantor merge or consolidate with any other entity, or change its organizational structure such that the change may have a Material Adverse Effect on Borrower's ability to repay the advances under this Facility (provided, however, that Lender shall determine Material Adverse Effect in its reasonable discretion as it pertains to this Section and provided that any objection to a merger or consolidation that results in a change of control of Borrower shall be deemed reasonable).

5.11 Observe All Laws. Conform to and duly observe all laws, rules and regulations and all other valid requirements of any regulatory authority with respect to the conduct of its business.

5.12 Governmental Licenses. Obtain and maintain all licenses, permits, certifications and approvals of all applicable governmental authorities as are required for the conduct of its business as currently conducted and contemplated in this Agreement.

5.13 Compliance with Laws. Duly observe, conform and comply with all laws, decisions, judgments, rules, regulations and orders of all governmental authorities relative to the conduct of its business, its properties, and assets, except those being contested in good faith by appropriate proceedings diligently pursued; and obtain, maintain and keep in full force and effect all governmental licenses, authorizations, consents and permits necessary to the proper conduct of its business.

5.14 Visitation Rights. Permit any authorized representative of Lender, on reasonable notice to Borrower, Guarantor or any Future Guarantor, as applicable, and during normal business hours, to examine and copy the records and books of, and visit and inspect the properties of, Borrower, Guarantor or any Future Guarantor, and to discuss the affairs and finances of Borrower, Guarantor or any Future Guarantor or with any of their respective officers, directors or employees, and at the expense of Borrower, independent public accountants.

5.15 Payment of Indebtedness. Pay all of its Indebtedness and perform all of its Obligations promptly and in accordance with normal terms and comply in all material respects with all agreements, indentures, deeds of trust or documents binding on it; pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed on it or on its property or any part thereof, but in all events before the same shall become in default, as well as all claims for labor, materials and supplies or otherwise which, if unpaid, might become a lien on those properties or any part thereof unless properly contested.

5.16 Subordination. Borrower shall cause Guarantor and each Future Guarantor at the applicable Land Closing to unconditionally subordinate to the Facility the payment of any principal and

interest of all obligations of any kind owing from Borrower to Guarantor or a Future Guarantor or to a Future Guarantor from another Future Guarantor (collectively, "**Junior Claims**"). Each Guarantor and Future Guarantor shall not accept any payments on Junior Claims except: (i) profit distributions payable in the ordinary course of business and only if no Default has occurred and is continuing; and (ii) as otherwise approved by Lender.

5.17 Notice of Default. Borrower, Guarantor and each Future Guarantor (as the case may be) shall promptly provide Lender with written notice of any notice of default received by any of them on any other credit facility or other indebtedness from any other source that relates to an obligation of the Borrower, Guarantor or Future Guarantor that equals or exceeds Five Million ($5,000,000.00).

5.18 Interstate Land Sales Full Disclosure Act. The development, marketing and sale of all Units (including the purchase contract between Borrower and all Unit purchasers) shall comply with the Improved Lot Exemption to the Interstate Land Sales Full Disclosure Act 15 U.S.C. 1702(a)(2).

ARTICLE 6

NEGATIVE COVENANTS

Until full payment and performance of all Indebtedness and Obligations of Borrower to Lender and Lender under the Loan Documents and the termination of any obligation of Lender to make any Advances and issue any Letters of Credit, Borrower, Guarantor and each Future Guarantor (as the case may be) will not, without the prior written consent of Lender (and without limiting any requirement of any other Loan Documents):

6.01 Character of Business. Change the general character of business as conducted at the date hereof, or engage in any type of business not reasonably related to its business as presently conducted.

6.02 Additional Negative Covenants.

(a) Guarantee, endorse or assume debt, except (i) debt in the normal course of business; and (ii) Permitted Liabilities;

(b) Acquire all or substantially all the assets, stock or ownership interest of another entity whether by direct purchase, merger or other method (except for a newly formed Future Guarantor) and that acquisition may have a Material Adverse Effect on Borrower's ability to repay the advances under this Facility (provided, however, that Lender shall determine Material Adverse Effect in its reasonable discretion as it pertains to this Section);

(c) Sell, lease, assign or otherwise dispose of or transfer any assets, except in the ordinary course of business; or

(d) Become a party to any transaction whereby all or substantially all of the properties, assets or undertakings of Borrower, Guarantor or any Future Guarantor (whether legally or beneficially owned) would become the property of any other person, whether by way of reorganization, amalgamation, merger, transfer, sale, lease, sale and leaseback or otherwise.

ARTICLE 7

DEFAULT

The occurrence of any of the following as they relate to Borrower, Guarantor or any Future Guarantor shall constitute an "**Event of Default**" after the giving of any required notice and the expiration of any applicable grace period:

7.01 Failure to pay any Indebtedness within five (5) Business Days after its due date, without notice or demand, including the failure to pay principal or interest or any other payment under the Note, or failure to pay any other Obligation within ten (10) Business Days after receipt of notice thereof from Lender.

7.02 A breach of any other term, covenant, condition, obligation or agreement under this Agreement or the other Loan Documents, and the continuance of the breach for a period of thirty (30) days after the earlier of: (i) knowledge thereof by Borrower, Guarantor or any Future Guarantor, that knowledge to be that of the President, Chief Financial Officer or General Counsel; or (ii) written notice thereof shall have been given by Lender to Borrower, Guarantor or any Future Guarantor, but, if Lender reasonably determines that the default cannot be cured within the thirty (30) day period, then no cure period shall be provided.

7.03 Failure to be in compliance with any of the Financial Covenants not cured to Lender's satisfaction within ten (10) days from the commencement of that failure.

7.04 Any representation, warranty, statement or certificate determined by Lender to be untrue in any material adverse respect.

7.05 Filing of any petition for adjudication as a bankrupt or for reorganization not dismissed within thirty (30) days from filing, whether voluntary or involuntary; the appointment of a receiver or trustee or other similar officer with respect to any substantial part of their property; a general assignment for the benefit of creditors; any other insolvency proceeding, any dissolution or liquidation or winding up of affairs.

7.06 Entry of a final judgment in an amount exceeding $10,000, other than a final judgment in connection with any condemnation, not discharged or a stay of execution procured within sixty (60) days of entry.

7.07 Recordation of any federal, state or local tax lien or any claim of lien for labor, materials or any other lien or encumbrance of any nature whatsoever not removed by payment or transferred to substitute security in the manner provided by law within thirty (30) days after it is recorded in accordance with applicable law or contested in accordance with law and in a manner acceptable to Lender.

7.08 Failure to exist or to be qualified to do or transact business in the jurisdictions where assets are located, the dissolving of the corporation, or a sale of all or substantially all of its assets.

7.09 Any sale, conveyance, transfer, assignment or other disposition of all or substantially all of assets not in the ordinary course of business.

7.10 Default under any obligation imposed by any indemnity, contained in any of the Loan Documents.

7.11 The results of any field audit performed by Lender are not satisfactory to Lender, as determined in Lender's sole discretion, and the expiration of sixty (60) days after notice from Lender to Borrower of said dissatisfaction and the failure of the Borrower to cure said default.

7.12 The happening of any of the following: the cancellation or suspension for a period of sixty (60) days of any material permits, licenses, authorizations, certifications, contracts or approvals from or with any federal, state or local governmental authority.

7.13 A voluntary or involuntary proceeding being filed or commenced for dissolution or liquidation which is not dismissed within thirty (30) days.

7.14 A Material Adverse Change.

7.15 The acquisition by a Person of 50% or more of the aggregate voting power of all classes of common equity of Borrower or Guarantor (or of any Future Guarantor that is an entity).

7.16 The liquidation or dissolution of Borrower, or the death of any Future Guarantor that is a person.

7.17 A majority of the Board of Directors of Borrower as of the date hereof are no longer members of the Board of Directors unless the new Board Members were nominated and elected to the Board of Directors with an affirmative vote of at least a majority of a quorum of the Directors who were Directors as of the date hereof or who were similarly nominated for election or elected.

ARTICLE 8

REMEDIES UPON DEFAULT

If an Event of Default occurs, then Lender may terminate the Commitment and/or declare this Agreement and the other Loan Documents in default and all Indebtedness and Obligations shall on demand by Lender immediately become due; but, upon the occurrence of an Event of Default under **Section 7.05**, the Commitment shall automatically terminate and all Indebtedness and Obligations shall automatically become due and payable without any action by Lender. Further, if an Event of Default occurs, then Lender may exercise any right, power or remedy permitted by law or in equity or as set forth in this Agreement or any other Loan Document including the right to declare the entire unpaid principal amount of the Note and all interest accrued thereon, and all other sums secured by the Deed of Trust or any other Loan Document, to be, and the principal, interest and other sums shall become, immediately due and payable.

If after receipt of any payment of or any part of Indebtedness and Obligations, Lender is for any reason compelled to surrender that payment to any person because that payment is determined to be void or voidable as a preference, an impermissible setoff, or a diversion of trust funds, or for any other reason, then this Agreement shall continue in full force and Borrower shall remain liable to Lender for the amount of that payment surrendered. The provisions of this **Article 8** shall be and remain effective notwithstanding any contrary action which may have been taken by Lender in reliance on that payment, and any contrary action so taken shall be without prejudice to the rights of Lender under this Agreement and shall be deemed to have been conditioned on the payment having become final and irrevocable. The provisions of this **Article 8** shall survive the termination of this Agreement until all periods for surrender have ended without the action having been instituted.

Borrower makes, constitutes and appoints Lender (and all Persons designated by Lender) the true and lawful agent and attorney-in-fact of Borrower with full power of substitution so that if an Event of Default has occurred to do all things necessary and take those actions in the name and on behalf of Borrower to carry out the intent of this Agreement, including to protect rights created under this Agreement. Borrower agrees that neither Lender nor any of its agents, designees or attorneys-in-fact will be liable for any acts or omissions (other than for acts or omissions which constitute gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, nonappealable order), or for any error of judgment or mistake of fact or law in respect to the exercise of the power of attorney

granted under this **Article 8**. The power of attorney granted under this **Article 8** shall be irrevocable during the term of this Agreement.

ARTICLE 9

JOINDER INTO DECLARATIONS

9.01 Consent to Master Association Declarations, Easements and Plats. If no Default or Event of Default exists, then Lender will join in and consent to the execution and recording of: (a) any Declaration of Covenants, Restrictions, Easements and Plats for a Project within the Collateral Pool and in form approved by Lender; and (b) reasonable access, utility and other easements if same are required by governmental requirements or otherwise necessary in connection with the development of the Property in order to construct a Project within the Collateral Pool, provided that the applicable easement is acceptable to Lender.

ARTICLE 10

NOTICES

All notices, requests or demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to the other party at the following address:

Borrower: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Christopher Clemente
Telephone: (703) 883-1700
Fax: (703) 760-1520

Borrower: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Jubal Thompson
Telephone: (703) 883-1700
Fax: (703) 760-1520

Lender: Wachovia Bank, National Association
150 Fayetteville Street, NC 3288
Raleigh, North Carolina 27602
Attention: Joe Morrocco
Telephone: (919) 881-7237
Fax: (919) 881-6647
Email: joe.morrocco@wachovia.com

With a copy to: Parker Poe Adams & Bernstein LLP
Three Wachovia Center
Suite 3000
401 South Tryon Street
Charlotte, North Carolina 28202-1935
Attention: Alan G. Dexter, Esq.
Telephone: (704) 335-9042
Fax: (704) 335-9559
Email: alandexter@parkerpoe.com

or to any other address as any party may designate by written notice to the other party. Each notice, request and demand shall be deemed given or made upon receipt or refusal to accept delivery.

ARTICLE 11

COSTS, EXPENSES AND ATTORNEYS' FEES

Borrower shall pay to Lender immediately on demand the full amount of all costs and expenses, including reasonable attorneys' fees and costs (to include outside counsel fees) incurred by Lender in connection with: (a) the negotiation and preparation of this Agreement and each of the Loan Documents; and (b) Lender's reasonable attorneys' fees and costs incurred in connection with the addition of a Project to the Collateral Pool from time to time or in connection with any other matter related to this Agreement or the other Loan Documents (including any consent or approval request from Borrower to Lender). Borrower shall pay to Lender immediately on demand the full amount of all costs and expenses, including reasonable attorneys' fees and costs (to include outside counsel fees) incurred by Lender in connection with the enforcement of the Loan Documents, including all costs and expenses incurred during any "workout" or restructuring after an Event of Default, whether or not pursuant to any legal proceeding.

ARTICLE 12

MISCELLANEOUS

Borrower, Guarantor, Lender and each Future Guarantor covenant and agree as follows, without limiting any requirement of this Agreement or any other Loan Document:

12.01 Cumulative Rights and No Implied Waiver. Each right granted to Lender, Borrower, Guarantor or any Future Guarantor, as the case may be, under any Loan Document or allowed it by law or equity shall be cumulative of each other and may be exercised in addition to all other rights of Lender, Borrower, Guarantor or any Future Guarantor, as the case may be, and no delay in exercising any right shall operate as a waiver thereof, nor shall any single or partial exercise by Borrower, Guarantor or any Future Guarantor, as the case may be, of any right preclude any other or future exercise thereof or the exercise of any other right No notice to or demand on Borrower, Guarantor or any Future Guarantor in any case shall, of itself, entitle Borrower, Guarantor or any Future Guarantor to any other or future notice or demand in similar or other circumstances.

12.02 Applicable Law. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and interpreted in accordance with the laws of North Carolina and applicable United States federal law. No defense given or allowed by the laws of any other state or country shall be interposed in any action, case or proceeding unless the defense is also given or allowed by the laws of the State of North Carolina.

12.03 Amendment. No modification, consent, amendment or waiver of any provision of this Agreement, nor consent to any departure by Borrower, Guarantor or any Future Guarantor therefrom, shall be effective unless the same shall be in writing and signed by an officer of Lender, and then shall be effective only in the specified instance and for the purpose for which given.

12.04 Documents. All documents, certificates and other items required under this Agreement to be executed and/or delivered to Lender shall be in form and content satisfactory to Lender and its counsel.

12.05 Partial Invalidity. The unenforceability or invalidity of any provision of this Agreement or any other Loan Document shall not affect the enforceability or validity of any other provision in this Agreement and the invalidity or unenforceability of any provision of this Agreement or any other Loan Document to any person or circumstance shall not affect the enforceability or validity of the provision as it may apply to other persons or circumstances.

12.06 Indemnification. Borrower indemnifies and agrees to defend and hold harmless Lender and its officers, employees and agents, from and against all losses, damages, liabilities, suits, claims or demands, including reasonable attorneys' fees incurred in investigating or defending that claim, suffered by any of them and caused by, arising out of or in any way connected with the Loan Documents or the transactions contemplated therein (unless determined by a final judgment of a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of any of the indemnified parties), including (i) disputes with any architect, general contractor, subcontractor, materialman or supplier, or on account of any act or omission to act by Lender in connection with any Project; (ii) losses, damages, expenses or liabilities sustained by Lender resulting directly from any environmental inspection, monitoring, sampling or clean up of any Project required or mandated by any applicable environmental law; (iii) claims by any tenant, contract purchaser or any other party arising under or in connection with any lease or contract for all or any portion of any Project (if the lease or contract is otherwise permitted under the Loan Documents); (iv) any untrue statement of a material fact contained in information submitted to Lender by Borrower, Guarantor or any Future Guarantor or the omission of any material fact necessary to be stated therein in order to make that statement not misleading or incomplete; (v) the failure of Borrower, Guarantor or any Future Guarantor to perform any obligations in this Agreement required to be performed by any of them; and (vi) the ownership, construction, occupancy, operation use or maintenance of any Project.

If any action shall be brought against Lender or any of its officers, employees or agents, in respect to which indemnity may be sought against Borrower, then Lender shall notify Borrower and Borrower shall assume the defense thereof, including the employment of counsel selected by Borrower and satisfactory to Lender, the payment of all costs and expenses and the right to negotiate and consent to settlement. Lender shall have the right, at its sole option, to employ separate counsel in any action and to participate in the defense thereof.

The provisions of this **Section 12.06** shall survive the repayment or other satisfaction of the Indebtedness.

12.07 Survivability. All covenants, agreements, representations and warranties made in this Agreement or in the other Loan Documents shall survive the making of the Facility and shall continue in full force and effect so long as the Facility is outstanding or the obligation of Lender to make any Advances shall not have expired.

12.08 Course of Dealing. No course of dealing between Lender and Borrower, Guarantor or any Future Guarantor shall be effective to amend, modify or change any provision of this Agreement.

12.09 Successors and Assigns. This Agreement shall be binding upon Borrower, Guarantor and each Future Guarantor and shall inure to the benefit of and shall be binding upon Lender and its successors and assigns. Lender may, without the consent of Borrower, Guarantor or any Future Guarantor or any other Person, assign, negotiate, hypothecate or grant assignments of or participations in this Agreement or in any of its rights and security under this Agreement and each of the other documents contemplated to be executed in conjunction herewith. Borrower, Guarantor and each Future Guarantor shall accord full recognition to any assignment or participation, and all rights and remedies of Lender in connection with the interest so assigned shall be as fully enforceable by the assignee. In connection with any proposed assignment or participation, Lender may disclose to the proposed assignee or participant any information that Borrower, Guarantor and each Future Guarantor is required to deliver to Lender pursuant to this Agreement. There is no third party beneficiary of this Agreement.

12.10 Net Payments. All payments by Borrower under this Agreement and the Note shall be made without set-off or counterclaim and in amounts as may be necessary in order that all payments, after deduction or withholding for or on account of any present or future taxes, levies, imposts, duties or other charges of whatsoever nature imposed by any government or any political subdivision or taxing authority thereof, including documentary and intangible taxes payable by Borrower (collectively, the "**Taxes**"), shall not be less than the amounts otherwise specified to be paid under this Agreement and the

Note. Borrower shall not be liable for the payment of any tax on or measured by net income imposed on Lender pursuant to the income tax laws of the United States or any political subdivision thereof. Borrower shall pay all Taxes prior to delinquency (and indemnify Lender against any liability therefor) and shall promptly (and in any event not later than thirty [30] days thereafter) furnish to Lender any certificates, receipts and other documents which may be required (in the judgment of Lender) to establish any tax credit to which Lender may be entitled. The obligations of Borrower under this **Article 12.10** shall survive the termination of this Agreement and the repayment of the Facility.

12.11 Further Assurances. Borrower will, at its own cost and expense, execute and deliver to Lender all further agreements, documents and instruments, and take all further actions which may be required under applicable law or which Lender may request, in order to effectuate the intent of the transactions contemplated by this Agreement and the other Loan Documents.

12.12 Resurrection of Borrower's Indebtedness. To the extent that Lender receives any payment on account of any of Borrower's Indebtedness, and any of the payment(s) or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other Person under any bankruptcy act, state or Federal law, common law or equitable cause, then, to the extent of the payment(s) received, Borrower's Indebtedness or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if the payment(s) had not been received by Lender and applied on account of Borrower's Indebtedness.

12.13 Equitable Relief. Borrower recognizes that, if Borrower fails to perform, observe or discharge any of Borrower's Obligations under this Agreement and any remedy at law may prove to be inadequate relief to Lender, then Lender shall be entitled to temporary and permanent injunctive relief in any case without the necessity of proving actual damages.

12.14 Multiple Borrowers. If more than one Person is named as Borrower, then all obligations, representations and covenants in this Agreement and in other Loan Documents to which Borrower is a party shall be joint and several.

12.15 Identification of Lender. No officer, director or shareholder of Lender shall incur any liability or obligation on an individual basis to Borrower and shall not be individually responsible to Borrower for the performance or non-performance of any obligations of Lender.

12.16 Broker's Commission. Borrower represents and warrants to Lender that it has dealt with no broker, finder or similar entity in connection herewith. Borrower agrees to indemnify, defend and hold Lender free and harmless from brokerage claims made by any person or entity, claiming through or as a result of dealings with Borrower relative to this transaction, including attorneys' fees.

12.17 No Usurious Amounts. Borrower does not agree and shall not be obligated to pay interest under the Note at a rate which is in excess of the maximum non-usurious rate permitted by law. If by the terms of the Note, Borrower is, at any time, required to pay interest at a rate in excess of the maximum non-usurious rate, then the rate of interest under the Note shall be deemed to be immediately reduced to the maximum non-usurious legal rate and the portion of all prior interest payments in excess of the maximum non-usurious legal rate shall be applied to and shall be deemed to have been payments in reduction of the outstanding principal balance. Borrower agrees that in determining whether or not any interest payable under the Note exceeds the highest rate permitted by law, any non-principal payment, including late charges, shall be deemed to the extent permitted by law to be an expense, fee or premium rather than interest.

12.18 Approvals. Except as provided elsewhere in this Agreement, if this Agreement calls for the approval or consent of Lender, then the approval or consent must, if given, be in writing and may be given or withheld in the sole discretion of Lender. If at any time Borrower believes that Lender has not acted reasonably in granting or withholding any approval or consent under the Loan Documents as to

which approval or consent Lender has expressly agreed to act reasonably, or absent agreement, a court of law having jurisdiction over the subject matter would require Lender to act reasonably, then Borrower's sole remedy shall be to seek injunctive relief or specific performance and no action for monetary damages or punitive damages shall in any event or under any circumstances be maintained by Borrower against Lender.

12.19 Documentary and Intangible Taxes. Borrower, Guarantor and any Future Guarantor shall be liable for all documentary stamp and intangible taxes (including any penalties and interest charged for the late payment of any taxes) assessed upon execution of the Note or as renewed from time to time during the term of the Facility or assessed upon execution of any Guarantees by a Future Guarantor (or assessed upon execution of any security instruments executed by a Future Guarantor securing its Guarantee).

12.20 Confidentiality. Lender shall not disclose any Financial Reporting, Borrowing Base Certificates, Submission Packages or other financial reports, appraisals or insurance certificates or policies or any other material non-public information concerning Borrower, Guarantor or any Future Guarantor obtained by or furnished to Lender in connection with the transactions contemplated by this Agreement, to any person other than (a) Lender's affiliates, and to Lender's and its affiliates' respective directors, officers, employees, agents, contractors, representatives and advisors (collectively, the "Representatives"), who shall only use this information in connection with the consummation or administration of the transactions contemplated by this Agreement or (b) any prospective assignees of the Commitment or the Facility, any prospective participant in the Facility, or any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, provided that Lender shall inform the parties of the confidential nature of the information with respect to the transactions contemplated by this Agreement and direct them to treat all information in the same manner that is required of Lender in this Agreement or (c) in connection with the exercise of any remedies or in any action or proceeding relating to this Agreement or any other Loan Document. Notwithstanding the foregoing, Lender shall be permitted to disclose any information obtained by Lender: (a) which is incorporated in any Loan Documents subject to recordation and/or filing in applicable public records or is otherwise a matter of public record; (b) as shall be required by law, for instance, in the context of interrogatories, requests for information or documents, subpoenas, civil investigative demands or similar process; (c) as shall be required by any regulatory or governmental authorities; or (d) as shall be otherwise required in connection with the transactions contemplated by this Agreement.

12.21 USA Patriot Act Notice. Lender notifies Borrower that, pursuant to the requires of the USA Patriot Act (Title III of Pub. L. 107-56 [signed into law October 26, 2003]) (the "Act"), it 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.

12.22 Counterparts; Effective Date. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of separate counterparts, no one of which need contain all of the signatures of the parties, and as many of the counterparts as shall together contain all of the signatures of the parties shall be deemed to constitute one and the same instrument. A set of the counterparts of this Agreement signed by all parties to this Agreement shall be delivered to and held by Lender. This Agreement shall become effective upon the receipt by Lender of signed counterparts of this Agreement from each of the parties hereto or telecopy confirmation of the signing of counterparts of this Agreement by each of the parties to this Agreement.

ARTICLE 13

AMBIGUITY OR CONFLICT

If there is an ambiguity or conflict of terms between the Note, this Agreement and/or any other Loan Document, then the terms of this Agreement shall be deemed to amend and control all of the other

agreements; and, to the extent that any of the agreements are silent, each shall supplement the others; but, if there is any conflict between the terms of this Agreement, the Note and/or any other Loan Document, then the terms which, in Lender's sole discretion, grant Lender the greater protection, shall control. All other provisions of contemporaneous or previous agreements and understandings between Borrower and Lender relating to the commitment of Lender and the Note in conflict with any expressed provision hereof shall be merged into this Agreement and be extinguished and of no further force and effect.

ARTICLE 14

JURISDICTION, SERVICE OF PROCESS

Any suit, action or proceeding against Borrower, Guarantor or any Future Guarantor directly or indirectly connected to this Agreement or any other Loan Document, or any judgment entered by any court in respect thereof, may be brought in the courts of Mecklenburg County, North Carolina or in the U.S. District Court, Middle District of North Carolina as Lender (in its sole discretion) may elect, and Borrower, Guarantor and each Future Guarantor accepts the non-exclusive jurisdiction of those courts for the purpose of any suit, action or proceeding. Service of process in any case may be had against Borrower, Guarantor and each Future Guarantor by delivery in accordance with the notice provisions in this Agreement or as otherwise permitted by law, and Borrower, Guarantor and each Future Guarantor agrees that the service shall be valid in all respects for establishing personal jurisdiction over it. Borrower, Guarantor and each Future Guarantor waive any right which it may have with respect to any litigation arising with respect to this Agreement, any Loan Document or any judgment to remove the litigation from state court to federal court or to require that the litigation take place in federal court instead of state court.

In addition, Borrower, Guarantor and each Future Guarantor irrevocably waive, to the fullest extent permitted by law, any objection which it may now or in the future have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the Loan Documents or any judgment entered by any court in respect of any thereof brought in Mecklenburg County, North Carolina or in the U.S. District Court, Middle District of North Carolina as selected by Lender, and further irrevocably waives any claim that any suit, action or proceeding brought in Mecklenburg County, North Carolina or in the District Court has been brought in an inconvenient forum.

ARTICLE 15

NO ORAL AGREEMENT

THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

ARTICLE 16

WAIVER OF JURY TRIAL

16.01 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, BORROWER, GUARANTOR, EACH FUTURE GUARANTOR, AND LENDER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT AND ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR

ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed under seal by their duly authorized representatives as of the date first above written.

LENDER:

WACHOVIA BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

AGREED TO AND ACCEPTED BY:

BORROWER:

COMSTOCK HOMEBUILDING COMPANIES, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Exhibit 10.4

STOCK PURCHASE AGREEMENT

DATED AS OF MAY 1, 2006

BY AND AMONG

COMSTOCK HOMEBUILDING COMPANIES, INC.

CAPITOL HOMES, INC.,

AND

EACH OF THE SELLING SHAREHOLDERS IDENTIFIED HEREIN

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STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT (this "***Agreement***") dated as of May 1, 2006, by and among COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation ("***Purchaser***"), CAPITOL HOMES, INC., a North Carolina corporation (the "***Company***"), and each of the following individuals who are all of the shareholders of the Company on the date hereof, owning in the aggregate 100 shares (the "***Shares***") of the Company's common stock, without par value (the "***Common Stock***"), which Shares constitute all of the issued and outstanding capital stock of the Company: RICHARD WEALE, GLENN HARTMAN, and PABLO REITER (each a "***Seller***" and collectively, the "***Sellers***").

RECITALS

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

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

AGREEMENTS

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

ARTICLE I
DEFINITIONS

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

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

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

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

"***Appurtenances***" means all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of any Real Property, including all easements

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

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

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

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

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

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

"***Closing Date***" means the effective date of the Closing, which the parties agree shall be May 1, 2006..

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

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

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

"***Comstock Shares***" has the meaning provided in Section 2.4(a).

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

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

"***Damages***" means all actions, lawsuits, proceedings, hearings, investigations, charges, complaints, Third Party Claims, demands, injunctions, judgments, orders, decrees, rulings, dues, Liabilities, obligations, Taxes, liens, assessments, levies, losses, fines, penalties, damages, costs, fees and expenses, including reasonable attorneys', accountants', investigators', and experts' fees and expenses incurred in investigating or defending any of the foregoing. For purposes of the indemnification provisions in Article IX, all Damages shall be net of any third-party insurance proceeds which are actually recovered by the Indemnified Party (net of any premium increase

directly relating to such Damages) in connection with the facts giving rise to the right of indemnification.

"***Disclosure Schedule***" means the schedules delivered by the Company and the Sellers to the Purchaser concurrently herewith and identified by the parties as the Disclosure Schedule. The Disclosure Schedule shall specifically refer to the Section(s) of this Agreement to which the applicable disclosure or exception applies.

"***Division"*** means the Raleigh, North Carolina operating division of Purchaser, including the operations of the Company following the Closing Date.

"***Earnout Basis***" means, for any period, an amount equal to ninety eight (98%) percent of the total revenue of the Division less the Company's cost of goods sold (excluding interest expense, home office corporate overhead, and local sales and marketing expense in amounts equal to 50% of divisional office overhead) for such period, determined in accordance with GAAP.

"***Employment Agreement***" means an Employment Agreement to be entered into with each of Glenn Hartman and Pablo Reiter, respectively, in the form of Exhibit A attached hereto.

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

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

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

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

"***Fair Market Value***" means (i) with respect to the Comstock Shares, the average closing price of the Comstock Shares as quoted on NASDAQ over a period of 20 consecutive trading days, the latest of which will be the trading day immediately preceding the date as of which Fair

Market Value is being determined, and (ii) with respect to any Listed Equity Security, the average closing bid price (or, if there is no applicable closing bid price, the closing price) of such Listed Equity Security on the principal exchange or interdealer quotation system on which such Listed Equity Security is traded over a period of 20 consecutive trading days, the latest of which will be the trading day immediately preceding the date as of which Fair Market Value is being determined.

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

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

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

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

"***Ground Lease Property***" means any Real Property, Improvements and Appurtenances subject to a ground lease in favor of the Company, used or usable in the conduct of the Company's business.

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

"***Improvements***" means all buildings, structures, fixtures, site improvements, off-site easements and rights or other improvements located on, or appurtenant to, the Real Property, including those under construction.

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

"***Indemnified Party***" means, with respect to a particular matter, a Person who is entitled to indemnification from another party hereto pursuant to Article IX.

"***Indemnifying Party***" means, with respect to a particular matter, a party hereto who is required to provide indemnification under Article IX to another Person.

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

"***Intellectual Property Licenses***" means all Contracts (other than Contracts with respect to Software that have been purchased "off the shelf") between the Company , on the one hand, and any other Person, on the other hand, granting any right to use or practice any rights under any of the Intellectual Property owned by the Company or any other Person.

"***Interim Financial Statement Date***" means April 30, 2006.

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

"***IRS***" means the Internal Revenue Service.

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

"***Land Purchase Agreements***" has the meaning provided in Section 8.6.1.

"***Leased Real Estate***" means all real property leased or subleased by the Company.

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

"***Material Adverse Effect***" means any event, change, condition or matter that individually or in the aggregate results in or could reasonably be expected to result in a material adverse change in the (1) business, operations (including results of operations), assets, Liabilities, financial condition, properties or prospects of the Company and its divisions taken as a whole, or

(2) the ability of any party hereto to consummate the transactions contemplated hereby. Notwithstanding the foregoing, a decline in general economic conditions or matters generally affecting real estate markets or home building companies in North Carolina shall not be deemed to be a Material Adverse Effect.

"***Neutral Accountant***" means Grant Thornton.

"Noncompetition Agreement" means a Confidentiality and Noncompetition Agreement, to be entered into with each of Richard Weale, Glenn Hartman and Pablo Reiter, respectively, in the forms of Exhibit B attached hereto.

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

"***Permitted Liens***" means all (1) statutory liens for Taxes not yet due; (2) statutory liens of landlords, carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due; (3) mortgages, deed of trust, chattel mortgages, security agreements, financing statements, easements, covenants, rights-of-way or similar restrictions or other instruments encumbering any of the assets of the Company, including the Real Property, that have been recorded and filed with the appropriate jurisdiction and which have been disclosed in the Disclosure Schedule, provided however, mortgages, deeds of trust, chattel mortgages, security agreements, financing statements, liens, easements, covenants, rights-of-way or similar restrictions and encumbrances of record with respect to owned Real Property shall be deemed Permitted Liens without having to be disclosed on a Disclosure Schedule; and (4) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security.

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

"***Proprietary Software***" means Software which is owned by the Company.

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

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

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

"***Related Parties***" means (1) Sellers; (2) the Company's present and former directors, officers and shareholders; (3) any Affiliates of any of the foregoing; and (4) any Person that has a business relationship with the Company of which any Seller or the spouse or any relative of

any Seller is an officer, director, member, partner, trustee, beneficiary or shareholder (other than, with respect to any Person which has equity securities listed on a national securities exchange or traded in the over-the-counter market, as a holder of not more than 2% of such Person's outstanding equity securities).

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

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

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

"***Seller Indemnitees***" means each Seller and his respective agents, representatives, successors and assigns.

"***Seller Representative***" means Pablo Reiter, who shall act in such capacity subject to the provisions of Section 2.7 hereof..

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

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

"***Subsidiaries***" means any Person in which the Company holds or beneficially owns any direct or indirect interest.

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

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

"***Unaudited Financial Statements***" means the balance sheets, statements of income and retained earnings, statements of cash flows and notes to financial statements (together with any supplementary information thereto) of the Company as of and for the years ended September 30, 2004 and September 30, 2005.

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

"***Undeveloped Lots***" shall have the meaning ascribed to it in Section 2.2.1(d).

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

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

1.4 Construction. Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) references to Sections and Articles refer to the applicable Sections and Articles of this Agreement, (d) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," and (e) the predicate of any noun or pronoun shall be the immediately preceding prior noun. An individual will be deemed to have "knowledge" of a particular fact or other matter if on the day of determination: (x) that individual is actually aware of that fact or matter; or (y) a prudent individual, after a reasonably comprehensive inquiry, could be expected to have discovered or otherwise become aware of that fact, circumstance, event or matter in the normal discharge of that individual's respective duties and responsibilities or after a reasonable inquiry of any employees of and advisors to the Company who have principal responsibility for the matter in question.. A Person (other than an individual) will be deemed to have "knowledge" of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer or manager of that Person (or in any similar capacity) has, or at any time had, knowledge of that fact or other matter (as set forth in (x) and (y) above).

ARTICLE II
PURCHASE AND SALE OF SHARES

2.1 The Acquisition. Upon the terms and subject to the conditions of this Agreement, at the Closing, each Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and accept from each Seller, all of the Sellers' rights, title, interest in and to the Shares, free and clear of any Claims. Purchaser shall be entitled to assign its rights under this Agreement to an Affiliate or a wholly-owned subsidiary of Purchaser, in which case, notwithstanding anything to the contrary herein, Sellers shall, upon written notice from Purchaser prior to the Closing, sell and deliver the Shares, free and clear of any Claims, to such assignee as the purchaser of the Shares, and Purchaser shall not acquire the Shares. Any such assignment shall not relieve Purchaser of its obligations hereunder or affect the consideration payable to Sellers hereunder.

2.2 Purchase Price2.2.1 As consideration for the purchase of the Shares, Purchaser shall, at the Closing:

(a) Pay the sum of Seven Million Dollars ($7,000,000) (the "***Closing Payment***"), subject to the adjustments provided herein;

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

(c) Assume and pay-off of all of the existing debt of the Company owed to its shareholders, Affiliates and other investors as set forth in Schedule 2.2.1(c) (the "***Assumed Shareholder Debt***"), net of amounts owed to the Company by its shareholders, Affiliates and other investors as set forth in Schedule 2.2.1(c).

In addition to the consideration set forth in clauses (a), (b) and (c) of this Section 2.2.1, Sellers shall be entitled to additional consideration from Purchaser, determined as set forth in Section 2.4 below, with respect to each Applicable Earnout Period (as defined below) (the "Earnout Amounts").

Collectively, the Purchaser's obligations under clauses (a), (b) and (c) of this Section 2.2.1, together with the Earnout Amounts, constitute the "***Purchase Price***." Subject to the adjustments and other reductions provided in Sections 2.2.3(a), 2.2.4 and 11.2 herein, the Closing Payment and the Assumed Shareholder Debt, net of amounts owed to the Company by its shareholders, Affiliates and other investors as set forth in Schedule 2.2.1(c), shall be paid at the Closing in cash, or by wire transfer of immediately funds to the Seller Representative, and shall be distributed by the Seller Representative in accordance with the respective percentage allocation as set forth under Closing Payment Allocations in Schedule2.2.1 and in accordance with the allocation as set forth under "Assumed Shareholder Debt Allocation" in Schedule 2.2.1, as applicable.

Concurrently with the Closing, Purchaser shall also purchase (i) the unfinished lot inventory of Rex2 Development, LLC in the Massey Preserve development (collectively, the "***Undeveloped Lots***"), specifically identified in the Deed referred to in Section 8.6.1 of this Agreement., and (ii) the Company shall enter into the Rex and Rex2 Amendments referred to in Section 8.6.1 of this Agreement.

2.2.2 [Reserved]

2.2.3 (a) The Closing Payment shall be subject to adjustment as provided in this Section 2.2.3. Prior to the Closing, the Company shall deliver to Purchaser its good faith estimate of the balance sheet for the Company as of the Closing Date (the "***Estimated Closing Date Balance Sheet***"), together with a certificate, signed by the President of the Company, pursuant to which the Company shall certify, represent and warrant to Purchaser that the Estimated Closing Date Balance Sheet fairly presents in all material respects the financial position of the Company as of the anticipated Closing Date, and otherwise satisfies the requirements set forth in the following sentence. The Estimated Closing Date Balance Sheet Shall be the balance sheet included in the Interim Financial Statements. The Estimated Closing Date Balance Sheet shall (i) reflect adequate cash on hand to satisfy the accounts payable of the

Company, including any payables for invoices or other charges not yet received by the Company related to homes previously settled and (ii) be prepared in a manner consistent with the balance sheet included within the Interim Financial Statements (the "***Interim Balance Sheet***"), subject only to changes in the assets and liabilities of the Company arising from the operation of the Company's business in the ordinary course (and in all cases in a manner consistent with the requirements of this Agreement) from the Interim Financial Statement Date through the Closing Date. In the event that the Estimated Closing Date Balance Sheet reflects total Liabilities in excess of the total amount of such Liabilities set forth on the Interim Balance Sheet plus any net increase in the Company's work in process, leasehold improvements and the cost basis of property, plant, and equipment ("PP&E"), then Purchaser shall have the right to reduce the Closing Payment by an amount equal to the amount of such excess Liabilities.

(b) The Closing Payment shall be subject to adjustment after the Closing as follows: within 60 days after the Closing, Purchaser shall prepare and deliver to the Seller Representative a statement (the "***Closing Date Balance Sheet***") calculating the balance sheet for the Company as of the Closing Date in a manner consistent with the Interim Balance Sheet Purchaser shall provide the Seller Representative and a single accounting firm for Sellers reasonable access to all (i) work papers and written procedures used to prepare the Closing Date Balance Sheet and (ii) Books and Records and personnel to the extent reasonably necessary to enable Seller and such accounting firm to conduct a sufficient review of the Closing Date Balance Sheet. If the Seller Representative disputes the computation of total Liabilities or work in process on the Closing Date Balance Sheet, the Seller Representative shall deliver to Purchaser within 30 days after receipt of the Closing Date Balance Sheet a statement (the "Dispute Notice") setting forth Seller's calculation and describing in reasonable detail the basis for the determination of such different computation. The parties shall use reasonable efforts to resolve such differences within a period of 15 days after the Seller Representative has given the Dispute Notice. If Purchaser and the Seller Representative do not reach a final resolution on the Closing Date Balance Sheet within 15 days after Seller has given the Dispute Notice, unless Purchaser and the Seller Representative mutually agree to continue their efforts to resolve such differences, the Neutral Accountant shall resolve such differences promptly and in any event within 30 days and any expenses of the Neutral Accountant shall be allocated between the Purchaser and Sellers so that the Sellers share of such expenses shall be in the same proportion that the aggregate amount of the disputed amount submitted to the Neutral Accountant that are unsuccessfully disputed by the Sellers (as finally determined by the Neutral Accountant) bears to the total amount of such disputed amounts so submitted to the Neutral Accountant. If the amount of total Liabilities reflected on the Closing Date Balance (as agreed between the Seller Representative and Purchaser or determined by the Neutral Accountant) exceeds the total amount of such Liabilities set forth on the Estimated Closing Date Balance Sheet by an amount that exceeds the net increase in the Company's work in process, leasehold improvements and the cost basis of PP&E from the amounts reflect on the Estimated Closing Date Balance Sheet, then the Sellers shall pay to Purchaser an amount equal to the difference. For purposes of this Section 2.2.3(b), "Liabilities" shall not include unknown and contingent liabilities for which Sellers or the Company could not have reasonably known at the time of Closing and would not be required to be set forth on a balance sheet as at the Closing Date prepared in accordance with GAAP.

2.2.4 (a) Purchaser shall deduct Two Million Dollars ($2,000,000) from the Closing Payment (the "***Holdback***") and deposit the Holdback in escrow with the Bank of New

York (the "***Escrow Agent***"), to be held in an interest bearing account in accordance with an Escrow Agreement, attached hereto as Exhibit D (the "***Escrow Agreement***") as a set-off reserve to secure the Sellers' indemnification obligations described under Article IX hereof. Subject to the terms and conditions provided in Article IX, on each of the dates set forth below, the Holdback (net of any amount thereof that has been setoff and applied to any Claim pursuant to Article IX or reserved for any unresolved Claim for Damages under this Agreement as to which notice has been given) shall be reduced to the amount set forth opposite each such date (the "Maximum Holdback") and any portion of the net Holdback in excess of the Maximum Holdback shall be paid to the Sellers in accordance with their respective percentage allocation as set forth in Schedule 2.2.1.

Date	Maximum Holdback
March 31, 2007	$1,666,666
First Anniversary of Closing Date	$1,416,666
March 31, 2008	$1,083,333
Second Anniversary of Closing Date	$ 333,333
March 31, 2009	-0-

(b) Time and Place of Closing. The Closing shall be at 10:00 a.m., at the offices of the Company at the Tysons Corner, VA offices of Greenberg Traurig LLP_on May 5, 2006 or on such other date, or at such other time or place, as shall be mutually agreed upon by Sellers and Purchaser.

2.4 Earnout Amounts. (a) The Earnout Amounts shall be determined as follows:

(i) For the period commencing on the Closing Date and ending on June 30, 2007 (the "***First Earnout Period***"), the Earnout Amount shall be thirty (30%) percent of the amount, if any, by which the Final Earnout Basis amount for such period exceeds $8 million, provided the Earnout Amount for the First Earnout Period shall not exceed $1,666,667.

(ii) For the period commencing on July 1, 2007 until June 30, 2008 (the "***Second Earnout Period***"), the Earnout Amount shall be (i) thirty (30%) percent of the amount, if any, by which the Final Earnout Basis for such period exceeds $14 million, plus (y) thirty (30%) percent of the amount, if any, by which the Final Earnout Basis for the First Earnout Period is greater than $13,555,556, provided that the aggregate Earnout Amounts for the First Earnout Period and the Second Earnout Period shall not exceed $3,333,333.

(iii) For the period commencing on July 1, 2008 and ending on June 30, 2009 (the "***Third Earnout Period***"), the Earnout Amount shall be (i) thirty (30%) percent of the amount, if any, by which the Final Earnout Basis for such period exceeds $14 million, plus (ii) thirty (30%) percent of the amount, if any, by which the Final Earnout Basis for the Second Earnout Period is greater than $19,555,556, provided that the aggregate Earnout Amounts for the First Earnout Period, the Second Earnout Period and the Third Earnout Period (collectively, the "***Applicable Earnout Periods***") shall not exceed $5 million.

At Purchaser's option, up to 50% of each Earnout Amount may be satisfied by the issuance to Sellers of shares of the Purchaser's Class A common stock, par value $.01 per share (the "***Comstock Shares***"), having an aggregate Fair Market Value as of the applicable Final Earnout Amount Determination Date equal to such portion of such Earnout Amount. Any such shares of Comstock Shares shall be payable and deliverable promptly following the applicable Final Earnout Amount Determination Date. Sellers agree that neither Purchaser nor any other Person makes any guarantee or representation to Sellers that any Earnout Amount will be realized. Any Earnout Amount that is paid in cash or Comstock Shares shall be treated as a component of the Purchase Price.

(b) The Purchaser shall deliver to the Seller Representative within 60 days after the end of each Applicable Earnout Period, its calculation of the Earnout Basis for such period (each, an "***Initial Earnout Basis Amount***") and the Earnout Amount, if any, payable in respect thereof. The Purchaser shall provide the Seller Representative and his accounting firm with reasonable access to all Books and Records and working papers to the extent reasonably necessary to enable the Seller Representative and such accounting firm to verify such calculations after the delivery thereof. Such calculations shall be binding on the parties unless the Seller Representative, within 30 days after the delivery of the calculations by the Purchaser, notifies the Purchaser in writing that it objects to any item or computation in connection with the calculations and specifies in reasonable detail the basis for such objection. If Purchaser and the Seller Representative are unable to agree upon the calculations within 20 days after any notice of objection has been given, then at the election of either the Seller Representative or Purchaser, the dispute shall be submitted to the Neutral Accountant for a final determination in accordance with the procedures set forth in Section 2.2.3(b), which determination shall be final and binding upon the parties absent fraud or manifest error. Any expenses of the Neutral Accountant shall be allocated between the Purchaser and Sellers so that the Sellers share of such expenses shall be in the same proportion that the aggregate amount of the disputed amount submitted to the Neutral Accountant that are unsuccessfully disputed by the Sellers (as finally determined by the Neutral Accountant) bears to the total amount of such disputed amounts so submitted to the Neutral Accountant. For purposes of this Agreement, with respect to any Applicable Earnout Period, (i) the "***Final Earnout Basis Amount***" for such period shall mean the Initial Earnout Basis Amount for such period, or such other amount as shall have been agreed to by Purchaser and the Seller Representative following a timely notice of objection as contemplated under this Section 2.5(b), or such other amount as determined by the Neutral Accountant, and (ii) the "***Final Earnout Amount Determination Date***" for such period shall mean: (x) the date that is 31 days after the delivery of Purchaser's calculation of the Initial Earnout Basis Amount for such period to the Seller Representative, (y) such earlier date on which the Seller Representative delivers an irrevocable notice to Purchaser in writing that it agrees with Purchaser's calculation of such Initial Earnout Basis Amount, or (z) if the Seller Representative timely objects to such Initial

Earnout Basis Amount, such date on which the Final Earnout Baisi Amount in respect thereof is otherwise determined.

(c) From the Closing Date until December 31, 2008 (the "***Earnout Period***"), the Business shall be conducted in good faith as a going concern and in accordance with applicable Law. During such period (and, to the extent determined by Parent, thereafter), (x) Purchaser shall be controlled by a Board of Directors elected or appointed, directly or indirectly, by Purchaser (the "***Board***") and (y) the operation of the Business shall be subject to the control of the Board and ultimate authority for all decisions affecting the Business shall rest with the Board. No portion of the Earnout Amounts or any other consideration not reflected as compensation in Board-approved budgets shall be offered or paid to employees or service providers to the Company, directly or indirectly by any Seller. Each Seller shall, so long as such Seller is an employee of the Company, fully disclose to the Board or its representative all interests in business matters or arrangements involving the Company.

(d) If as a result of a Conversion Transaction substantially all of the Comstock Shares are converted into the right to receive equity securities that are traded on the New York Stock Exchange, the American Stock Exchange, The Nasdaq Stock Market or another securities exchange or interdealer quotation system reasonably acceptable to the Seller Representative ("***Listed Equity Securities***"), then the Earnout Amounts with respect to which the Applicable Earnout Period has not been completed prior to the date of the Conversion Transaction shall be permitted to be satisfied through the issuance of Listed Equity Securities to the extent set forth above and, for such purpose, the Listed Equity Securities shall be valued at the aggregate Fair Market Value of the Listed Equity Securities of the applicable Final Earn-out Amount Determination Date for which they are issuable. In the event that, in any Conversion Transaction, substantially all of the outstanding Comstock Shares are converted into the right to receive equity securities that are not Listed Equity Securities (or are converted into the right to receive a combination of such equity securities and cash), then, until such equity securities constitute Listed Equity Securities, any Earnout Amount with respect to which the Applicable Earnout Period has not been completed prior to the date of the Conversion Transaction shall be required to be satisfied entirely in cash. In the event of Conversion Transaction as a result of which substantially all of the outstanding Comstock Shares are converted into the right to receive only cash, any Earnout Amount with respect to which the Applicable Earnout Period has not been completed prior to the date of the Conversion Transaction shall be required to be satisfied entirely in cash, Notwithstanding the two preceding sentences, if the surviving or transferee entity in such transaction has a class of Listed Equity Securities and provision is made for the Earnout Amounts to be satisfied through the issuance of such Listed Equity Securities, then any portion of an Earnout Amount with respect to which the Applicable Earnout Period has not been completed prior to the date of the Conversion Transaction shall be permitted to be satisfied through the issuance of Listed Equity Securities.

2.5 Registration Covenant. In the event that Comstock Shares or other Listed Equity Securities are issued to the Sellers hereunder, the Purchaser undertakes to file (or to cause to be filed) promptly and in any event within sixty (60) days following the date of such issuance, and to use commercially reasonable best efforts to cause to become effective promptly thereafter, a registration statement under the Securities Act of 1933, as amended (the "***Securities Act***"), to permit the resale of such securities by the Sellers. The parties will act in good faith and

cooperate in accordance with customary practice in connection with such registration, including in the case of the Sellers by providing such information as the Purchaser may reasonably request for inclusion in such registration statement. Purchaser will use commercially reasonable best efforts to (i) cause the Registration Statement to remain effective for the shorter of the period expiring (A) twelve (12) months following the Closing or (B) the date on which all shares comprising the Stock Consideration may be sold pursuant to Rule 144 under the Securities Act in any three-month period; and (ii) cause the shares of the Stock Consideration to be approved for listing on the applicable primary exchange or quotation system on such such shares shall then be traded. Purchaser shall promptly: (x) notify the Sellers after it has received notice of the time when such Registration Statement has been declared effective or any supplement to any prospectus forming a part of such Registration Statement has been filed; (y) notify the Sellers of any request by the SEC for the amending or supplementing of such Registration Statement or prospectus or if additional information is required to be filed in connection with such Registration Statement, and shall prepare and file with the SEC such amendment or supplement or such additional information; and (z) notify the Sellers of Purchaser's receipt of, or knowledge of the issuance of, any stop order by the SEC suspending the effectiveness of any such Registration Statement and use Purchaser's commercially reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order has been issued.

All costs and expenses incurred in connection with the registration pursuant to this Section 2.5 shall be borne by Purchaser, except that all selling discounts and commissions (if any) and stock transfer taxes applicable to the shares covered by the Registration Statement and all fees and disbursements of counsel for the Sellers relating thereto shall be borne by the Sellers.

2.6 Transferability; Registration; Legending of Comstock Shares and Listed Equity Securities.

(a) Sellers acknowledge that any Comstock Shares and the Listed Equity Securities are being acquired pursuant to an exemption from registration under the Securities Act and that such Comstock Shares and any Listed Equity Securities may be transferred only pursuant to an effective registration statement or an exemption from registration under the Securities Act. No Seller shall be permitted to transfer any Purchaser or Listed Equity Securities in the absence of an effective registration statement unless such Seller has furnished Purchaser with an opinion of counsel, reasonably satisfactory to Purchaser, that such disposition does not require registration of such Comstock Shares or Listed Equity Securities under the Securities Act.

(b) It is understood that the certificates evidencing the Comstock Shares and the Listed Equity Securities shall, until they have been sold pursuant to an effective registration statement under the Securities Act, bear a legend to the effect set forth below:

> NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES FOR WHICH THEY ARE EXCHANGEABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SECURITIES MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT WITH RESPECT THERETO

OR AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTES OF SUCH ACT.

The certificates evidencing the Comstock Shares and the Listed Equity Securities may also bear any legends required by applicable blue sky laws.

2.7 Seller Representative. Each Seller irrevocably designates the Seller Representative to represent such Seller and act as the attorney-in-fact and agent for and on behalf of such Seller with respect to any and all matters relating to, arising out of, or in connection with this Agreement, including for service of process. Purchaser will be entitled to rely on the Seller Representative's authority as the agent, representative and attorney-in-fact of Sellers for all purposes under this Agreement. The Seller Representative will have no liability to any Seller in taking any action or omitting to take action on behalf of any Seller absent gross negligence or willful misconduct. Sellers hereby agree to jointly and severally indemnify and hold harmless the Seller Representative from and against (i) any Losses incurred without gross negligence or willful misconduct on the part of the Seller Representative and arising out of or in connection with the acceptance, performance or nonperformance of his duties hereunder and (ii) any related out-of-pocket costs and expenses (including reasonable attorneys' fees).

ARTICLE III
REPRESENTATIONS AND WARRANTIES

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

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

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

3.2.2 Power and Authority. Purchaser has the corporate power and authority to execute, deliver and perform this Agreement and each of the documents and instruments required to be entered into pursuant to this Agreement, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement

and each of the documents and instruments required to be entered into pursuant to this Agreement, and the consummation by Purchaser of the transactions contemplated hereby and thereby, has been duly and validly authorized by all necessary corporate action and such authorization has not been withdrawn or amended in any manner.

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

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

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

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

3.2.7 Availability of Funds. Purchaser has available, and will have available, sufficient funds to enable it to consummate the transactions contemplated hereby.

3.3 Representations and Warranties of the Company and Sellers. (a) Each of the Company and each of the Sellers severally in accordance with such Seller's respective percentage allocation as set forth in Schedule 2.2.1, represent and warrant to Purchaser that, except as set forth in the Disclosure Schedule:

3.3.1 Organization, Existence and Good Standing. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of North Carolina.

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

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

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

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

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

3.3.7 Conflicts Under Contracts. Except as set forth on Schedule 3.3.7, none of the Company or any of the Sellers is a party to, or bound by, any unexpired, undischarged or unsatisfied Contract under the terms of which the execution, delivery and performance by the Company or Sellers according to the terms of this Agreement will be a default or an event of acceleration, or grounds for termination, modification or cancellation, or whereby timely performance by the Company or Sellers according to the terms of this Agreement may be prohibited, prevented or delayed.

3.3.8 Subsidiaries, Affiliates and Related Parties. The Company does not hold or beneficially own any direct or indirect interest (whether a partnership, joint venture, common or preferred stock or any comparable ownership interest in any Person that is not a corporation), or any subscriptions, options, warrants, rights, calls, convertible securities or other agreements or commitments for any interest in any Person. The Company, and each of the Sellers, do not have any Affiliates or Related Parties other than those described in Schedule 3.3.8.

3.3.9 Directors and Officers. The names of each director and officer of the Company, in all cases along with his or her respective position(s) in the Company, are set forth on Schedule 3.3.9.

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

3.3.11 Capitalization and Title to Shares.

(a) The authorized capital stock of the Company consists solely of 100 shares of Common Stock. As of the date hereof, only 100 shares (constituting all of the Shares) are issued and outstanding. There are no shares of capital stock of the Company of any other class authorized, issued or outstanding. All of the issued and outstanding Shares have been validly issued, are fully paid and nonassessable, and are solely owned beneficially and of record by the Sellers, free and clear of any Claims of any kind, in the exact number and percentage interests as set forth in Schedule 3.3.11. There are no outstanding subscriptions, options, warrants, rights (including preemptive rights), calls, convertible securities, contractual obligations to repurchase, redeem or otherwise acquire any capital stock of the Company, voting trusts, shareholders' agreements or other agreements or commitments of any character relating to the issued or unissued capital stock or other securities of the Company or obligating the Company to issue any securities of any kind. With the exception of the agreements described in Schedule 3.3.11, true, correct and complete copies of which are attached to Schedule 3.3.11, there are no agreements, voting trusts, understandings or arrangements by and among the Sellers with respect to the Company or the Common Stock held by the Sellers.

(b) Each Seller has good and marketable title to the Shares which are to be transferred to the Purchaser by such Seller pursuant to this Agreement, free and clear of any and all Claims (including liens, security interests, encumbrances, covenants, conditions, restrictions, voting trust arrangements, options and adverse claims or rights whatsoever). No Seller is a party to, subject to or bound by any agreement or any judgment, order, writ, prohibition, injunction or decree of any court or other Governmental or Regulatory Authority which would prevent the execution or delivery of this Agreement by any Seller or the transfer, conveyance and sale of the

Shares to be sold by such Seller to Purchaser pursuant to the terms hereof or result in a lien on the Shares owned by such Seller. No Seller is, nor will he be, required to give any notice to or obtain any consent or approval from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

3.3.12 Financial Statements. Complete and accurate copies of the Financial Statements are contained in Schedule 3.3.12. The Financial Statements present fairly, in all material respects, the financial position of the Company as of the dates thereof and the results of operations and cash flows of the Company for the periods covered by said statements, in accordance with accounting principles consistently applied through the periods covered thereby. The books and records of the Company have been maintained in accordance with accounting principles consistently applied through the periods covered by the Financial Statements and properly reflect all of the transactions entered into by the Company .

3.3.13 Conduct of Business. Since the Interim Financial Statement Date, (a) the Company has conducted its business only in the ordinary course, (b) there has not been any Material Adverse Effect, (c) there has been no non-renewal or material amendment of any of the material Permits held by or granted to the Company, and the Company has used commercially reasonable efforts to maintain such Permits, and (d) there has been no physical damage, destruction or other casualty loss (whether or not covered by insurance) affecting any of the real or personal property or equipment of the Company in an amount exceeding $10,000, individually or in the aggregate, and (e) except as described on Schedule 3.3.13, none of the Company or the Sellers has taken or permitted to be taken any of the following actions:

(i) increase the compensation payable to any employee, except in the ordinary course of business consistent with past practices as described in the Disclosure Schedule;

(ii) establish or modify any targets, goals, bonuses, pools or similar provisions under any Benefit Plan, employment Contract or other employee compensation arrangement, independent contractor Contract or other compensation arrangement; and

(iii) make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any Tax return or any amendment to a Tax return, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(iv) make any change to the Company’s accounting methods, principles or practices;

(v) revalue any of its assets, including writing off notes or Accounts Receivable or writing down any other assets;

(vi) terminate or waive any right of substantial value;

(vii) take or agree in writing or otherwise to take any of the actions described in clauses (i) through (vi) above.

3.3.14 Liabilities. The Company has no Liabilities except for (a) Liabilities provided for or reserved against in the Financial Statements and not discharged subsequent to the dates of the Financial Statements and (b) Liabilities which have been incurred by the Company subsequent to the Interim Financial Statement Date in the ordinary course of the Company's business and not discharged since the Interim Financial Statement Date, none of which could reasonably be expected to have a Material Adverse Effect. The Company has no Liabilities that relate to or have arisen out of a breach of Contract, breach of warranty, tort, or infringement by or against the Company or any claim or lawsuit involving the Company. The Company does not have any Indebtedness in the nature of borrowed money from any bank or other lender, or any guarantee thereof, other than the Indebtedness specifically set forth on Schedules 2.2.1(b) and 2.2.1(c) and set forth on the Interim Balance Sheet or the Closing Date Balance Sheet.

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

3.3.16 Assets. The Company has good title to its assets, free and clear of any Claims, except for Permitted Liens. Schedule 3.3.16 contains a list of any Permitted Liens that are required under the definition of "Permitted Liens" to be disclosed on a Disclosure Schedule. Except for those assets listed on Schedule 3.3.16 which the Company is using but does not own, the Company's assets are adequate in all material respects to conduct its business as presently being conducted. The Company's assets and items of tangible personal property are in all material respects in good operating condition and repair, normal wear and tear excepted, and are suitable for the uses intended therefor.

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

3.3.18 Insurance. Schedule 3.3.18 contains a true, correct and complete list and description (including insurer, coverages, annual premium, deductibles, limitations and expiration dates) of all insurance policies (including fire and casualty, general liability, theft, life, workers' compensation, directors and officers, business interruption, reinsurance and all other

forms of insurance) which are owned by the Company or which name the Company as an insured (or loss payee), including without limitation those which pertain to the Company's assets, employees or operations. All such insurance policies are in full force and effect, all premiums have been paid thereunder and none of the coverage provided by such policies will terminate or lapse by reason of any of the transactions contemplated by this Agreement. In the three year period ending on the date hereof, the Company has not received any notice from or on behalf of any insurance carrier issuing such insurance policies to the effect that insurance rates will thereafter be substantially increased, that there will thereafter be no renewal of an existing policy, or that material alteration of any owned or leased personal or real property, purchase of additional equipment, or material modification of the Company's methods of doing business, will be required or is suggested. To the best of the Company's and the Sellers' knowledge there are no pending claims that have been denied insurance coverage. The Company has not failed to give any notice or present any claim under any insurance policy in due and timely fashion or as required by any insurance policy. Schedule 3.3.18 sets forth a list of all claims made under any insurance policies covering the Company in the last three years. The Company has not received notice that any insurer under any policy is denying, disputing or questioning liability with respect to a claim thereunder or defending under a reservation of rights clause.

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

3.3.20 Taxes.

(a) The Company has properly completed and filed on a timely basis all Returns required to be filed. Such Returns are accurate and complete in all material respects. As of the time of filing, the foregoing Returns correctly reflected the facts regarding the income, business, assets, operations, activities, status and other matters of or information regarding the Company required to be shown thereon, and no extension of time within which to file any such Return has been requested or granted.

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

(c) No issues have been raised and are currently pending by any taxing authority in connection with any of the Returns. No waivers of statutes of limitation with respect to the Returns have been given by or requested from the Company. All deficiencies asserted or assessments made as a result of any examinations of Returns previously filed by the Company have been fully paid, or are fully reflected as a liability in the Financial Statements and the

Interim Financial Statements, or are being contested and an adequate reserve therefor has been established and is fully reflected as a liability in the Financial Statements and the Interim Financial Statements.

(d) The Company is not a party to or bound by any tax indemnity, tax sharing or tax allocation agreement.

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

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

(g) The Company has not entered into a reportable transaction with the meaning of Section 6011 of the Code or the regulations thereunder.

(h) The Company has not agreed to make, nor is required to make, any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise.

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

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

(k) The Company has not had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

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

3.3.21 Contracts. Schedule 3.3.21 contains a true, correct and complete list of each undischarged Contract (including all amendments thereto) that is material to the conduct of the Company's businesses and to which the Company party to, including without limitation, all agreements with (a) suppliers or vendors; (b) independent contractors and subcontractors; (c) developers; and (d) any Governmental or Regulatory Authority. Furthermore, Schedule 3.3.21 contains a true, correct and complete list of all material personal property and equipment leases, employment Contracts, consulting Contracts, all agreements of sale for the purchase of homes that have not closed, all Contracts under which the Company has created, incurred, assumed or

guaranteed Indebtedness of more than $10,000, all Contracts that give the Company any right to purchase land, including options, letters of intent, rights of first offer and other similar Contracts, and all written warranties, guaranties and/or other similar undertaking with respect to contractual performance extended by the Company. Each Contract required to be set forth on the Disclosure Schedule is in full force and effect and is valid and enforceable against the Company and, to the best of the Company's and the Sellers' knowledge, the other party(ies) thereto, in accordance with its terms. Except as may be set forth in Schedule 3.3.21, the Company is in compliance with all terms and requirements of each such Contract and, to the best of the Company's and the Sellers' knowledge, each other Person that is party to any such Contract is in compliance with the terms and requirements of such Contract. No event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a violation or breach of, or give the Company or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any such Contract. There are no renegotiations, attempts to renegotiate or outstanding rights to negotiate any amount to be paid or payable to or by the Company under any such Contract other than with respect to non-material amounts in the ordinary course of business, and no Person has made a written demand for such renegotiation. The Company has not released or waived any of its rights under any such Contract.

3.3.22 Material Adverse Effect. The Company has not suffered or been threatened with, and no Seller has knowledge of any facts which could reasonably be expected to cause or result in, any Material Adverse Effect including, without limiting the generality of the foregoing, the existence or threat of any labor dispute, a moratorium or permit allocation scheme or any changes that may have a Material Adverse Effect on any relationship between the Company and its respective customers, suppliers or employees or related to any Contract.

3.3.23 Suppliers. Set forth in Schedule 3.3.23 are the names and addresses of all the suppliers from which the Company ordered homebuilding supplies, or other goods or services with an aggregate purchase price of $10,000 or more during the twelve-month period ended as of the Interim Financial Statement Date and the amount for which each such supplier invoiced the Company during such period. The Company has not received any notice or has any reason to believe that any such supplier will not sell supplies, merchandise and other goods to the Company at any time after the Closing Date on terms and conditions substantially similar to those used in its current sales to the Company, subject only to general and customary price increases and decreases.

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

3.3.25 Permits. Schedule 3.3.25 contains a true, correct and complete list in all material respects of, and the Company possesses, all Permits which are required in order for the Companyto conduct its business as presently conducted or proposed to be conducted. The Company and Sellers have delivered or made available complete and accurate copies of each Permit to Purchaser. The Company has not received any citation, suspension, revocation, limitation, warning or similar notice regarding the Permits. With the exception of those jurisdictions set forth on Schedule 3.3.25, the Company does not have any operations outside of the State of North Carolina.

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

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

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

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

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

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

3.3.27 Employee Relations. (a) To the best of the Company's and Sellers' knowledge (without independent investigation or inquiry), no employee of the Company is a party to, or is otherwise bound by, any Contract, including any confidentiality, noncompetition or proprietary rights agreement, between such employee and any other Person that materially adversely affects or will affect the performance of that employee's duties as an employee of the Company following the Closing. Except as set forth on Schedule 3.3.27, to the best of the Company's and Sellers' knowledge (without independent investigation or inquiry), no officer or other key employee of the Company currently intends to terminate employment with the Company.

(b) There is not presently pending or, to the best of the Company's and Sellers' knowledge, overtly threatened any: (i) strike, slowdown, picketing, work stoppage or employee grievance process; (ii) charge, grievance proceeding or other claim against or affecting

the Company relating to the alleged violation of any Law pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental or Regulatory Authority; (iii) union organizational activity or other labor or employment dispute against or affecting the Company; or (iv) application for certification of a collective bargaining agent.

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

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

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

(f) To the best of the Company's and Sellers' knowledge, no employee of the Company is an undocumented alien or has been hired in violation of the immigration Laws.

(g) The employment of each of the Company's employees, including Richard Weale, is terminable at will without cost to the Company, except for payments required under the Benefit Plans and the payment of accrued salaries or wages and vacation pay.

3.3.28 Litigation and Claims. Schedule 3.3.28 sets forth all litigation or proceedings, at law or in equity, before any Governmental or Regulatory Authority, pending or, to the best of the Company's and Sellers' knowledge, threatened against any Seller, the Company or the officers, directors or Affiliates of the Company, with respect to or affecting the Company's operations, Contracts, business or assets, or with respect to the consummation of the transactions contemplated hereby, and to the best of the Company's and the Sellers' knowledge, any basis for any of the foregoing.

3.3.29 Decrees, Orders or Arbitration Awards. The Company is not a party to, or to the best of the Company's and the Sellers' knowledge bound by, any decree, order or arbitration award (or agreement entered into in any administrative, judicial or arbitration

proceeding with any Governmental or Regulatory Authority) with respect to or affecting the Company's operations, business or assets.

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

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

3.3.32 Real Property.

(a) Schedule 3.3.32(a) contains a true, correct and complete legal description, street address (to the extent one exists) and tax parcel identification number of each tract, parcel and subdivided lot constituting all of the Real Property owned by the Company or which is the subject of any Contract to which the Company is a party, and Schedule 3.3.32(a) correctly identifies such Real Property as Fully Developed and Buildable Land or Undeveloped Land and states whether each such tract, parcel or lot is held as inventory or is used for some other purpose. For Undeveloped Land, Schedule 3.3.32(a) identifies the zoning and/or permit approval status of each parcel along with the number of subdividable lots upon which homes are to be constructed. For Fully Developed and Buildable Land, Schedule 3.3.32(a) identifies all

subdivided lots upon which a home is fully constructed or under construction. For lots upon which a home is currently under construction, a percentage of completion shall be designated for each such lot as of the Closing Date. For existing lots upon which a home has been fully constructed, Schedule 3.3.32 indicates whether it is a model, speculative or sold unit as of the Closing Date. Upon Closing, Purchaser will acquire all of the right, title and interest of the Company in the respective Real Property, including, but not limited to, any Improvements constructed thereon and any Contracts related thereto. With respect to the Real Property subject to a Contract representing an agreement or option of the Company to purchase lots, such Contracts accurately set forth all obligations of the Company to take-down or purchase lots and the applicable time periods or schedule for such take-downs or purchases .Except as disclosed in Schedule 3.3.32, the Company owns good and marketable title to its fee simple estates in the Real Property, free and clear of all Claims other than the Permitted Liens. True, correct and complete copies of (i) all deeds, existing title insurance policies, plans of subdivision, all title encumbrances and exceptions and surveys of or pertaining to the Real Property and (ii) all instruments, agreements and other documents evidencing, creating or constituting any Claims on the Real Property have been delivered to Purchaser.

(b) To the best of the Company's and the Sellers' knowledge: the use of the Real Property required to be set forth on the Schedule 3.3.32(a) for the various purposes for which it is presently being used, or for which it is being planned to be used, is permitted under all applicable Laws and is not subject to "permitted nonconforming" use or structure classifications; all Improvements on the Real Property are in compliance with all applicable Laws, including those pertaining to zoning, building and the disabled, are in good repair and in good condition, ordinary wear and tear excepted, and are free from latent and patent defects; and no part of any improvement on the Real Property encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property that encroach on any part of the Real Property.

(c) With respect to the Real Property required to be set forth on Schedule 3.3.32(a), each lot abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting such lot, is supplied with public or quasi-public utilities to the boundaries of the lot and other services appropriate for the operation of the Improvements, if any, located thereon and to the best of the Company's and the Sellers' knowledge no lot for a home is located within any flood plain or area subject to wetlands regulation or any similar restriction. All offsite easements required in connection with the development and subsequent construction of homes upon any lots within the Real Property have been obtained and paid for by the Company. With respect to all such Real Property, all water, sewer, electric and telephone facilities and all other utilities required for the normal use and operation of the residences constructed or to be constructed on the lots are installed within the streets or sidewalks of the lots and can be connected for use by the residences without charge except the normal and usual nondiscriminatory tap fees and utilities charges. With respect to the Real Property required to be set forth on Schedule 3.3.32(a), there is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that would result in the taking of all or any part of any lot or that would prevent or hinder the continued use of any lot as heretofore used in the conduct of the Company's business.

(d) For each parcel of Real Property required to be set forth on Schedule 3.3.32(a) that is subject to a recorded plat, Purchaser has been provided with a complete copy of such recorded plat. For each Real Property or Contract which constitutes an option to purchase Real Property that is not subject to a recorded plat, the Company and Sellers have no knowledge of (i) any notification from any Governmental or Regulatory Authority indicating that such tract or parcel is subject to any Law outside of the ordinary course of business, or not uniformly imposed on all similar properties within such Governmental or Regulatory Authority's jurisdiction or (ii) any notification from any Governmental or Regulatory Authority indicating that any plans to develop such tract or parcel may not be approved or may be approved with less density than the current zoning designation Permits.

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

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

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

3.3.33 Intellectual Property.

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

Company (collectively, the "***Company Intellectual Property***") and identifies each as owned, licensed or otherwise used.

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

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

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

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

(f) To the best of the Company's and the Sellers' knowledge, no Person is infringing upon or otherwise violating any of the Company Intellectual Property.

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

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

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

3.3.34 Product Liability. Each of the residential homes built and sold by the Company is, and at all times has been, in compliance in all material respects with all applicable Laws and is, and at all relevant times has been, fit for the ordinary purposes for which it is intended to be used and conforms to any promises or affirmations of fact made in connection with the sale. There is no design defect or construction defect or common element defect with respect to any of such homes and there is no presence in any material respect of mold or existing water intrusion issues with respect to a home under construction or built and sold by the Company and the Company has not received any notice of same from any contractor, supplier, vendor, contract purchaser or owner of a home constructed by the Company. There are no claims, actions, suits, inquiries, proceedings or investigations pending or, to the best of the Company's and the Sellers' knowledge, threatened against the Company that any of such homes are defective or were improperly designed or constructed or improperly labeled or otherwise improperly described for use and there is no known basis for any of the foregoing. Each of the homes constructed, sold, and delivered by the Company has conformed in all material respects with all basic plans and specifications and applicable contractual commitments agreed to

between the Company and the purchaser of such home, and the Company has no Liabilities for replacement thereof or other Damages in connection therewith, subject only to the reserve for product warranty claims set forth on the face of the Financial Statements, as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Company.

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

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

3.3.37 Brokers. None of the Company, the Sellers or any of their respective Affiliates has dealt with any Person who is entitled to a broker's commission, finder's fee, investment banker's fee or similar payment from Purchaser, the Company or the Sellers for arranging the transactions contemplated hereby or introducing the parties to each other.

ARTICLE IV
RESERVED

ARTICLE V
CONDITIONS TO CLOSING

5.1 Conditions to the Company's and Sellers' Obligations The obligation of the Company and Sellers to close the transactions contemplated hereby is subject to the fulfillment of all of the following conditions on or prior to the Closing, upon the non-fulfillment of any of which, this Agreement may, at the Company's or Sellers' option, be terminated pursuant to and with the effect set forth in Article X:

5.1.1 The representations and warranties made by Purchaser shall be true, correct and complete as if originally made on and as of the Closing.

5.1.2 No lawsuit, proceeding or investigation shall have been commenced by any Governmental or Regulatory Authority on any grounds to restrain, enjoin or hinder the consummation of the transactions contemplated hereby.

5.1.3 Any applicable waiting period that may have been required by any Governmental or Regulatory Authority to the consummation of the transactions contemplated hereby shall have expired or been terminated.

5.1.4 Purchaser shall have delivered to Sellers all of the documents set forth in Section 6.2.

5.1.5 The transactions contemplated by the Land Purchase Agreements shall be consummated simultaneously with the Closing.

5.2 Conditions to Purchaser's Obligations The obligation of Purchaser to close the transactions contemplated hereby is subject to the fulfillment of all of the following conditions on or prior to the Closing, upon the non-fulfillment of any of which, this Agreement may, at Purchaser's option, be terminated pursuant to and with the effect set forth in Article X:

5.2.1 The representations and warranties made by the Company and/or the Sellers (i) in the case of such representations and warranties qualified by materiality, shall be true, correct and complete as if originally made on and as of the Closing and (ii) in the case of such representations and warranties not qualified by materiality, shall be true, correct and complete in all material respects as if originally made on and as of the Closing.

5.2.2 All obligations of the Company and/or the Sellers to be performed hereunder through, and including on the date of, the Closing (including all obligations which Sellers would be required to perform at the Closing if the transactions contemplated hereby were consummated) shall have been fully performed in all material respects.

5.2.3 All of the Required Consents shall have been obtained. To the extent any Permits or Environmental Permits held by the Company are not assignable, Purchaser shall have either obtained licenses and permits on substantially the same terms as the Permits and Environmental Permits have been issued to the Company, or shall have obtained binding commitments from the applicable Governmental or Regulatory Authorities to issue such licenses and permits to Purchaser following the Closing.

5.2.4 During the period from the date of this Agreement to the Closing, there shall not have occurred, and there shall not exist as of the Closing, any condition or fact which, individually or in the aggregate, has or reasonably may be expected to result in a Material Adverse Effect. Additionally, during the period from the date of this Agreement to the Closing, neither the Company nor any material portion of its assets shall have been materially and adversely affected by reason of any loss, condemnation, destruction or damage, whether or not insured against.

5.2.5 No lawsuit, proceeding or investigation shall have been commenced by any Governmental or Regulatory Authority on any grounds to restrain, enjoin or hinder the consummation of the transactions contemplated hereby.

5.2.6 Any applicable waiting period that may have been required by any Governmental or Regulatory Authority to the consummation of the transactions contemplated hereby shall have expired or been terminated.

5.2.7 The transactions contemplated by the Land Purchase Agreement shall be consummated simultaneously with the Closing and the lot purchase and option agreements relating to the Brookfield and Providence subdivisions shall have been amended to Purchaser's satisfaction.

5.2.8 Purchaser and one or more of the Sellers have finalized and entered into purchase agreements as provided in Section 8.6.1.

5.2.9 The Company and Sellers shall have delivered to Purchaser all of the documents set forth in Section 6.3.

ARTICLE VI
CLOSING

6.1 Form of Documents At the Closing, the parties shall deliver the documents, and shall perform the acts, which are set forth in this Article VI. All documents which the Company or Sellers shall deliver shall be in form and substance reasonably satisfactory to Purchaser and Purchaser's counsel. All documents which Purchaser shall deliver shall be in form and substance reasonably satisfactory to Sellers and Sellers' counsel.

6.2 Purchaser's Deliveries Purchaser shall execute and/or deliver to Sellers all of the following:

6.2.1 the Purchase Price;

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

6.2.3 a closing certificate executed by an executive officer of Purchaser, on behalf of Purchaser, pursuant to which Purchaser certifies to Sellers that: (a) Purchaser's representations and warranties to Sellers are true, correct and complete as of the Closing as if then originally made (or, if any such representation or warranty is untrue in any respect, specifying the respect in which the same is untrue); (b) all covenants required by the terms hereof to be performed by Purchaser on or before the Closing, to the extent not waived by Sellers in writing, have been so performed (or, if any such covenant has not been so performed, indicating that such covenant has not been performed); and (c) all documents to be executed and delivered by Purchaser at the Closing have been executed by duly authorized officers of Purchaser;

6.2.4 the Employment Agreement to be entered into with each of Glenn Hartman and Pablo Reiter, and the Noncompetition Agreement to be entered into with each Seller, respectively, executed by a duly authorized officer of Purchaser;

6.2.5 the Land Purchase Agreement and the Rex and Rex2 Amendments, duly executed by the Purchaser; and

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

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

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

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

6.3.3 the minute books and stock records of the Company;

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

6.3.5 the Land Purchase Agreement and the Rex and Rex2 Amendments, duly executed by the Sellers and Sellers' Affiliates party thereto;

6.3.6 copies of all of the Required Consents;

6.3.7 a Seller Release, in a form of Exhibit E attached hereto, duly executed by each Seller and each Affiliate and Related Party identified on Schedule 3.3.24;

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

6.3.9 certified copies of the Company's articles of incorporation issued by the Secretary of State of the State of North Carolina

6.3.10 certificates of good standing for each of the Company issued not earlier than ten days prior to the Closing, by the Secretaries of State of North Carolina.;

6.3.11 a certificate of the secretary of the Company certifying as true, correct and complete the following: (a) the incumbency and specimen signature of each Seller and each officer of the Company executing this Agreement and any other document delivered hereunder on behalf of the Company or Sellers; (b) a copy of the bylaws of the Company; and (c) a copy of

the resolutions of the Company's board of directors and shareholders authorizing the execution, delivery and performance of this Agreement and any other documents delivered by the Company hereunder;

6.3.12 a closing certificate duly executed by the President of the Company, on behalf of the Company, and by each Seller, pursuant to which the Company and each Seller certifies to Purchaser that: (a) the Company's and Sellers' representations and warranties to Purchaser are as set forth in Section 5.2.1 of this Agreement (or if any such representation or warranty is untrue in any respect, specifying the respect in which the same is untrue); (b) all covenants required by the terms hereof to be performed by either the Company and each Seller on or before the Closing, to the extent not waived in writing by Purchaser, have been so performed (or if any such covenant has not been so performed, indicating that such covenant has not been performed); and (c) all documents to be executed by the Company and each Seller and delivered at the Closing have been executed by duly authorized officers of the Company and by each Seller, as applicable;

6.3.13 the Employment Agreement to be entered into with each of Glenn Hartman and Pablo Reiter, and the Noncompetition Agreement to be entered into with each Seller, respectively, and each duly executed by Richard Weale, Glenn Hartman and Pablo Reiter, respectively;

6.3.14 the written opinions of Satisky & Silverstein, L.L.P., counsel to the Company and the Sellers, dated as of the Closing Date, in substantially the form of Exhibit F attached hereto; and

6.3.15 without limitation by specific enumeration of the foregoing, all other documents reasonably required from Purchaser to consummate the transactions contemplated hereby and including all documents referred to in the Disclosure Schedule.

ARTICLE VII
POST-CLOSING AGREEMENTS

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

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

7.3 Use of Trademarks Each Seller shall not use, and shall not license or permit any third party to use, any name, slogan, logo or trademark which is deceptively similar to any of the names or trademarks used in connection with the business of the Company. Promptly and in any event within 10 business days following the Closing, Sellers shall cause Capitol Homes of Triangle LLC to change its corporate name to exclude any reference to "Capitol Homes" and Sellers shall not, and shall cause their respective Affiliates not to, use the name "Capitol Homes" or any derivation thereof for the conduct of business following the Closing.

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

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

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

7.7 Right of First Offer.

(a) Right of First Offer. Sellers agree that during the period from the Closing Date to the third anniversary of the Closing Date (the "Right of First Offer Period"), Sellers shall not, and Sellers shall cause any Affiliate not to, offer to sell or sell any Covered Properties without first offering such Covered Properties for sale to Purchaser pursuant to the procedures described below (the "Right of First Offer"). Notwithstanding the foregoing, neither Sellers nor the Affiliate shall be required to offer any Covered Properties to Purchaser hereunder if such Covered Properties (i) are being transferred to another Affiliate or to any other Seller, or (ii) if such Covered Properties are those presently under contract with Bill Clark Homes of Raleigh, LLC, a description of which is set forth in Schedule 7.7. For the purposes of this Section 7.7, "Covered Properties" means (i) any for sale Developed Lots or Undeveloped Lots that are developed by Sellers or any Affiliate of Sellers in those tracts of property identified as Cleveland Springs Subdivision, Phases 2, 3, and 4, as shown in Book of Maps 3055 Page 950, Book of Maps 2826 Page 190, and Book of Maps 2826 Page 192, all in the Johnston County, North Carolina Register of Deeds Office ("Cleveland Springs"), and (ii) any for sale Developed Lots that are developed by Sellers or any Affiliate of Sellers in that tract of property identified as Lot 1, Glenwood Station West, as shown in Book of Maps 2006, Page 71, Wake County, North Carolina Register of Deeds Office ("Glenwood Station"), whether for attached or detached housing (and any for sale of such Glenwood Station property in its entirety in raw undeveloped form for a purchase price of $4.1 million or less). In the event that a Seller or an Affiliate of Seller is developing a mixed use project, only the lots included therein that would constitute Covered Properties as defined above shall be deemed Covered Properties.

(b) Offer. Prior to offering for sale any Covered Properties, the Sellers shall (or the Sellers shall cause the Affiliate to) provide written notice to Purchaser describing such Covered Properties (the "Offered Properties") and stating the lot prices, the number of lots to be sold, and other material terms at which the Sellers (or the Affiliate) offers to sell the Offered Properties to Purchaser (the "Offer"). Notwithstanding anything to the contrary herein, (i) the lot prices offered to Purchaser in the Offer for Developed Lots in Cleveland Springs shall be $43,000.00 per lot plus (a) the actual cost of sewer tap fees per lot previously paid (currently $2,400.00 per lot),(b) from the date of Closing, a 2% escalator applied semiannually on each December 31 and June 30 following the Closing,(c) the actual cost of any new governmental fees not in existence on the date of Closing, and (d) any increases in excess of 4% per annum in any of the catagories of expense set forth on Schedule 7.7 above the budgeted amounts therefore set forth on Schedule 7.7; (ii) the lot prices offered to Purchaser in the Offer for Undeveloped Lots in Cleveland Springs shall be $23,000.00 per lot plus (a) the actual cost of sewer tap fees per lot previously paid (currently $2,400.00) per lot, (b) from the date of Closing, a 2% escalator applied semiannually on each December 31 and June 30 following the Closing, and (c) reimbursement for the actual costs of Improvements associated with the Undeveloped Lots; (iii) the lot prices offered to Purchaser in the Offer for any for sale Developed Lots in Glenwood Station shall be $55,000.00 per lot plus (a) from the date of Closing, a 2% escalator applied semiannually on each December 31 and June 30 following the Closing, (b) the actual cost of any new governmental fees not in existence on the day of Closing and (c) any increases in excess of 4% per annum in any of the categories of expense set forth on Schedule 7.7 above the budgeted amounts therefore set forth on Schedule 7.7. Sellers further agree that, prior to the termination of the Right of First Offer Period, they will have (or caused the Affiliate to have) presented an Offer to Purchaser for all the Cleveland Springs property, either as Developed Lots or Undeveloped Lots in accordance with the terms and provisions herein.

(c) Evaluation Notice. Within ten (10) days following receipt of the Initial Offer, Purchaser shall notify Sellers in writing whether or not Purchaser intends to evaluate the Offered Properties (an "Evaluation Notice"). If the Evaluation Notice indicates that Purchaser does not wish to evaluate the Offered Properties or if Purchaser fails to deliver an Evaluation Notice to Sellers within such ten (10) day period, Sellers (or the Affiliate) shall be free to negotiate and conclude a sale, as specified in the Offer, of the Offered Properties with other Persons for a period of one (1) year following receipt by the Purchaser of the Offer. If the Evaluation Notice is received by Sellers within such ten (10) day period and it indicates that Purchaser wishes to evaluate the Offered Properties, then for thirty (30) days following receipt by Sellers of the Evaluation Notice, Purchaser shall have the right to evaluate the Offered Properties (the "Evaluation Period") and the remainder of this Section 7.7 shall apply.

(d) Certain Information. During the first ten (10) days of the Evaluation Period, Sellers shall, or shall cause the Affiliate to, promptly provide Purchaser with such documents and information concerning the Offered Properties as Purchaser shall reasonably request to the extent such documents and information are possessed by or reasonably available (without cost or expense) to Sellers and the Affiliate. The type of information to be provided shall include the square footage minimums applicable to such lots and other restrictions (including deed restrictions, if applicable) relating to such lots. Neither the Sellers nor any Affiliate makes or

shall be deemed to make any representation or warranty as to the accuracy or completeness of such documents and information, provided that this will not prevent disclosure to Purchaser to the extent that such disclosure is required by law or court order.

(e) Acceptance; Rejection; Matching. Prior to the end of the Evaluation Period, Purchaser shall either accept or reject the Offer. If Purchaser accepts the Offer, Sellers and Purchaser shall, and Sellers shall cause the Affiliate to conclude the sale of such Offered Properties on the terms contained in the Offer. If Purchaser rejects the Offer, Sellers (or the Affiliate) shall be free to negotiate with, and sell, as specified in the Offer, the Offered Properties to other Persons; provided, that: (i) Sellers may not (or Sellers shall cause the Affiliate not to) accept any offer to purchase the Offered Properties from any other Person during the Right of First Offer Period without first re-offering the Offered Properties on the same terms to Purchaser if the other offer contains a closing sales price for the Offered Properties that is less than the closing sales price contained in the Offer, or contains terms that in the aggregate are materially less favorable to Sellers (or the Affiliate). For this purpose, if the price contained in either the Offer or in the other offer is payable over time in whole or in part (the "financed portion"), then the present value of the financed portion shall be calculated using an 8% discount rate, and such present value shall be deemed to be included in the "price" for comparison purposes; and (ii) Sellers shall be required to give (or Sellers shall cause the Affiliate to give) to Purchaser ten (10) days to match any offer described in Section 7.7 (e)(i) above.

(f) Reoffer in Certain Circumstance. Subject to the terms of Section 7.7(g), Sellers shall be required to (and shall cause the Affiliate to) offer Purchaser another Evaluation Period in accordance with this Section 7.7 with respect to any Offered Properties which the Sellers or an Affiliate, as the case may be, is continuing to offer for sale if such Offered Properties have not been sold by the later of one (1) year after the expiration of (i) the previous Evaluation Period with respect to such Offered Properties or (ii) if applicable, to such Offered Properties, the ten (10) day match period described in Section 7.7(e)(ii).

(g) Termination of Right of First Offer. In the event of a breach or default by Purchaser under (i) an agreement for purchase and sale for any of the Offered Properties or (ii) any obligations or restrictions imposed by the documents of conveyance of any Offered Properties to Purchaser (the Offered Properties described in (i) or (ii) being the "Subject Offered Properties") and such breach or default is not cured within any applicable cure period provided in the applicable agreement or document and after any notice required by any such agreement or document has been given, the provisions of this Section 7.7 shall automatically terminate and be of no further force and effect with respect to all Subject Offered Properties and with respect to all other Covered Properties located in the project(s) in which the Subject Offered Properties are located.

(h) No Obligation to Sell. It is understood that except for the provisions of the last sentence of Section 7.7(b) above, neither Sellers nor any Affiliate has an obligation to market or sell any Covered Properties (provided that the foregoing shall not relieve the Sellers from complying with this Section 7.7 if they decide to offer for sale any Covered Properties) or to accept any offer made by Purchaser.

ARTICLE VIII
OTHER AGREEMENTS

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

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

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

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

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

8.4 Employee Matters Purchaser will use its commercially reasonable efforts to retain all of the Company's employees at their current compensation levels or better. The Company and each Seller will use their best efforts to retain, and will assist Purchaser's efforts to retain, as may be reasonably requested by Purchaser, key employees of the Company, and/or to find suitable replacements in the event of the termination of employment of any such key employees. At the Closing, Purchaser will enter into Employment Agreements and Noncompetition Agreements with each of Glenn Hartman and Pablo Reiter, respectively, and a Noncompetition Agreement with Richard Weale. All consulting, management or other services agreements and arrangements between each of Richard Weale, Inc., PR Consulting Inc. and D&H Consulting Inc., respectively, and the Company, and the office expense and rental sharing arrangements arrangements between each of Rex Development LLC and Rex2 Development LLC,respectively, and the Company, each shall be terminated effective as of the Closing Date and the Company shall not be required to make any payments to or bear any costs, expenses or liabilities of in connection therewith, it being agreed that following the Closing Richard Weale shall be engaged as a consultant to the Company for a minimum period of 90 days, thereafter automatically renewable for consecutive monthly periods until terminated by either party upon not less than 30 days' notice to the other party, and providing for consulting services to the Company upon request of the Company for not less than 20 hours per week at a rate of $85.00 per hour .

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

8.6 Entry into Further Agreements Simultaneously with the execution and delivery of this Agreement, Purchaser and one or more of the Sellers (or their Affiliates) shall enter into (i) a Land Purchase Agreement in the form of Exhibit C attached hereto (the "***Land Purchase Agreement***")for the Undeveloped Lots described therein , at a purchase price of Four Million Four Hundred three Thousand one hundred Thirty Dollars ($4,403,130.00, and (ii) amendments to the Purchase and Sale of Subdivision Lots and Option Agreements with Rex Development LLC and Rex2 Development LLC with respect to the residential building lots located at the Massey Preserve Subdivision and the Cleveland Springs Subdivision, each in form and substance satisfactory to Sellers and Purchaser (the "***Rex and Rex 2 Amendments***") .

ARTICLE IX
INDEMNIFICATION

9.1 The Company's and Sellers' Indemnification Obligations Subject to the provisions of this Section 9.1 and Sections 9.4, 9.5, 9.6, and 9.7, each of the Sellers severally (in accordance with such Seller's respective percentage allocation as set forth in Schedule 2.2.1), shall indemnify, save and keep each Purchaser Indemnitee harmless against and from all Damages sustained or incurred by any Purchaser Indemnitee, as a result of, or arising out of or by virtue of:

9.1.1 any inaccuracy in or breach of any representation and warranty made by the Company or Sellers to Purchaser herein or in any certificate or closing document delivered to Purchaser in connection herewith (it being understood that such representations and warranties are made on and as of the Closing);

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

9.1.3 Taxes which are unpaid as of the Closing Date and which are imposed on the Company with respect to (a) any taxable period ending on or before the Closing Date, or (b) the pre-Closing portion of any taxable period which begins before, and ends after, the Closing Date, to the extent the liability for such Taxes exceeds the accrual for Taxes contained on the Company's Estimated Closing Date Balance Sheet.

Notwithstanding anything to the contrary contained herein, the Company's obligations (but not Sellers' obligations) to indemnify Purchaser under this Section 9.1 shall terminate at the Closing.

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

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

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

9.3 Cooperation Subject to the provisions of Section 9.4, the Indemnifying Party shall have the right, at its own expense, to participate in the defense of any Third Party Claim, and if said right is exercised, the parties shall cooperate in the investigation and defense of said Third Party Claim. Any party seeking indemnification pursuant to the provisions of this Article IX in respect of any breach of representation and warranty shall give notice in writing to the Indemnifying Party on or before the applicable time periods specified in Section 9.6.1 (except in the case of any Unlimited Claims.

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

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

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

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

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

9.5 No Contribution. Each Seller hereby waives any right to contribution or any similar rights it may have against the Company arising out of such Seller's agreement to indemnify Purchaser pursuant to this Article IX.

9.6 Survival of Representations and Warranties; Limitations

9.6.1 Subject to further provisions of this Section 9.6, the representations and warranties of the Company and the Sellers contained in Article III and the representations and warranties of Purchaser contained in Article III shall survive the Closing Date until March 31, 2008, and any Claim for indemnity in respect of such representations ad warranties(except for Unlimited Claims) must be made within this time period. For Unlimited Claims (as defined below), the survival date shall be the date on which the applicable statute of limitations would bar such Claims. The covenants and other agreements of the parties contained in this Agreement shall survive the Closing Date until they are otherwise terminated, whether by their terms or as a matter of applicable law.

9.6.2 The provisions for indemnity from the Sellers under Section 9.1.1 shall be effective only when the aggregate amount of all Damages for which indemnification is sought, either for a particular claim, a series of related claims or otherwise, exceeds $50,000 (the "***Basket***"), in which case the Purchaser Indemnitees shall be entitled to indemnification of the Purchaser Indemnitees' aggregate Damages under this Section in excess of the amount of the Basket. Notwithstanding the foregoing, the Basket shall not apply to claims arising from the breach of Sections (a) 3.3.1 (Organization, Existence and Good Standing), (b) 3.3.3 (Power and Authority), (c) 3.3.4 (Enforceability), (d) 3.3.8 (Subsidiaries and Affiliates), (e) 3.3.11 (Capitalization and title to Shares), (f) 3.3.20 (Taxes), (g) 3.3.26 (Employee Benefit Plans), or

(h) 3.3.31 (Environmental Matters) (collectively, the claims in clauses (a)-(h) of this sub-Section are "***Unlimited Claims***"). The indemnification obligations of the Sellers shall not exceed the aggregate amount of (x) $2,000,000 in respect of all Damages (other than Damages arising from any Unlimited Claims) plus the right of the Purchaser to offset up to an additional $2,000,000 of Earnout Amounts otherwise due and payable hereunder and (y) the Purchase Price, in respect of the Unlimited Claims (together, the limitations in clauses (x) and (y) of this sub-Section constitute the "***Liability Cap***"). The indemnification obligations of the Sellers hereunder shall be several, and limited to each such Seller's respective percentage allocation, as set forth in Schedule 2.2.1, of the Liability Cap.

9.6.3 The provisions for indemnity from the Purchasers under Section 9.2.1 shall be effective only when the aggregate amount of all Damages for which indemnification is sought, either for a particular claim, a series of related claims or otherwise, exceeds the Basket, in which case the Seller Indemnitees shall be entitled to indemnification of the Seller Indemnitees' aggregate Damages under this Section, excluding the amount of the Basket. The indemnification obligations of the Purchaser (excluding claims arising from a breach of (a) Section 3.2.1, (b) Section 3.2.2, (c) Section 3.2.3, (d) Article II and (e) monetary obligations as set forth in this Agreement) shall not exceed the Liability Cap.

9.7 Set-off

9.7.1 Without limiting any other rights or remedies available to Purchaser, but at all times subject to the Basket and Liability Cap, to the extent applicable, , Purchaser may set-off and recoup any Damages to which any Purchaser Indemnitee may be entitled to be reimbursed pursuant to this Article IX against the Holdback, the Earnout Amounts and any other amount to which each Seller may be entitled to under this Agreement, provided Sellers are given written notice of the factual basis for such set-off and fifteen (15) days to dispute such claim. The good faith exercise of such right of set-off by Purchaser will not constitute a breach of this Agreement. Subject to the Basket, the Liability Cap, and consistent with any other applicable terms and provisions of this Agreement, if the Holdback and any Earnout Amounts then due are insufficient to set-off any Damages any Purchaser Indemnitee may be entitled to, Purchaser may take any action or exercise any remedy available to it by appropriate legal proceedings to collect the Damages. All set-offs and recoupments against the Holdback and any Earnout Amounts shall be treated as adjustments to the Purchase Price. In the event Purchaser exercises set-off rights with respect to a disputed claim, at Sellers' request Purchaser shall enter into reasonable arrangements to cause such disputed property to be held in a third party escrow during the period of the dispute, and any amounts reserved, whether or not requested to be so held in escrow, shall not be included in determining the amount of the Holdback for purposes of the Maximum Holdback and release provisions in Section 2.2.4.

ARTICLE X
MISCELLANEOUS

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

If to Sellers, the Seller Representative or (prior to the Closing) the Company:

Capitol Homes, Inc.
5200 Capital Blvd.
Raleigh, North Carolina 27616
Attention: Pablo Reiter
Fax: (919) 870-1015

with a copy to:

Pablo Reiter
2216 Mountain High Road
Wake Forest, NC 27587
(919) 562-7096

and

Satisky & Silverstein L.L.P.
900 Ridgefield Drive, Suite 250
Raleigh, North Carolina 27609
Attention: Howard P. Satisky, Esq.
Fax: (919) 790 1560

If to Purchaser:

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Fifth Floor
Reston, Virginia 20190
Attention: Chief Financial Officer
Fax: (703) 760-1520

with a copy to:

Comstock Homebuilding Companies, Inc.

11465 Sunset Hills Road, Fifth Floor
Reston, Virginia 20190
Attention: General Counsel
Fax: (703) 760-1520

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

10.2 Expenses; Transfer Taxes. Sellers shall bear all fees and expenses incurred by the Company and themselves in connection with, relating to or arising out of the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including financial advisors', attorneys', accountants' and other professional fees and expenses. At the Closing, to the extent the Company pays or becomes liable with respect to any transaction expenses of the Company or any Seller, the Purchase Price will be reduced dollar-for dollar to the extent of such expenses incurred by the Company. Purchaser shall bear all fees and expenses incurred by Purchaser in connection with, relating to or arising out of the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including financial advisors', attorneys', accountants' and other professional fees and expenses. Sellers shall pay the cost of all sales, use, stamp, documentary, excise and transfer Taxes which may be payable in connection with the transactions contemplated hereby.

10.3 Entire Agreement. This Agreement, together with the instruments and other documents to be delivered by the parties pursuant to the provisions hereof constitute the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. Without limiting the generality of the preceding sentence, the letter of intent entered into as of November 29, 2005, between Purchaser, and each of the Sellers, is hereby expressly superseded and of no further force or effect. Each exhibit, schedule and the Disclosure Schedule, shall be considered incorporated into this Agreement. Any amendments, or alternative or supplementary provisions, to this Agreement, must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

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

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

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

10.7 Applicable Law. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal Laws of the Commonwealth of Virginia applicable to contracts made in that state, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the Laws of any jurisdiction other than the Commonwealth of Virginia.

10.8 Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and permitted assigns. Nothing in this Agreement, express or implied, shall confer on any Person other than the parties hereto, and their respective successors and permitted assigns, any rights, remedies, obligations or Liabilities under or by reason of this Agreement, including third party beneficiary rights.

10.9 Assignability. This Agreement shall not be assignable by the Company or Sellers without the prior written consent of Purchaser. Purchaser may assign its rights under this Agreement to an Affiliate or a wholly-owned subsidiary of Purchaser, provided however Purchaser shall remain liable for all the obligations of Purchaser pursuant to this Agreement.

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

10.11 Waiver of Trial by Jury. EACH OF THE PARTIES HERETO TO THE EXTENT ALLOWED BY LAW WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LAWSUIT, ACTION OR PROCEEDING SEEKING ENFORCEMENT OF SUCH PARTY'S RIGHTS UNDER THIS AGREEMENT.

11.12 Good-Faith Negotiations. If after the Closing any dispute arises under this Agreement that is not settled promptly in the ordinary course of business, the parties shall seek to resolve any such dispute between them, first, by negotiating promptly with each other in good faith in face-to-face negotiations. These face-to-face negotiations shall be conducted by the respective designated senior management representative of each party. If the parties are unable to resolve the dispute between them within 20 business days (or such period as the parties shall otherwise agree) through these face-to-face negotiations, any party may initiate mediation of the controversy or claim in accordance with the then current CPR Mediation Procedure, such mediation to be held in Raleigh, North Carolina. If the dispute has not been resolved pursuant to such mediation procedure

within 30 business days of the initiation of such procedure, or if the parties will not participate in mediation, any party shall be entitled to seek whatever legal or equitable remedies that may be available to such party consistent with the terms and provisions of this Agreement

10.12 Consent to Jurisdiction. This Agreement shall be governed by the laws of the Commonwealth of Virginia. The parties hereto each agree to the exclusive jurisdiction of any Federal court within the city of Raleigh, North Carolina, with respect to any claim or cause of action arising under or relating to this Agreement, and waives personal service of any and all process upon it, and consents that all services of process be made by registered or certified mail, return receipt requested, directed to it at its address as set forth in Section 11.1, and service so made shall be deemed to be completed when received. The parties hereto each waive any objection based on forum non conveniens and waive any objection to venue of any action instituted hereunder. Nothing in this Section shall affect the right of any party to serve legal process in any other manner permitted by Law.

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

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

PURCHASER:

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Name: _____
Title: _____

THE COMPANY:

CAPITOL HOMES, INC.

By: _____
Name: _____
Title: _____

SELLERS:

RICHARD WEALE

GLENN HARTMAN

PABLO REITER

EXHIBIT 31.1

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

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

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

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

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

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

Date: August 9, 2006

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

EXHIBIT 31.2

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

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

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

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

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

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

Date: August 9, 2006

/s/ Bruce J. Labovitz
Bruce J. Labovitz
Chief Financial Officer
(Principal financial officer)

EXHIBIT 32.1

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

In connection with the Quarterly Report on Form 10-Q of Comstock Homebuilding Companies, Inc. (the "Company") for the quarter ended June 30, 2006 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: August 9, 2006

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

Date: August 9, 2006

/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.