

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended September 30, 2001

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

Commission file number: 001-12822

Beazer Homes USA, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

58-2086934
(I.R.S. Employer Identification No.)

5775 Peachtree Dunwoody Road, Suite B-200, Atlanta, Georgia 30342
(Address of principal executive offices) (Zip code)

(Registrant's telephone number including area code) (404) 250-3420

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

| Title of Securities | Exchanges on which Registered |
|---------------------|-------------------------------|
|---------------------|-------------------------------|

| | |
|---|-------------------------|
| Common Stock, \$.01 par value per share | New York Stock Exchange |
| Preferred Share Purchase Rights | New York Stock Exchange |

Securities registered pursuant to section 12(g) of the Act: None

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

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

The aggregate market value of the registrant's Common Stock held by non-affiliates of the registrant (7,812,238 shares) as of December 10, 2001, based on the closing sale price per share as reported by the New York Stock Exchange on such date, was \$560,606,199. The number of shares outstanding of the registrant's Common Stock as of December 10, 2001 was 8,623,931.

DOCUMENTS INCORPORATED BY REFERENCE

| | Part of 10-K where incorporated |
|--|------------------------------------|
|--|------------------------------------|

| | |
|--|-----|
| Portions of the registrant's 2001 Annual Report to Shareholders for the fiscal year ended September 30, 2001 | II |
| Portions of the registrant's Proxy Statement for the 2002 Annual Meeting of Shareholders | III |

BEAZER HOMES USA, INC.

FORM 10-K

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PART I

Item 1. Business

Our principal executive offices are located at 5775 Peachtree Dunwoody Road, Suite B-200, Atlanta, Georgia 30342, telephone (404) 250-3420. We also provide information about our active communities and mortgage financing through our Internet website located at www.beazer.com. Information on our website is not a part of this report.

Beazer Homes USA, Inc. designs, builds and sells single family homes in the following locations within the United States:

| Region/State | Market(s)/Year Entered |
|-----------------------------|---|
| Southeast Region: | |
| Florida | Jacksonville (1993), Fort Myers/Naples (1996), Tampa/St. Petersburg (1996), Treasure Coast (1995), Orlando (1997) |
| Georgia | Atlanta (1985) |
| North Carolina | Charlotte (1987), Raleigh (1992), Greensboro (1999) |
| South Carolina | Charleston (1987), Columbia (1993), Greenville (1998) |
| Tennessee | Nashville (1987) |
| West Region: | |
| Arizona | Phoenix (1993) |
| California | Los Angeles County (1993), Orange County (1993), Riverside & San Bernadino Counties (1993), San Diego County (1992), Ventura County (1993), Sacramento (1993) |
| Colorado | Denver (2001); Fort Collins (2001) |
| Nevada | Las Vegas (1993) |
| Central Region: | |
| Texas | Dallas (1995), Houston (1995) |
| Mid-Atlantic Region: | |
| Maryland | Baltimore (1998), Metro-Washington DC (1998) |
| New Jersey/ Pennsylvania | Central and Southern New Jersey (1998), Bucks County, PA (1998) |
| Virginia | Fairfax County (1998), Loudoun County (1998), Prince William County (1998) |

We design our homes to appeal primarily to entry-level and first time move-up homebuyers. Our objective is to provide our customers with homes that incorporate quality and value while seeking to maximize our return on invested capital. To achieve this objective, we have developed a business strategy which focuses on the following elements:

Geographic Diversity and Growth Markets. We compete in a large number of geographically diverse markets in an attempt to reduce our exposure to any particular regional economy. Virtually all of the markets in which we operate have experienced significant population growth in recent years. Within these markets, we build homes in a variety of projects, typically with fewer than 150 homesites.

Quality Homes for Entry-Level and First Time Move-Up HomeBuyers. We seek to maximize customer satisfaction by offering homes which incorporate quality materials, distinctive design features, convenient locations and competitive prices. We focus on entry-level and first time move-up homebuyers because we believe they represent the largest segment of the homebuilding market. During fiscal year 2001, the average sales price of our homes sold was approximately \$195,300.

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Additional Products and Services for Homebuyers. In order to maximize our profitability and provide our homebuyers with the additional products and services that they desire, we have incorporated design centers and mortgage origination operations into our business. Recognizing that homebuyers want to choose certain components of their new home, we offer limited customization through the use of design centers in most of our markets. These design centers allow the homebuyer to select certain non-structural customizations for their homes such as cabinetry, flooring, fixtures, appliances and wallcoverings. Additionally, recognizing the homebuyer's desire to simplify the financing process, we originate mortgages on behalf of our customers through Beazer Mortgage Corp. Beazer Mortgage originates, processes and brokers mortgages to third party investors. Beazer Mortgage does not retain or service the mortgages that it brokers. We also provide title insurance to our homebuyers in many of our markets. During fiscal 2000, we formed an insurance agency to provide homeowners and other insurance to our homebuyers.

Decentralized Operations with Experienced Management. We believe our in-depth knowledge of our local markets enables us to better serve our customers. Our local managers, who have significant experience in both the homebuilding industry and the markets they serve, are responsible for operating decisions regarding design, construction and marketing. We combine these decentralized operations with a centralized corporate-level management which controls decisions regarding overall strategy, land acquisitions and financial matters.

Conservative Land Policies. We seek to maximize our return on capital by limiting our investment in land and by focusing on inventory turnover. To implement this strategy and to reduce the risks associated with investments in land, we use options to control land whenever possible. In addition, we do not speculate in land which is not generally subject to entitlements providing basic development rights to the owner.

Value Created. We measure our financial performance using Value Created, a variation of economic value added. Value Created measures the extent to which we beat our cost of capital.

Company History

In March 1994, we completed a concurrent initial public offering of common stock and issuance of senior notes (the "IPO"). Prior to our IPO, we were an indirect wholly-owned subsidiary of Hanson PLC ("Hanson"), a company registered in the United Kingdom. Hanson currently does not hold any investment, or ongoing interest, in us.

Markets and Product Description

We evaluate a number of factors in determining which geographic markets to enter or in which markets to concentrate our homebuilding activities. We attempt to anticipate swings in economic and real estate conditions by evaluating such statistical information as

- (1) the historical and projected growth of the population;
- (2) the number of new jobs created or projected to be created;
- (3) the number of housing starts in previous periods;
- (4) building lot availability and price;
- (5) housing inventory;
- (6) level of competition; and
- (7) home sale absorption rates.

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We generally seek to avoid direct competition in a particular market with respect to product type and maintain the flexibility to alter our product mix within a given market depending on market conditions. In determining our product mix we consider demographic trends, demand for a particular type of product, margins, timing and the economic strength of the market. While remaining responsive to market opportunities within the industry, in recent years we have focused, and intend to continue to focus, our business primarily on entry-level and first time move-up housing in the form of single family detached homes and townhouses. Entry-level homes generally are those homes priced at the lower end of the market and target first time homebuyers, while first time move-up homes generally are priced in the mid-to-upper price range and target a wide variety of homebuyers as they progress in income and family size. Although some of our move-up homes are priced at the upper end of the market and we offer a selection of amenities, we generally do not build "custom homes." The prices of our first time move-up

homes generally are well below the prices of custom homes in most areas. We attempt to maximize efficiency by using standardized design plans whenever possible.

The following table summarizes certain operating information regarding our markets as of and for the year ended September 30, 2001 (*dollars in thousands*):

| State | Number of Active Subdivisions | Number of Homes Closed | Average Closing Price | Units in Backlog at Year End | Dollar Value of Backlog at Year End |
|-------------------------|-------------------------------|------------------------|-----------------------|------------------------------|-------------------------------------|
| Arizona | 27 | 1,024 | \$ 153.5 | 532 | \$ 86,480 |
| California | 33 | 1,800 | 238.6 | 553 | 135,611 |
| Colorado | 14 | 41 | 441.5 | 195 | 32,470 |
| Florida | 49 | 948 | 228.6 | 537 | 125,544 |
| Georgia | 11 | 406 | 146.0 | 120 | 19,879 |
| Maryland | 14 | 338 | 227.3 | 175 | 42,807 |
| Nevada | 12 | 547 | 180.0 | 326 | 50,241 |
| New Jersey/Pennsylvania | 7 | 304 | 256.4 | 136 | 30,800 |
| North Carolina | 34 | 933 | 148.8 | 189 | 27,302 |
| South Carolina | 10 | 516 | 133.2 | 119 | 17,782 |
| Tennessee | 20 | 611 | 200.1 | 275 | 31,420 |
| Texas | 31 | 897 | 159.7 | 384 | 61,774 |
| Virginia | 19 | 694 | 233.4 | 436 | 113,502 |
| Total Company | 281 | 9,059 | \$ 195.3 | 3,977 | \$ 775,612 |

Our homebuilding and marketing activities are conducted under the name of Beazer Homes in each of our markets except in Colorado (Sanford Homes) and Tennessee (Phillips Builders).

Corporate Operations

We perform the following functions at a centralized level:

- (1) evaluate and select geographic markets;
- (2) allocate capital resources to particular markets, including with respect to land acquisitions;
- (3) maintain our relationship with lenders to regulate the flow of financial resources and develop consistent relationships with our lenders;
- (4) maintain centralized information systems; and
- (5) monitor the decentralized operations of our subsidiaries and divisions.

We allocate capital resources necessary for new projects in a manner consistent with our overall operating strategy. We utilize *Value Created*, return on capital employed and profit margin as criteria for

our allocation of capital resources. We will vary the capital allocation based on market conditions, results of operations and other factors. Capital commitments are determined through consultation among selected executive and operational personnel, who play an important role in ensuring that new projects are consistent with our strategy. Centralized financial controls are also maintained through the standardization of accounting and financial policies and procedures.

Structurally, we operate through separate divisions, which are generally located within the areas in which they operate. Each division is managed by executives with substantial experience in the division's market. In addition, each division is equipped with the skills to complete the functions of land acquisition, map processing, land development, construction, marketing, sales and product service.

Land Acquisition and Development

Substantially all of the land we acquire is purchased only after necessary entitlements have been obtained so that we have the right to begin development or construction as market conditions dictate. In certain situations, we will purchase property without all necessary entitlements where we perceive an opportunity to build on such property in a manner consistent with our strategy. The term "entitlements" refers to development agreements, tentative maps or recorded plats, depending on the jurisdiction within which the land is located. Entitlements generally give a developer the right to obtain building permits upon compliance with conditions that are usually within the developer's control. Although entitlements are ordinarily obtained prior to the purchase of land, we are still required to obtain a variety of other governmental approvals and permits during the development process.

We select our land for development based upon a variety of factors, including:

- (1) internal and external demographic and marketing studies;
- (2)

suitability for development during the time period of one to five years from the beginning of the development process to the last closing;

- (3) financial review as to the feasibility of the proposed project, including projected Value Created, profit margins and returns on capital employed;
- (4) the ability to secure governmental approvals and entitlements;
- (5) environmental and legal due diligence;
- (6) competition in the area;
- (7) proximity to local traffic corridors and amenities; and
- (8) management's judgment as to the real estate market and economic trends and our experience in a particular market.

We generally purchase land or obtain an option to purchase land, which, in either case, requires certain site improvements prior to construction. Where required, we then undertake or, in the case of land under option, the grantor of the option then undertakes, the development activities (through contractual arrangements with local developers) which include site planning and engineering, as well as constructing road, sewer, water, utilities, drainage and recreational facilities and other amenities. When available in certain markets, we also buy finished lots that are ready for construction.

We strive to develop a design and marketing concept for each of our projects, which includes determination of size, style and price range of the homes, layout of streets, layout of individual lots and overall community design. The product line offered in a particular project depends upon many factors, including the housing generally available in the area, the needs of a particular market and our cost of lots in the project. We are, however, often able to use standardized design plans.

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The development and construction of each project are managed by our operating divisions, each of which is led by a president who, in turn, reports to our Chief Operating Officer and our Chief Executive Officer. At the development stage, a manager (who may be assigned to several projects and reports to the president of the division) supervises development of buildable lots. In addition, a field superintendent is responsible for each project site to supervise actual construction, and each division has one or more customer service and marketing representatives assigned to projects operated by that division.

The following table sets forth, by state, land controlled by us as of September 30, 2001:

| | Lots Owned | | | | Lots Under Contract(3) | | | | Total Land Controlled |
|-----------------------------|---------------------|------------------------|---------------|-----------------------------|------------------------|---------------|------------------|---------------------------|-----------------------|
| | Undeveloped Lots(1) | Lots Under Development | Finished Lots | Homes Under Construction(2) | Total Lots Owned | Finished Lots | Undeveloped Lots | Total Lots Under Contract | |
| Southeast Region: | | | | | | | | | |
| Georgia | — | 367 | 74 | 205 | 646 | 1,197 | — | 1,197 | 1,843 |
| Florida | — | 599 | 473 | 415 | 1,487 | 1,583 | 311 | 1,894 | 3,381 |
| North Carolina | 60 | 1,125 | 153 | 172 | 1,510 | 1,957 | 1,477 | 3,434 | 4,944 |
| South Carolina | 36 | 123 | 133 | 65 | 357 | 276 | 335 | 611 | 968 |
| Tennessee | 306 | — | 166 | 254 | 726 | 875 | 355 | 1,230 | 1,956 |
| Southwest Region: | | | | | | | | | |
| Arizona | — | — | 920 | 432 | 1,352 | 1,354 | — | 1,354 | 2,706 |
| California | 163 | 785 | 294 | 952 | 2,194 | 209 | 1,316 | 1,525 | 3,719 |
| Colorado | — | 117 | 32 | 206 | 355 | 359 | — | 359 | 714 |
| Nevada | — | — | 906 | 371 | 1,277 | 872 | — | 872 | 2,149 |
| Central Region: | | | | | | | | | |
| Texas | 184 | 888 | 835 | 405 | 2,312 | 1,043 | — | 1,043 | 3,355 |
| Mid-Atlantic Region: | | | | | | | | | |
| Maryland | — | 784 | 130 | 201 | 1,115 | 423 | — | 423 | 1,538 |
| New Jersey/Pennsylvania | — | 430 | 100 | 121 | 651 | 276 | 575 | 851 | 1,502 |
| Virginia | — | 450 | 37 | 297 | 784 | 922 | 278 | 1,200 | 1,984 |
| Total | 749 | 5,668 | 4,253 | 4,096 | 14,766 | 11,346 | 4,647 | 15,993 | 30,759 |

(1) "Undeveloped Lots" consists of raw land that is expected to be developed into the respective number of lots reflected in this table.

(2) The category "Homes Under Construction" represents lots on which construction of a home has commenced.

(3) The classification within Lots Under Contract for this schedule is based upon level of completion at delivery as stated in the option contract.

Option Contracts: We acquire certain lots by means of option contracts. Option contracts generally require the payment of a cash deposit or issuance of a letter of credit for the right to acquire lots during a specified period of time at a certain price. Our option contracts have expiration periods ranging from one to sixty months.

Under option contracts without specific performance obligations, our liability is limited to forfeiture of the non-refundable deposits, which aggregated approximately \$15.1 million at September 30, 2001 and are included in inventory on our balance sheet. At September 30, 2001, we are committed to future amounts under option contracts without specific performance obligations that aggregated \$487.2 million.

Under option contracts with specific performance obligations, we are generally required to purchase specific numbers of lots on fixed dates pursuant to a contractually established schedule. Under option contracts with specific performance obligations, the party granting the option is required to maintain and/or develop the property pursuant to certain standards specified in the contract. They

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are required to deliver lots which are free of any liens and are appropriate for residential building pursuant to a specified schedule. If we fail to purchase the required number of lots on the date fixed for purchase pursuant to such option contracts and the party granting the option has fulfilled its obligations under the contract, the party granting the option to us generally has the right to either terminate the option granted pursuant to the option contract in its entirety or to require us to purchase the remaining lots. If the party granting the option fails to meet its obligations under such option contracts, we generally may, at our option, either not make the lot purchase or require the party granting the option to cure the deficiency. Under such option contracts, if we purchase a lot and subsequently discover that the lot did not meet all of the conditions specified by the option contract, we generally may require the party granting the option to repurchase the lot or cure the deficiency. At September 30, 2001, we are committed to future amounts under option contracts with specific performance obligations that aggregated \$23.7 million.

Construction

We act as the general contractor for the construction of our projects. Our project development operations are controlled by our subsidiaries and divisions, whose employees supervise the construction of each project, coordinate the activities of subcontractors and suppliers, subject their work to quality and cost controls and assure compliance with zoning and building codes. We specify that quality, durable materials be used in the construction of our homes. Our subcontractors follow design plans prepared by architects and engineers who are retained by us and whose designs are geared to the local market. Subcontractors typically are retained on a project-by-project basis to complete construction at a fixed price. Agreements with our subcontractors and materials' suppliers are generally entered into after competitive bidding, and we do not have any long-term contractual commitments with any of our subcontractors or suppliers. In connection with this competitive bid process, we obtain information from prospective subcontractors and vendors with respect to their financial condition and ability to perform their agreements with us. We do not maintain significant inventories of construction materials except for materials being utilized for homes under construction. We have numerous suppliers of raw materials and services used in our business, and such materials and services have been and continue to be available. Material prices may fluctuate, however, due to various factors, including demand or supply shortages, which may be beyond the control of our vendors. From time to time we enter into regional and national supply contracts with certain of our vendors. We believe that our relationships with our suppliers and subcontractors are good. We are actively exploring ways in which we can use our Internet presence to maximize business to business e-commerce applications with our suppliers and subcontractors.

Construction time for our homes depends on the availability of labor, materials and supplies, product type and location. Homes are designed to promote efficient use of space and materials, and to minimize construction costs and time. In all of our markets except California, Colorado and Virginia, construction of a home historically has been completed within three to four months following commencement of construction. In California, Colorado and Virginia, construction of a home historically has been completed within four to eight months following commencement of construction. At September 30, 2001, we had 610 finished homes (not including models), of which 346 were sold and included in backlog at such date.

Warranty Program

We provide a variety of warranties in connection with our homes, spanning from one to ten years in length. We provide a one-year limited warranty of workmanship and materials with each of our homes, which generally includes home inspection visits with the customer during the first year following the purchase of a home. We subcontract our homebuilding work to subcontractors who provide us with an indemnity and a certificate of insurance prior to receiving payments for their work and, therefore,

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claims relating to workmanship and materials are generally the primary responsibility of our subcontractors. In addition, the first year of our warranty covers defects in plumbing, electrical, heating, cooling and ventilation systems, and major structural defects; the second year of such warranty covers major structural defects and certain defects in plumbing, electrical, heating, cooling and ventilation systems of the home (exclusive of defects in appliances, fixtures and equipment); and the final eight years of protection cover only major structural defects.

We record a reserve of approximately 0.5% to 1.0% of the sales price of a home to cover warranty expenses, although this allowance is subject to adjustment in special circumstances. Our historical experience is that such warranty expenses generally fall within the amount established for such allowance.

We self-insure our structural warranty obligations through our wholly-owned risk retention group, United Home Insurance Corp. ("UHIC"). We believe this results in cost savings as well as increased control over the warranty process.

In addition, we maintain third party insurance for most construction defects which we encounter in the normal course of business. We believe that our accruals and third party insurance programs are adequate to cover the ultimate resolution of our potential liabilities associated with known and anticipated warranty and construction defect related claims and litigation.

Marketing and Sales

We make extensive use of advertising and other promotional activities, including our website (*beazer.com*), newspaper advertisements, brochures, direct mail and the placement of strategically located signboards in the immediate areas of our developments.

We normally build, decorate, furnish and landscape between one and five model homes for each project and maintain on-site sales offices. At September 30, 2001, we maintained 369 model homes, of which 274 were owned and 95 were leased from third parties pursuant to sale and leaseback agreements. We believe that model homes play a particularly important role in our marketing efforts. Consequently, we expend a significant effort in creating an attractive atmosphere at our model homes. Interior decorations are undertaken by both in-house and local third-party design specialists, and vary within our models based upon the lifestyles of targeted homebuyers. The purchase of furniture, fixtures and fittings is coordinated to ensure that manufacturers' bulk discounts are utilized to the maximum extent. Structural changes in design from the model homes are not generally permitted, but homebuyers may select various optional amenities. We also use a cross-referral program that encourages our personnel to direct customers to other Beazer subdivisions based on the customers' needs.

We generally sell our homes through commissioned employees (who typically work from the sales offices located at the model homes used in the subdivision) as well as through independent brokers. Our personnel are available to assist prospective homebuyers by providing them with floor plans, price information and tours of model homes and in connection with the selection of options. The selection of interior features is a principal component of our marketing and sales efforts. Sales personnel are trained by us and attend periodic meetings to be updated on sales techniques, competitive products in the area, the availability of financing, construction schedules, marketing and advertising plans, which management believes result in a sales force with extensive knowledge of our operating policies and housing products. Our policy also provides that sales personnel be licensed real estate agents where required by law. We also build a number of homes for which no signed sales contract exists at the time of commencement of construction. The use of an inventory of such homes is necessary to satisfy the requirements of relocated personnel and of independent brokers, who often represent customers who require a completed home within 60 days. At September 30, 2001, excluding models, the Company had

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1,330 homes either finished or at various stages of completion for which the Company had not received a sales contract.

We sometimes use various sales incentives (such as landscaping and certain interior home options and upgrades) in order to attract homebuyers. The use of incentives depends largely on local economic and competitive market conditions.

Customer Financing

We provide customer financing through Beazer Mortgage. Beazer Mortgage provides mortgage origination services only, and does not retain or service the mortgages that it originates. These mortgages are generally funded by one of a network of mortgage lenders arranged for us by Homebuilders Financial Network, an independent consultant. Beazer Mortgage can provide qualified homebuyers numerous financing options, including a wide variety of conventional, FHA and VA financing programs. In certain situations we will seek to assist our homebuyers in obtaining financing from outside mortgage lenders and, in certain limited circumstances, we may attempt to minimize potential risks relating to the availability of customer financing by purchasing mortgage financing commitments that lock in the availability of funds and interest rates at specified levels for a certain period of time. Because substantially all homebuyers utilize long-term mortgage financing to purchase a home, adverse economic conditions, increases in unemployment and high mortgage interest rates may deter and eliminate a substantial number of potential homebuyers from our markets in the future.

Competition and Market Factors

The development and sale of residential properties is highly competitive and fragmented. We compete for residential sales on the basis of a number of interrelated factors, including location, reputation, amenities, design, quality and price, with numerous large and small homebuilders, including some homebuilders with nationwide operations and greater financial resources and/or lower costs than us. We also compete for residential sales with individual resales of existing homes, available rental housing and, to a lesser extent, resales of condominiums. We believe that we compare favorably to other builders in the markets in which we operate, due primarily to

- (1) our experience within our geographic markets and breadth of product line, which allows us to vary our regional product offerings to reflect changing market conditions;
- (2) our responsiveness to market conditions, enabling us to capitalize on the opportunities for advantageous land acquisitions in desirable locations; and
- (3) our reputation for quality design, construction and service.

The housing industry is cyclical and is affected by consumer confidence levels, prevailing economic conditions generally, and interest rate levels in particular. A variety of other factors affect the housing industry and demand for new homes, including the availability of labor and materials and increases in the costs thereof, changes in costs associated with home ownership such as increases in property taxes and energy costs, changes in consumer preferences, demographic trends and the availability of and changes in mortgage financing programs.

Government Regulation and Environmental Matters

Substantially all of our land is purchased with entitlements, giving us the right to obtain building permits upon compliance with specified conditions, which generally are within our control. Upon compliance with such conditions, we must obtain building permits. The length of time necessary to obtain such permits and approvals affects the carrying costs of unimproved property acquired for the purpose of development and construction. In addition, the continued effectiveness of permits already granted is subject to factors such as changes in policies, rules and regulations and their interpretation and application. Several governmental authorities have imposed impact fees as a means of defraying the cost of providing certain governmental services to developing areas. To date, the governmental

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approval processes discussed above have not had a material adverse effect on our development activities, and indeed all homebuilders in a given market face the same fees and restrictions. There can be no assurance, however, that these and other restrictions will not adversely affect us in the future.

We may also be subject to periodic delays or may be precluded entirely from developing communities due to building moratoriums or "slow-growth" or "no-growth" initiatives or building permit allocation ordinances which could be implemented in the future in the states and markets in which we operate. Substantially all of our land is entitled and, therefore, the moratoriums generally would only adversely affect us if they arose from health, safety and welfare issues such as insufficient water or sewage facilities. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction. These fees are normally established, however, when we receive recorded final maps and building permits. We are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning the protection of health and the environment. These laws may result in delays, cause us to incur substantial compliance and other costs, and prohibit or severely restrict development in certain environmentally sensitive regions or areas.

Bonds and Other Obligations

We are frequently required, in connection with the development of our projects, to obtain letters of credit and performance, maintenance and other bonds in support of our related obligations with respect to such developments. The amount of such obligations outstanding at any time varies in accordance with our pending development activities. In the event any such bonds or letters of credit are drawn upon, we would be obligated to reimburse the issuer of such bonds or letters of credit. At September 30, 2001, there were approximately \$31.9 million and \$202.9 million of outstanding letters of credit and performance bonds, respectively, for such purposes. We do not believe that we will be required to draw upon any such bonds or letters of credit.

Employees and Subcontractors

At September 30, 2001, we employed 1,857 persons, of whom 426 were sales and marketing personnel, 637 were executive, management and administrative personnel, 725 were involved in construction and 69 were personnel of Beazer Mortgage. Although none of the our employees are covered by collective bargaining agreements, certain of the subcontractors engaged by us are represented by labor unions or are subject to collective bargaining arrangements. We believe that our relations with our employees and subcontractors are good.

Item 2. Properties

We lease approximately 16,000 square feet of office space in Atlanta, Georgia to house our corporate headquarters. We also lease an aggregate of approximately 250,000 square feet of office space for our subsidiaries' operations at various locations. We own approximately 18,500 square feet of manufacturing space and 6,800 square feet of office space in Nashville, Tennessee.

Item 3. Legal Proceedings

We are involved in various legal proceedings, all of which have arisen in the ordinary course of business and some of which are covered by insurance. The most significant matters relate to construction defects and product liability. In our opinion, none of the claims individually or in the aggregate will have a material adverse effect on our financial condition or results of operations.

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

No matters were submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise.

SEPARATE ITEM: EXECUTIVE OFFICERS OF THE REGISTRANT

Unless otherwise indicated, the following executive officers have been employed by Beazer since 1994, the year of our initial public offering.

| Name | Age | Position |
|---------------------------|-----|--|
| Executive Officers | | |
| Ian J. McCarthy | 48 | President, Chief Executive Officer and Director |
| David S. Weiss | 41 | Executive Vice President, Chief Financial Officer and Director |
| Michael H. Furlow(i) | 51 | Executive Vice President, Chief Operating Officer |
| John Skelton | 52 | Senior Vice President, Financial Planning |
| C. Lowell Ball(ii) | 44 | Senior Vice President, General Counsel |

(i) Since October 1997

(ii) Since August 2000

All officers are elected by the Board of Directors.

Business Experience

IAN J. MCCARTHY. Mr. McCarthy is the President and Chief Executive Officer of Beazer and has served as a director of Beazer since our initial public offering of common stock (the "IPO") in March 1994. Mr. McCarthy has served as President of predecessors of Beazer since January 1991 and was responsible for all United States residential homebuilding operations in that capacity. During the period May 1981 to January 1991, Mr. McCarthy was employed in Hong Kong and Thailand becoming a director of Beazer Far East and from January 1980 to May 1981 was employed by Kier, Ltd., a company engaged in the United Kingdom construction industry which became an indirect, wholly-owned subsidiary of Beazer PLC. Mr. McCarthy is a Chartered Civil Engineer with a Bachelor of Science degree from The City University, London. Mr. McCarthy currently serves as a Director of HomeAid America's National Advisory Board and Homebuilders Financial Network, Inc.

DAVID S. WEISS. Mr. Weiss is the Executive Vice President and Chief Financial Officer of Beazer and has served as a director of Beazer since the IPO. Mr. Weiss served as the Assistant Corporate Controller of Hanson Industries, the United States arm of Hanson PLC, for the period from February 1993 to March 1994. Mr. Weiss was Manager of Financial Reporting for Colgate-Palmolive Company from November 1991 to February 1993 and was with the firm of Deloitte & Touche from 1982 to November 1991, at which time he served as a Senior Audit Manager. Mr. Weiss holds a Master of Business Administration degree from the Wharton School and undergraduate degrees in Accounting and English from the University of Pennsylvania. Mr. Weiss is a licensed Certified Public Accountant.

MICHAEL H. FURLOW. Mr. Furlow joined us in October 1997 as the Executive Vice President for Operations. In this capacity the Division Presidents report to Mr. Furlow and he is responsible for the performance of those operating divisions. During the preceding 12 years, Mr. Furlow was with Pulte Home Corporation in various field and corporate roles, most recently as a Regional President. Mr. Furlow received a Bachelor of Arts degree with honors in accounting from the University of West Florida and initially worked as a CPA for Arthur Young & Company.

JOHN SKELTON. Mr. Skelton has served as Senior Vice President, Operations since March 1994 and was appointed Senior Vice President, Financial Planning in fiscal 1999. Mr. Skelton served as Vice

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President and Chief Financial Officer of Beazer Homes, Inc. since 1985 and Vice President and Chief Financial Officer of Beazer Homes Holdings, Inc. since April 1993. During the period 1977 to 1985, Mr. Skelton served as Finance Director of Leech Homes, a subsidiary of Leech PLC which was acquired by Beazer PLC in 1985. After graduating with a Bachelor's degree from Durham University in the United Kingdom, he was employed by Deloitte & Touche and is a Fellow of the Institute of Chartered Accountants in England and Wales.

C. LOWELL BALL. Mr. Ball joined us in August 2000 as Senior Vice President and General Counsel. From 1992 to August 2000, Mr. Ball held equivalent positions with commercial real estate investment, development-operating companies, including Regent Partners, Inc., Compass Management and Leasing and Dutch Institutional Holding Company. Prior to 1992, Mr. Ball practiced law for ten years with two major Atlanta law firms: Long, Aldridge & Norman and Sutherland, Asbill & Brennan. Mr. Ball graduated with honors from the University of North Carolina School of Law where he served on the Board of Editors of the *North Carolina Law Review*. He also received his undergraduate degree from the University of North Carolina where he was a Morehead Scholar.

PART II

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters

On December 10, 2001, Beazer Homes USA, Inc. had approximately 65 shareholders of record and 8,623,931 shares of common stock outstanding.

The remaining information required by this item is incorporated by reference to the information set forth under the captions "Quarterly Stock Price Information" and "Trading Information" located on Page 45 and 52, respectively, of our Annual Report to Shareholders for the year ended September 30, 2001.

Item 6. Selected Financial Data

The information required by this item is incorporated by reference from page 16 of our Annual Report to Shareholders for the year ended September 30, 2001.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The information required by this item is incorporated by reference from pages 19 to 28 of our Annual Report to Shareholders for the year ended September 30, 2001.

Item 7(a). Quantitative and Qualitative Disclosures About Market Risk

The information required by this item is incorporated by reference from page 28 of our Annual Report to Shareholders for the year ended September 30, 2001.

Item 8. Financial Statements and Supplementary Data

The information required by this item is incorporated by reference from pages 30 to 44 of our Annual Report to Shareholders for the year ended September 30, 2001.

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

None.

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PART III.

Item 10. Directors and Executive Officers of the Registrant

Director information is incorporated by reference to the section entitled "Election of Directors" of our Proxy Statement for our 2002 Annual Meeting of Shareholders. Information regarding our executive officers is set forth herein under Part I as a separate item.

Item 11. Executive Compensation

The information required by this item is incorporated by reference to the section entitled "Executive Compensation" of our Proxy Statement for our 2002 Annual Meeting of Shareholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The information required by this is incorporated by reference to the section entitled "Security Ownership of Management" of our Proxy Statement for our 2002 Annual Meeting of Shareholders.

Item 13. Certain Relationships and Related Transactions

None

PART IV.**Item 14. Exhibits, Financial Statement Schedules, and Reports on Form 8-K****(a) 1. Financial Statements**

The Independent Auditors' Report and the following consolidated financial statements are incorporated by reference from our Annual Report to Shareholders for the fiscal year ended September 30, 2001 in Part II, Item 8 of this report:

Consolidated Statements of Income for the years ended September 30, 2001, 2000 and 1999.
 Consolidated Balance Sheets as of September 30, 2001 and 2000.
 Consolidated Statements of Stockholders' Equity for the years ended September 30, 2001, 2000 and 1999.
 Consolidated Statements of Cash Flows for the years ended September 30, 2001, 2000 and 1999.
 Notes to Consolidated Financial Statements.

2. Financial Statement Schedules

None required

3. Exhibits

| Exhibit Number | Exhibit Description | Page herein or incorporate by reference from |
|----------------|---|--|
| 3.1 | — Amended and Restated Certificate of Incorporation of the Company | (4) |
| 3.2 | — Amended and Restated Bylaws of the Company | (4) |
| 4.1 | — Indenture dated as of March 25, 1998 among the Company, its subsidiaries party thereto, and US Bank Trust National Association, as trustee, relating to the Company's 8 ⁷ / ₈ % Senior Notes due 2008 | (9) |
| 4.2 | — Form of 8 ⁷ / ₈ % Senior Note due 2008 | (9) |
| 4.3 | — First Supplemental Indenture (8 ⁷ / ₈ % Notes) dated July 20, 1998 | (10) |
| 4.4 | — Indenture dated as of May 21, 2001 among the Company and U.S. Bank Trust National Association, as trustee, related to the Company's 8 ⁵ / ₈ % Senior Notes due 2011 | Filed herewith |
| 4.5 | — Supplemental Indenture (8 ⁵ / ₈ % Notes) dated as of May 21, 2001 among the Company, its subsidiaries party thereto and U.S. Bank Trust National Association, as trustee | Filed herewith |
| 4.6 | — Form of 8 ⁵ / ₈ % Senior Notes due 2011 | Filed herewith |
| 4.7 | — Specimen of Common Stock Certificate | (3) |
| 4.8 | — Retirement Savings and Investment Plan (the "RSIP"). | (2) |
| 4.9 | — RSIP Summary Plan Description. | (2) |
| 4.10 | — Rights Agreement, dated as of June 21, 1996, between the Company and First Chicago Trust Company of New York, as Rights Agent. | (5) |
| 10.1 | — Amended 1994 Stock Incentive Plan. | (1) |
| 10.2 | — Non-Employee Director Stock Option Plan. | (1) |
| 10.3 | — 1999 Stock Incentive Plan | (11) |
| 10.4 | — Asset Purchase Agreement dated as of October 26, 1998 between Beazer Homes Corp. and Trafalgar House Property, Inc. | (8) |
| 10.5-8 | Amended and Restated Employment Agreements dated as of March 31, 1995: | |
| 10.5 | — Ian J. McCarthy. | (6) |
| 10.6 | — David S. Weiss. | (6) |
| 10.7 | — John Skelton. | (6) |
| 10.8 | — Peter H. Simons. | (6) |
| 10.9-12 | Supplemental Employment Agreements dated as of July 17, 1996: | |
| 10.9 | — Ian J. McCarthy. | (7) |
| 10.10 | — David S. Weiss. | (7) |
| 10.11 | — John Skelton. | (7) |
| 10.12 | — Peter H. Simons. | (7) |
| 10.13 | — Employment Agreement dated as of January 13, 1998 — Michael H. | (9) |

| | | |
|-------|--|----------------|
| | Furlow | |
| 10.14 | — Employment Agreement effective as of November 7, 2000 for C. Lowell Ball | (11) |
| 10.15 | — Change of Control Agreements effective as of November 7, 2000 for C. Lowell Ball | (11) |
| 10.16 | — Credit Agreement dated as of September 21, 2001 between the Company and Bank One, NA, as Agent, and Comerica Bank, Guaranty Federal Bank, F.S.B., SunTrust Bank and Wachovia Bank, N.A., as Documentation Agents and AmSouth Bank and PNC Bank, NA, as Co-Agents | Filed herewith |
| 10.17 | — Term Loan | (12) |
| 10.18 | — Purchase Agreement for Sanford Homes of Colorado LLLP | (13) |

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| | | |
|----|---|----------------|
| 13 | — Annual Report to Shareholders for the year ended September 30, 2001 | Filed herewith |
| 21 | — Subsidiaries of the Company | Filed herewith |
| 23 | — Consent of Deloitte & Touche LLP | Filed herewith |

- (1) Incorporated herein by reference to the exhibits to the Company's report on Form 10-K for the year ended September 30, 1994.
- (2) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-8 (Registration No. 33-91904) filed on May 4, 1995.
- (3) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-1 (Registration No. 33-72576) initially filed on December 6, 1993.
- (4) Incorporated herein by reference to the exhibits to the Company's report on Form 8-K filed on May 30, 1996.
- (5) Incorporated herein by reference to the exhibits to the Company's report on Form 8-K filed on June 21, 1996
- (6) Incorporated herein by reference to the exhibits to the Company's report on Form 10-Q for the quarterly period ended March 31, 1995.
- (7) Incorporated herein by reference to the exhibits to the Company's report on Form 10-K for the year ended September 30, 1996.
- (8) Incorporated herein by reference to the exhibits to the Company's report on Form 8-K/A filed on December 18, 1998.
- (9) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-4 (Registration No. 333-51087) filed on April 27, 1998.
- (10) Incorporated herein by reference to the exhibits to the Company's report on Form 10-K for the year ended September 30, 1998.
- (11) Incorporated herein by reference to the exhibits to the Company's 10-Q for the quarterly period ended December 31, 2000
- (12) Incorporated herein by reference to the exhibits to the Company's report on Form 8-K filed on December 22, 2000.
- (13) Incorporated herein by reference to the exhibits to the Company's report on Form 8-K filed on August 10, 2001.

(b) Reports on Form 8-K

We filed a report on Form 8-K on August 10, 2001 announcing the completion of our acquisition of Sanford Homes of Colorado.

(c) Exhibits

Reference is made to Item 14(a)3 above. The following is a list of exhibits, included in item 14(a)3 above, that are filed concurrently with this report.

| | |
|-----|---|
| 4.4 | — Indenture dated as of May 21, 2001 among the Company and U.S. Bank Trust National Association, as trustee, related to the Company's 8 5/8% Senior Notes due 2011 |
| 4.5 | — Supplemental Indenture (8 5/8% Notes) dated as of May 21, 2001 among the Company, its subsidiaries party thereto and U.S. Bank Trust National Association, as trustee |
| 4.6 | — Form of 8 5/8 % Senior Notes due 2011 |

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| | |
|-------|---|
| 10.16 | — Credit Agreement dated as of September 21, 2001 between the Company and Bank One, NA, as Agent, and Comerica Bank, Guaranty Federal Bank, F.S.B., SunTrust Bank and Wachovia Bank, N.A., as Documentation Agents and AmSouth Bank and PNC Bank, NA, as Co-Agents |
| 13 | — The Company's Annual Report to Shareholders for the fiscal year ended September 30, 2001. Except as expressly incorporated by reference in this report on Form 10-K, such Annual Report is furnished only for the information of the Securities and Exchange Commission and is not deemed "filed" as part of this report. The following portions of such Annual Report are incorporated by reference in the indicated items of this report. |

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| 23 | — | | | Consent of Deloitte & Touche LLP | |

(d) Financial Statement Schedules

Reference is made to Item 14(a)2 above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

BEAZER HOMES USA, INC.

By: /s/ IAN J. MCCARTHY

Name: Ian J. McCarthy
Title: *President and Chief Executive Officer*
Date: December 21, 2001

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

| | | | |
|--------------------------|-----|--|--|
| <u>December 21, 2001</u> | By: | <u> /s/ BRIAN C. BEAZER </u> | |
| Date | | | Brian C. Beazer, Director and Non-Executive Chairman of the Board |
| <u>December 21, 2001</u> | By: | <u> /s/ IAN J. MCCARTHY </u> | |
| Date | | | Ian J. McCarthy, Director, President and Chief Executive Officer (Principal Executive Officer) |
| <u>December 21, 2001</u> | By: | <u> /s/ DAVID S. WEISS </u> | |
| Date | | | David S. Weiss, Director, Executive Vice President and Chief Financial Officer (Principal Financial Officer) |
| <u>December 21, 2001</u> | By: | <u> /s/ THOMAS B. HOWARD </u> | |
| Date | | | Thomas B. Howard, Director |
| <u>December 21, 2001</u> | By: | <u> /s/ GEORGE W. MEFFERD </u> | |
| Date | | | George W. Mefferd, Director |
| <u>December 21, 2001</u> | By: | <u> /s/ D.E. MUNDELL </u> | |
| Date | | | D.E. Mundell, Director |
| <u>December 21, 2001</u> | By: | <u> /s/ LARRY T. SOLARI </u> | |
| Date | | | Larry T. Solari, Director |
| <u>December 21, 2001</u> | By: | <u> /s/ MICHAEL T. RAND </u> | |
| Date | | | Michael T. Rand, Vice President and Controller (Principal Accounting Officer) |

QuickLinks

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BEAZER HOMES USA, INC.
TO
U.S. BANK TRUST NATIONAL ASSOCIATION

Indenture Trustee

Indenture

Dated as of May 21, 2001

Debt Securities

BEAZER HOMES USA, INC.

Reconciliation and tie between Trust Indenture Act of 1939 and Indenture,
dated as of May 21, 2001.

| Trust Indenture Act Section | | Indenture Section |
|-----------------------------|---------------------|----------------------|
| Section 310 | (a)(1) | 6.07 |
| | (a)(2) | 6.07 |
| | (b) | 6.07, 6.08 |
| Section 312 | (c) | 7.01 |
| Section 313 | (a) | 7.02 |
| | (c) | 7.02 |
| Section 314 | (a) | 7.03 |
| | (a)(4) | 10.09 |
| | (c)(1) | 1.02 |
| | (c)(2) | 1.02 |
| | (e) | 1.02 |
| Section 315 | (b) | 6.01 |
| Section 316 | (a) (last sentence) | 1.01 ("Outstanding") |
| | (a)(1)(A) | 5.02, 5.12 |
| | (a)(1)(B) | 5.13 |
| | (b) | 5.08 |
| Section 317 | (a)(1) | 5.03 |
| | (a)(2) | 5.04 |
| Section 318 | (a) | 1.11 |
| | (c) | 1.11 |

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

Attention should also be directed to Section 318(c) of the Trust Indenture Act, which provides that the provisions of Sections 310 to and including 317 of the Trust Indenture Act are a part of and govern every qualified indenture, whether or not physically contained therein.

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INDENTURE, dated as of May 21, 2001, between BEAZER HOMES USA, INC., a corporation organized under the laws of the State of Delaware (hereinafter called the "Company"), having its principal office at 5775 Peachtree Dunwoody Road, Suite B-200, Atlanta, GA 30342, and U.S. BANK NATIONAL TRUST ASSOCIATION, a national banking association with trust powers as Indenture Trustee hereunder (hereinafter called the "Indenture Trustee"), having its Corporate Trust Office at St. Paul, Minnesota.

RECITALS OF THE COMPANY

The Company deems it necessary to issue from time to time for its lawful purposes debt securities (hereinafter called the "Securities") evidencing its indebtedness, and has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of the Securities, to be issued in one or more Series as provided in this Indenture.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, that are deemed to be incorporated into this Indenture and shall, to the extent applicable, be governed by such provisions.

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

- (1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the TIA (as defined), either directly or by reference therein, have the meanings assigned to them therein, and the terms "cash transaction" and "self-liquidating paper," as used in TIA Section 311, shall have the meanings assigned to them in the rules of the Commission adopted under the TIA;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and
- (4) the words "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.

"Act," when used with respect to any Holder, has the meaning specified in Section 1.04.

"Additional Amounts" means any additional amounts which are required by a Security or by or pursuant to a Board Resolution, under circumstances specified therein, to be paid by the Company in respect of certain taxes imposed on certain Holders and which are owing to such Holders.

"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.

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

"*Authorized Newspaper*" means a newspaper, printed in the English language or in an official language of the country of publication, customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Whenever successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different Authorized Newspapers in the same city meeting the foregoing requirements and in each case on any Business Day.

"*Bankruptcy Law*" has the meaning specified in Section 5.01.

"*Bearer Security*" means any Security established pursuant to Section 2.01 which is payable to bearer.

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

"*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, and delivered to the Indenture Trustee.

"*Business Day*," when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, means, unless otherwise specified with respect to any Securities pursuant to Section 3.01, any day, other than a Saturday or Sunday, that is not a day on which banking institutions in that Place of Payment or particular location are authorized or required by law, regulation or executive order to close.

"*CEDEL*" means Centrale de Livraison de Valeurs Mobilieres, S.A., or its successor.

"*Commission*" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or, if at any time after execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties on such date.

"*Common Shares*" means, with respect to any Person, all shares of capital stock or beneficial interest, as applicable, issued by such Person other than Preferred Stock or Preferred Shares, as applicable, or Excess Stock or Excess Shares, as applicable.

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

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

"*Conversion Event*" means the cessation of use of (i) a Foreign Currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, (ii) the ECU both within the European Monetary System and for the settlement of transactions by public institutions of or within the European Communities or (iii) any currency unit (or composite currency) other than the ECU for the purposes for which it was established.

"*Corporate Trust Office*" means the office of the Indenture Trustee at which, by any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at 180 East Fifth Street, St. Paul, MN 55105.

"*Corporation*" includes corporations, associations, companies, business trusts and real estate investment trusts.

"*Coupon*" means any interest coupon appertaining to a Bearer Security.

"*Custodian*" has the meaning specified in Section 5.01.

"*Defaulted Interest*" has the meaning specified in Section 3.07.

"*Dollar*" or "*\$*" means a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

"*ECU*" means the European Currency Unit as defined and revised from time to time by the Council of the European Communities.

"*Euroclear*" means Morgan Guaranty Trust Company of New York, Brussels office, or its successor as operator of the Euroclear System.

"*European Communities*" means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community.

"*European Monetary System*" means the European Monetary System established by the Resolution of December 5, 1978 of the Council of the European Communities.

"*Event of Default*" has the meaning specified in Section 5.01.

"*Foreign Currency*" means any currency, currency unit or composite currency, including, without limitation, the ECU issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

"*GAAP*" means generally accepted accounting principles, as in effect from time to time, as used in the United States applied on a consistent basis.

"*Global Security*" means a Security evidencing all or a part of a series of Securities issued to and registered in the name of the depository for such series, or its nominee, in accordance with Section 3.05, and bearing the legend prescribed in Section 2.03.

"Government Obligations" means securities which are (i) direct obligations of the United States of America or the government which issued the Foreign Currency in which the Securities of a particular series are payable, for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such government which issued the Foreign Currency in which the Securities of such series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, *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 depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

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"Holder" means, in the case of a Registered Security, the Person in whose name a Security is registered in the Security Register and, in the case of a Bearer Security, the bearer thereof and, when used with respect to any coupon, shall mean the bearer thereof.

"Indenture" means this instrument as originally executed or as it may be supplemented or amended from time to time by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, and shall include the terms of particular series of Securities established as contemplated by Section 3.01; *provided, however*, that, if at any time more than one Person is acting as Indenture Trustee under this instrument, "Indenture" shall mean, with respect to any one or more series of Securities for which such Person is Indenture Trustee, this instrument as originally executed or as it may be supplemented or amended from time to time by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of the or those particular series of Securities for which such Person is Indenture Trustee established as contemplated by Section 3.01, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is Indenture Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provision or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such Person had become such Indenture Trustee but to which such Person, as such Indenture Trustee, was not a party.

"Indexed Security" means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

"Interest," when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, shall mean interest payable after Maturity, and, when used with respect to a Security which provides for the payment of Additional Amounts pursuant to Section 10.10, includes such Additional Amounts.

"Interest Payment Date," when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

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

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

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company or who may be an employee of or other counsel for the Company and who shall be reasonably satisfactory to the Indenture Trustee.

"Original Issue Discount Security" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.02.

"Outstanding," when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, EXCEPT:

- (i) Securities theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation;
- (ii) Securities, or portions thereof, for whose payment or redemption (including repayment at the option of the Holder) money in the necessary amount has been theretofore deposited with the

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Indenture Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities and any coupons appertaining thereto; *provided, however*, 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 Indenture Trustee has been made;

(iii) Securities, except to the extent provided in Sections 14.02 and 14.03, with respect to which the Company has effected defeasance and/or covenant defeasance as provided in Article XIV;

(iv) Securities which have been paid pursuant to Section 3.06 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Indenture Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company; and

(v) Securities converted into Common Shares or Preferred Shares pursuant to or in accordance with this Indenture if the terms of such Securities provide for convertibility pursuant to Section 3.01;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders for quorum purposes, and for the purpose of making the

calculations required by TIA Section 3.03, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination or calculation and that shall be deemed to be Outstanding for such purpose shall be equal to the amount of principal thereof that would be (or shall have been declared to be) due and payable, at the time of such determination, upon a declaration of acceleration of the maturity thereof pursuant to Section 5.02, (ii) the principal amount of any Security denominated in a Foreign Currency that may be counted in making such determination or calculation and that shall be deemed Outstanding for such purpose shall be equal to the Dollar equivalent, determined pursuant to Section 3.01 as of the date such Security is originally issued by the Company, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent as of such date of original issuance of the amount determined as provided in clause (i) above) of such Security, (iii) the principal amount of any Indexed Security that may be counted in making such determination or calculation and that shall be deemed outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided with respect to such Security pursuant to Section 3.01, and (iv) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Indenture Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Indenture Trustee knows to be owned shall be so disregarded. Securities owned as provided in clause (iv) above which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the reasonable satisfaction of the Indenture 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 of such other obligor. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Indenture Trustee in accordance with such advice.

"*Paying Agent*" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities or coupons on behalf of the Company.

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"*Person*" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity.

"*Place of Payment*," when used with respect to the Securities of or within any series, means the place or places where the principal of (and premium, if any) and interest on such Securities are payable as specified as contemplated by Sections 3.01 and 10.02.

"*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; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security or a Security to which a mutilated, destroyed, lost or stolen coupon appertains shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security or the Security to which the mutilated, destroyed, lost or stolen coupon appertains.

"*Preferred Shares*" means, with respect to any Person, all shares of beneficial interest or capital stock, as applicable, issued by such Person that is entitled to a preference or priority over any other shares of beneficial interest or capital stock, as applicable, issued by such Person with respect to any distribution of such Person's assets, whether by dividend or upon any voluntary or involuntary liquidation, dissolution or winding up.

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

"*Redemption Price*," when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"*Registered Security*" shall mean any Security which is registered in the Security Register.

"*Regular Record Date*" for the interest payable on any Interest Payment Date on the registered Securities of or within any series means the date specified for that purpose as contemplated by Section 3.01, whether or not a Business Day.

"*Repayment Date*" means, when used with respect to any Security to be repaid at the option of the Holder, the date fixed for such repayment by or pursuant to this Indenture.

"*Repayment Price*" means, when used with respect to any Security to be repaid at the option of the Holder, the price at which it is to be repaid by or pursuant to this Indenture.

"*Responsible Officer*," when used with respect to the Indenture Trustee, means the chairman or vice-chairman of the board of directors, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice president (whether or not designated by a number or a word or words added before or after the title "vice president"), assistant cashier, any trust officer or assistant trust officer, the controller or any other officer of the Indenture Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"*Security*" has the meaning stated in the first recital of this Indenture and, more particularly, means any Security or Securities authenticated and delivered under this Indenture; *provided, however*, that, if at any time there is more than one Person acting as Indenture Trustee under this Indenture, "Securities" with respect to the Indenture as to which such Person is Indenture Trustee shall have the meaning stated in the first recital of this Indenture and shall more particularly mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Indenture Trustee.

"*Security Register*" and "*Security Registrar*" have the respective meanings specified in Section 3.05.

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"*Significant Subsidiary*" means any Subsidiary which is a "significant subsidiary" (as defined in Article I, Rule 1-02 of Regulation S-X, promulgated under the Securities Act of 1933) of the Company.

"*Special Record Date*" for the payment of any Defaulted Interest on the Registered Securities of or within any Series means a date fixed by the Company pursuant to Section 3.07.

"*Stated Maturity*" when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security or a coupon representing such installment of interest as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"*Subsidiary*" means a corporation a majority of the outstanding voting equity securities of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries of the Company. For the purposes of this definition, "equity securities" means stock or shares having voting power for the election of directors or trustees, as applicable, whether at all times or only so long as no senior class of stock or shares has such voting power by reason of any contingency.

"*Trust Indenture Act*" or "*TIA*" means the Trust Indenture Act of 1939, as amended and as in force at the date as of which this Indenture was executed, except as provided in Section 9.05.

"*Indenture Trustee*" means the Person named as the "Indenture Trustee" in the first paragraph of this Indenture until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Indenture Trustee" shall mean or include each Person who is then an Indenture Trustee hereunder; *provided, however*, that if at any time there is more than one such Person, "Indenture Trustee" as used with respect to the Securities of any series shall mean only the Indenture Trustee with respect to Securities of that series.

"*United States*" means, unless otherwise specified with respect to any Securities pursuant to Section 3.01, the United States of America (including the states and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

"*United States Person*" means, unless otherwise specified with respect to any Securities pursuant to Section 3.01, an individual who is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or an estate or trust the income of which is subject to United States Federal income taxation regardless of its source.

"*Yield to Maturity*" means the yield to maturity, computed at the time of issuance of a Security (or, if applicable, at the most recent redetermination of interest on such Security) and as set forth in such Security in accordance with generally accepted United States bond yield computation principles.

SECTION 1.02 *Compliance Certificates and Opinions*. Upon any application or request by the Company to the Indenture Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Indenture Trustee an Officers' Certificate stating that all conditions 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, if any, have been complied with, except that in the case of any such 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.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (including certificates delivered pursuant to Section 10.09) shall include:

- (1) a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

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

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

SECTION 1.03 *Form of Documents Delivered to Indenture Trustee*. 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.

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

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.

SECTION 1.04 *Acts of Holders*. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of the Outstanding Securities of all series or one or more series, as the case may be, may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing. If Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article XV, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Indenture Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Indenture Trustee and the Company and any agent of the Indenture Trustee or the Company, if made in the manner provided in this Section 1.04. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 15.06.

(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 a certificate of a notary public or other officer authorized by law to take acknowledgements of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute

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sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other reasonable manner which the Indenture Trustee deems sufficient.

(c) The ownership of Registered Securities shall be proved by the Security Register. As to any matter relating to beneficial ownership interests in any Global Security, the appropriate depository's records shall be dispositive for purposes of this Indenture.

(d) The ownership of Bearer Securities may be proved by the production of such Bearer Securities or by a certificate executed, as depository, by any trust company, bank, banker or other depository, wherever situated, if such certificate shall be deemed by the Indenture Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depository, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Indenture Trustee to be satisfactory. The Indenture Trustee and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Indenture Trustee by some other Person, or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding. The ownership of Bearer Securities may also be proved in any other manner which the Indenture Trustee deems sufficient.

(e) If the Company shall solicit from the Holders of Registered Securities any request, demand, authorization, direction, notice, consent or waiver or other Act, the Company may, at its option, in or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. Notwithstanding TIA Section 316(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date 15 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent or waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

(f) Any request, demand, authorization, direction, notice, consent, waiver or other Act of 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, omitted or suffered to be done by the Indenture Trustee, any Security Registrar, any Paying Agent, any Authenticating Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

SECTION 1.05 *Notices, Etc., to Indenture Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

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

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(2) the Company by the Indenture Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this Indenture or at any other address previously furnished in writing to the Indenture Trustee by the Company, Attention: President (with a copy to the Company's counsel), or

(3) either the Indenture Trustee or the Company, by the other party, shall be sufficient for every purpose hereunder if given by facsimile transmission, receipt confirmed by telephone followed by an original copy delivered by guaranteed overnight courier; if to the Indenture Trustee at (651) 244-0711; and if to the Company at facsimile number (404) 250-3428.

SECTION 1.06 *Notice to Holders; Waivers.* When this Indenture provides for notice of any event to Holders of Registered Securities by the Company or the Indenture Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each such Holder affected by such event, at his address as it appears in the Security 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. In any case where notice to Holders of Registered Securities 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 of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice mailed to a Holder in the manner herein prescribed shall be conclusively deemed to have been received by such Holder, whether or not such Holder actually receives such notice.

If by reason of the suspension of or irregularities in regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Registered Securities as shall be made with the approval of the Indenture Trustee shall constitute a sufficient notification to such Holders for every purpose hereunder.

Except as otherwise expressly provided herein or otherwise specified with respect to any Securities pursuant to Section 3.01, where this Indenture provides for notice to Holders of Bearer Securities of any event, such notice shall be sufficiently given if published in an Authorized Newspaper in The City of New York and in such other city or cities as may be specified in such Securities on a Business Day, such publication to be not later than the latest date, if any, and not earlier than the earliest date, if any, prescribed for the giving of such notice. Any such notice shall be deemed to have been given on the date of such publication or, if published more than once, on the date of the first such publication.

If by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Indenture Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither the failure to give notice by publication to any particular Holder of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of such notice with respect to other Holders of Bearer Securities or the sufficiency of any notice to Holders of Registered Securities given as provided herein.

Any request, demand, authorization, direction, notice, consent or waiver required or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication.

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 Indenture Trustee, but

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such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.07 *Counterparts; Effect of Headings and Table of Contents.* 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 Indenture. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction thereof.

SECTION 1.08 *Successors and Assigns.* All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 1.09 *Severability Clause.* In case any provision in this Indenture or in any Security or coupon 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.

SECTION 1.10 *Benefits of Indenture.* Nothing in this Indenture or in the Securities or coupons, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent, any Authenticating Agent and their successors hereunder and the Holders any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11 *Governing Law.* This Indenture and the Securities and coupons shall be governed by and construed in accordance with the internal law of the State of New York without regard to the principles of the conflict of laws thereof. This Indenture is subject to the provisions of the TIA that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions.

SECTION 1.12 *Legal Holidays.* In any case where any Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity of any Security or the last date on which a Holder has the right to convert or exchange a Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or any Security or coupon other than a provision in the Securities of any series which specifically states that such provision shall apply in lieu hereof), payment of interest or any Additional Amounts or principal (and premium, if any) or conversion or exchange of such security need not be made at such Place of Payment on such date, but (except as otherwise provided in the supplemental indenture with respect to such Security) may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repayment Date or sinking fund payment date, or at the Stated Maturity or Maturity, or on such last day for conversion or exchange, provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity, as the case may be.

SECTION 1.13 *Immunity of Shareholders, Trustees, Officers and Agents of the Company.* No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any past, present or future shareholder, employee, officer or trustee, as such, of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders and as part of the consideration for the issue of the Securities.

SECTION 1.14 *Conflict With Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with another provision hereof which is required or deemed to be included in this Indenture by any of the provisions of the Trust Indenture Act, such required provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so

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modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

ARTICLE II

SECURITIES FORMS

SECTION 2.01 *Forms of Securities.* The Registered Securities, if any, of each series and the Bearer Securities, if any, of each series and related coupons shall be substantially in the form of Exhibit A hereto or in such other form as shall be established in one or more indentures supplemental hereto or approved from time to time by or pursuant to a Board Resolution in accordance with Section 3.01, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage.

Unless otherwise specified as contemplated by Section 3.01, Bearer Securities shall have interest coupons attached.

The definitive Securities and coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or mechanically reproduced on safety paper or may be produced in any other manner, all as determined by the officers executing such

Securities or coupons, as evidenced by their execution of such Securities or coupons.

SECTION 2.02 *Form of Indenture Trustee's Certificate of Authentication*. Subject to Section 6.11, the Indenture Trustee's certificate of authentication shall be in substantially the following form:

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

U.S. BANK TRUST NATIONAL ASSOCIATION
as Indenture Trustee

By

Authorized Signatory

SECTION 2.03 *Securities Issuable in Global Form*. If Securities of or within a series are issuable in the form of one or more Global Securities, then, notwithstanding clause (8) of Section 3.01 and the provisions of Section 3.02, any such Global Security or Securities may provide that it or they shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Series of such series represented thereby may from time to time be increased or decreased to reflect exchanges. Any endorsement of any Global Security to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders thereof, of Outstanding Securities represented thereby shall be made by the Indenture Trustee in such manner or by such Person or Persons as shall be specified therein or in the Company Order to be delivered to the Indenture Trustee pursuant to Section 3.03 or 3.04. Subject to the provisions of Section 3.03 and, if applicable, Section 3.04, the Indenture Trustee shall deliver and redeliver any Global Security in

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permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order. If a Company Order pursuant to Section 3.03 or 3.04 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Global Security shall be in writing but need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 3.03 shall apply to any Security represented by a Global Security if such Security was never issued and sold by the Company and the Company delivers to the Indenture Trustee the Global Security together with written instructions (which need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 3.03.

Notwithstanding the provisions of Section 3.07, unless otherwise specified as contemplated by Section 3.01, payment of principal of and premium, if any, and interest on any Global Security in permanent global form shall be made to the registered Holder thereof.

Notwithstanding the provisions of Section 3.08 and except as provided in the next preceding paragraph, the Company, the Indenture Trustee and any agent of the Company and the Indenture Trustee shall treat as the Holder of such principal amount of Outstanding Securities represented by a permanent Global Security (i) in the case of a permanent Global Security in registered form, the Holder of such permanent Global Security in registered form, or (ii) in the case of a permanent Global Security in bearer form, Euroclear or CEDEL.

Any Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

"This Security is a Global Security within the meaning set forth in the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Security is exchangeable for Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or its nominee to a successor Depository or its nominee."

ARTICLE III

THE SECURITIES

SECTION 3.01 *Amount Unlimited; Issuable in Series*. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in one or more Board Resolutions or pursuant to authority granted by one or more Board Resolutions and, subject to Section 3.03, set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(1) the title of the Securities of the series (which shall distinguish the Securities of such series from all other series of Securities);

(2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Series authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Sections 3.04, 3.05, 3.06, 9.06, 11.07 or 13.05);

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(3) the date or dates, or the method by which such date or dates will be determined, on which the principal of the Securities of the series shall be payable;

(4) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue or the method by which such date or dates shall be determined, the Interest Payment Dates on which

such interest will be payable and the Regular Record Date, if any, for the interest payable on any Registered Security on any Interest Payment Date, or the method by which such date shall be determined, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(5) the place or places where the principal of (and premium, if any), interest, if any, on, and Additional Amounts, if any, payable in respect of Securities of the series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, exchange or conversion and notices or demands to or upon the Company in respect of the Securities of the series and this Indenture may be served;

(6) the period or periods within which, the price or prices at which, the currency or currencies, currency unit or units or composite currency or currencies in which, and other terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have the option;

(7) the obligation, if any, of the Company to redeem, repay or purchase Securities of the series pursuant to any sinking fund or analogous provision or at the option of a Holder thereof, and the period or periods within which or the date or dates on which, the price or prices at which, the currency or currencies, currency unit or units or composite currency or currencies in which, and other terms and conditions upon which Securities of the series shall be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;

(8) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which any Securities of the series shall be issuable;

(9) if other than the Indenture Trustee, the identity of each Security Registrar and/or Paying Agent;

(10) if other than the principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.02 or, if applicable, the portion of the principal amount of Securities of the series that is convertible in accordance with the provisions of this Indenture, or the method by which such portion shall be determined;

(11) if other than Dollars, the Foreign Currency or Currencies in which payment of the principal of (and premium, if any) and interest or Additional Amounts, if any, on the Securities of the series shall be payable or in which the Securities of the series shall be denominated and the manner of determining the equivalent thereof in Dollars for purposes of the definition of "Outstanding" in Section 1.01;

(12) whether the amounts of payments of principal of (and premium, if any) or interest, if any, on the Securities of the series may be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on one or more currencies, currency units, composite currencies, commodities, equity indices or other indices), and the manner in which such amounts shall be determined;

(13) whether the principal of (and premium, if any) or interest or Additional Amounts, if any, on the Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a currency or currencies, currency unit or units, or composite currency or currencies

other than that in which such Securities are denominated or stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made, and time and manner of, and identity of the exchange rate agent with responsibility for, determining the exchange rate between the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are denominated or stated to be payable and the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are to be so payable;

(14) provisions, if any, granting special rights to the Holders of Securities of the series upon the occurrence of such events as may be specified;

(15) any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to Securities of the series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(16) whether Securities of the series are to be issuable as Registered Securities, Bearer Securities (with or without coupons) or both, any restrictions applicable to the offer, sale or delivery of Bearer Securities and the terms upon which Bearer Securities of the series may be exchanged for Registered Securities of the series and vice versa (if permitted by applicable laws and regulations), whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form with or without coupons and, if so, whether beneficial owners of interests in any such permanent global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 3.05, and, if Registered Securities of the series are to be issuable as a Global Security, the identity of the depository for such series;

(17) the date as of which any Bearer Securities of the series and any temporary Global Security representing Outstanding Securities of the series shall be dated if other than the date of original issuance of the first Security of the series to be issued;

(18) the Person to whom any interest on any Registered Security of the series shall be payable, if other than 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, the manner in which, or the Person to whom, any interest on any Bearer Security of the series shall be payable, if otherwise than upon presentation and surrender of the coupons appertaining thereto as they severally mature, and the extent to which, or the manner in which, any interest payable on a temporary Global Security on an Interest Payment Date will be paid if other than in the manner provided in Section 3.04;

(19) the applicability, if any, of Sections 14.02 and/or 14.03 to the Securities of the series and any provisions in modification of, in addition to or in lieu of any of the provisions of Article XIV;

(20) if the Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and/or terms of such certificates, documents or conditions;

(21) if the Securities of the series are to be issued upon the exercise of warrants, the time, manner and place for such Securities to be authenticated and delivered;

(22) whether and under what circumstances the Company will pay Additional Amount as contemplated by Section 10.10 on the Securities of the series to any Holder who is not a United States person (including any modification to the definition of such term) in respect of any tax, assessment or governmental charge and, if so, whether the Company will have the option to

redeem such Securities rather than pay such Additional Amounts (and the terms of any such option);

(23) the obligation, if any, of the Company to permit the conversion of the Securities of such series into the Company's Common Shares or Preferred Shares, as the case may be, and the terms and conditions upon which such conversion shall be effected (including, without limitation, the initial conversion price or rate, the conversion period, any adjustment of the applicable conversion price and any requirements relative to the reservation of such shares for purposes of conversion); and

(24) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and the coupons appertaining to any Bearer Securities of such series shall be substantially identical except, in the case of Registered Securities, as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution (subject to Section 3.03) and set forth in such Officers' Certificate or in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuance of additional Securities of such series.

If any of the terms of the Securities of any series are established by action taken pursuant to one or more Board Resolutions, a copy of an appropriate record of such action(s) shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Indenture Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the Securities of such series.

SECTION 3.02 *Denominations*. The Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 3.01. With respect to Securities of any series denominated in Dollars, in the absence of any such provisions with respect to the Securities of any series, the Securities of such series, other than Global Securities (which may be of any denomination), shall be issuable in denominations of \$1,000 and any integral multiple thereof.

SECTION 3.03 *Execution, Authentication, Delivery and Dating*. The Securities and any coupons appertaining thereto shall be executed on behalf of the Company by its Chairman of the Board, its President or one of its Vice Presidents, under its corporate seal reproduced thereon, and attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Securities and coupons may be manual or facsimile signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Securities.

Securities or coupons 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 or coupons.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series, together with any coupon appertaining thereto, executed by the Company to the Indenture Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Indenture Trustee in accordance with the Company Order shall authenticate and deliver such Securities; *provided, however*, that, in connection with its original issuance, no Bearer Security shall be mailed or otherwise delivered to any location in the United States; and *provided, further* that, unless otherwise specified with respect to any series of Securities pursuant to Section 3.01, a Bearer Security may be delivered in connection with its original issuance only if the Person entitled to receive such Bearer Security shall have furnished a certificate to Euroclear or CEDEL, as the case may be, in the form set forth in Exhibit B-1 to this Indenture or such other certificate as may be specified with respect to any series of Securities pursuant to

Section 3.01, dated no earlier than 15 days prior to the earlier of the date on which such Bearer Security is delivered and the date on which any temporary Security first becomes exchangeable for such Bearer Security in accordance with the terms of such temporary Security and this Indenture. If any Security shall be represented by a permanent global Bearer Security, then, for purposes of this Section and Section 3.04, the notation of a beneficial owner's interest therein upon original issuance of such Security or upon exchange of a portion of a temporary Global Security shall be deemed to be delivery in connection with its original issuance of such beneficial owner's interest in such permanent Global Security. Except as permitted by Section 3.06, the Indenture Trustee shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured have been detached and canceled.

If all the Securities of any series are not to be issued at one time and if the Board Resolution or supplemental indenture establishing such series shall so permit, such Company Order may set forth procedures acceptable to the Indenture Trustee for the issuance of such Securities and determining the terms of particular Securities of such series, such as interest rate or formula, maturity date, date of issuance and date from which interest shall accrue. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Indenture Trustee shall be entitled to receive, and (subject to TIA Section 315(a) through 315(d)) shall be fully protected in relying upon,

(i) an Opinion of Counsel stating that

(a) the form or forms of such Securities and any coupons have been established in conformity with the provisions of this Indenture;

(b) the terms of such Securities and any coupons have been established in conformity with the provisions of this Indenture; and

(c) such Securities, together with any coupons appertaining thereto, when completed by appropriate insertions and executed and delivered by the Company to the Indenture Trustee for authentication in accordance with this Indenture, authenticated and delivered by the Indenture Trustee in accordance with this Indenture and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights generally and to general equitable principles; and

(ii) an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the issuance of the Securities have been complied with and that, to the best of the knowledge of the signers of such certificate, that no Event of Default with respect to any of the Securities shall have occurred and be continuing.

If such form or terms have been so established, the Indenture Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Indenture Trustee's own rights, duties, obligations or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Indenture Trustee.

Notwithstanding the provisions of Section 3.01 and of the preceding paragraph, if all the Securities of any series are not to be issued at one time it shall not be necessary to deliver an Officers' Certificate otherwise required pursuant to Section 3.01 or a Company Order, or an Opinion of Counsel or an Officers' Certificate otherwise required pursuant to the next preceding paragraph at the time of issuance of each Security of such series, but such order, opinion and certificates, with appropriate modifications to cover such future issuances, shall be delivered at or before the time of issuance of the first Security of such series.

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Each Registered Security shall be dated the date of its authentication and each Bearer Security shall be dated as of the date specified as contemplated by Section 3.01.

No Security or coupon shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security or Security to which such coupon appertains a certificate of authentication substantially in the form provided for herein duly executed by the Indenture Trustee by manual signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefit of this Indenture. Notwithstanding the foregoing, if any Security (including a Global Security) shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Indenture Trustee for cancellation as provided in Section 3.09 together with a written statement (which need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, 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.

SECTION 3.04 Temporary Securities. Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Indenture Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form, or, if authorized, in bearer form with one or more coupon or without coupon, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Series may determine, as conclusively evidenced by their execution of such Securities. In the case of Securities of any series, such temporary Securities may be in global form.

Except in the case of temporary Global Securities (which shall be exchanged as otherwise provided herein or as otherwise provided in or pursuant to a Board Resolution), if temporary Securities or any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series (accompanied by any non-matured coupons appertaining thereto), the Company shall execute and the Indenture Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations; *provided however*, that no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security, and *provided, further* that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 3.03. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Unless otherwise provided in or pursuant to a Board Resolution, the following provisions of this Section 3.04 shall govern the exchange of temporary Securities other than through the facilities of The Depository Trust Company. If any such temporary Security is issued in global form, then such temporary Global Security shall, unless otherwise provided therein, be delivered to the London office of a depository or common depository (the "Common Depository"), for the benefit of Euroclear and CEDEL, for credit to the respective accounts of the beneficial owners of such Securities (or to such other accounts as they may direct).

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary Global Security (the "Exchange Date"), the Company shall deliver to the Indenture Trustee definitive Securities, in aggregate principal amount equal to the

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principal amount of such temporary Global Security, executed by the Company. On or after the Exchange Date, such temporary Global Security shall be surrendered by the Common Depository to the Indenture Trustee, as the Company's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Securities without charge, and the Indenture Trustee shall authenticate and deliver in exchange for each portion of such temporary Global Security, an equal aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary Global Security to be exchanged. The definitive Securities to be delivered in exchange for any such temporary Global Security shall be in bearer form, registered form, permanent global bearer form or permanent global registered form, or any combination thereof, as specified as contemplated by Section 3.01, and, if any combination thereof is so specified, as requested by the beneficial owner thereof; *provided, however*, that, unless otherwise specified in such temporary Global Security, upon such presentation by the Common Depository, such temporary Global Security is accompanied by a certificate dated the Exchange Date or a subsequent date and signed by Euroclear as to the portion of such temporary Global Security held for its account then to be exchanged and a certificate dated the Exchange Date or a subsequent date and signed by CEDEL as to the portion of such temporary Global Security held for its account then to be exchanged, each in the form set forth in Exhibit B-2 to this Indenture or in such other form as may be established pursuant to Section 3.01; and *provided further* that definitive Bearer Securities shall be delivered in exchange for a portion of a temporary Global Security only in compliance with the requirements of Section 3.03.

Unless otherwise specified in such temporary Global Security, the interest of a beneficial owner of Securities of a series in a temporary Global Security shall be exchanged for definitive Securities of the same series and of like tenor following the Exchange Date when the account holder instructs Euroclear or CEDEL, as the case may be, to request such exchange on his behalf and delivers to Euroclear or CEDEL, as the case may be, a certificate in the form set forth in Exhibit B-1 to this Indenture (or in such other form as may be established pursuant to Section 3.01), dated no earlier than 15 days prior to the Exchange Date, copies of which certificate shall be available from the offices of Euroclear and CEDEL, the Indenture Trustee, any Authenticating Agent appointed for such series of Securities

and each Paying Agent. Unless otherwise specified in such temporary Global Security, any such exchange shall be made free of charge to the beneficial owners of such Temporary Global Security, except that a Person receiving definitive Securities must bear the cost of insurance, postage, transportation and the like unless such Person takes delivery of such definitive Securities in person at the offices of Euroclear or CEDEL. Definitive Securities in bearer form to be delivered in exchange for any portion of a temporary Global Security shall be delivered only outside the United States.

Until exchanged in full as hereinabove provided, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series and of like tenor authenticated and delivered hereunder, except that, unless otherwise specified as contemplated by Section 3.01, interest payable on a temporary Global Security on an Interest Payment Date for Securities of such series occurring prior to the applicable Exchange Date shall be payable to Euroclear and CEDEL on such Interest Payment Date upon delivery by Euroclear and CEDEL to the Indenture Trustee of a certificate or certificates in the form set forth in Exhibit B-2 to this Indenture (or in such other forms as may be established pursuant to Section 3.01), for credit without further interest on or after such Interest Payment Date to the respective accounts of Persons who are the beneficial owners of such temporary Global Security on such Interest Payment Date and who have each delivered to Euroclear or CEDEL, as the case may be, a certificate dated no earlier than 15 days prior to the Interest Payment Date occurring prior to such Exchange Date in the form set forth as Exhibit B-1 to this Indenture (or in such other forms as may be established pursuant to Section 3.01). Notwithstanding anything to the contrary herein contained, the certifications made pursuant to this paragraph shall satisfy the certification requirements of the preceding two paragraphs of this Section 3.04 and of the third paragraph of Section 3.03 of this Indenture and the interests of the

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Persons who are the beneficial owners of the temporary Global Security with respect to which such certification was made will be exchanged for definitive Securities of the same series and of like tenor on the Exchange Date or the date of certification if such date occurs after the Exchange Date, without further act or deed by such beneficial owners. Except as otherwise provided in this paragraph, no payments of principal or interest owing with respect to a beneficial interest in a temporary Global Security will be made unless and until such interest in such temporary Global Security shall have been exchanged for an interest in a definitive Security. Any interest so received by Euroclear and CEDEL and not paid as herein provided shall be returned to the Indenture Trustee prior to the expiration of two years after such Interest Payment Date in order to be repaid to the Company.

SECTION 3.05 *Registration, Registration of Transfer and Exchange.* The Company shall cause to be kept at the Corporate Trust Office of the Indenture Trustee or in any office or agency of the Company in a Place of Payment a register for each series of Securities (the registers maintained in such office or in any such office or agency of the Company in a Place of Payment being herein sometimes referred to collectively as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Registered Securities and of transfers of Registered Securities. The Security Register shall be in written form or any other form capable of being converted into written form within a reasonable time. The Indenture Trustee, at its Corporate Trust Office, is hereby initially appointed "Security Registrar" for the purpose of registering Registered Securities and transfers of Registered Securities on such Security Register as herein provided. In the event that the Indenture Trustee shall cease to be Security Registrar, it shall have the right to examine the Security Register at all reasonable times.

Subject to the provisions of this Section 3.05, upon surrender for registration of transfer of any Registered Security of any series at any office or agency of the Company in a Place of Payment for that series, the Company shall execute, and the Indenture Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series, of any authorized denominations and of a like aggregate principal amount, bearing a number not contemporaneously outstanding, and containing identical terms and positions.

Subject to the provisions of this Section 3.05, at the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series, of any authorized denomination or denominations and of a like aggregate principal amount, containing identical terms and provisions, upon surrender of the Registered Securities to be exchanged at any such office or agency. Whenever any such Registered Securities are so surrendered for exchange, the Company shall execute, and the Indenture Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive. Unless otherwise specified with respect to any series of Securities as contemplated by Section 3.01, Bearer Securities may not be issued in exchange for Registered Securities.

If (but only if) permitted by the applicable Board Resolution and (subject to Section 3.03) set forth in the applicable Officers' Certificate, or in any indenture supplemental hereto, delivered as contemplated by Section 3.01, at the option of the Holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons and all matured coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, any such permitted exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Indenture Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing coupon in

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respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; *provided, however*, that, except as otherwise provided in Section 10.02, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in a permitted exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date or proposed date for payment, as the case may be, and interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Indenture Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 3.01, any permanent Global Security shall be exchangeable only as provided in this paragraph. If the depository for any permanent Global Security is The Depository Trust Company ("DTC"), then, unless the terms of such Global Security expressly permit such Global Security to be exchanged in whole or in part for definitive Securities, a Global Security may be transferred, in whole but not in part, only to a nominee of DTC, or by a nominee of DTC to DTC, or to a successor to DTC for such Global Security selected or approved by the Company

or to a nominee of such successor to DTC. If at any time DTC notifies the Company that it is unwilling or unable to continue as depository for the applicable Global Security or Securities or if at any time DTC ceases to be a clearing agency registered under the Securities Exchange Act of 1934 if so required by applicable law or regulation, the Company shall appoint a successor depository with respect to such Global Security or Securities. If (x) a successor depository for such Global Security or Securities is not appointed by the Company within 90 days after the Company received such notice or becomes aware of such unwillingness, inability or ineligibility, (y) an Event of Default has occurred and is continuing and the beneficial owners representing a majority in principal amount of the applicable series of Securities represented by such Global Security or Securities advise DTC to cease acting as depository for such Global Security or Securities or (z) the Company, in its sole discretion, determines at any time that all Outstanding Securities (but not less than all) of any series issued or issuable in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities, then the Company shall execute, and the Indenture Trustee shall authenticate and deliver definitive Securities of like series, rank, tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such beneficial owner's interest in such permanent Global Security. On or after the earliest date on which such interests may be so exchanged, such permanent Global Security shall be surrendered for exchange by DTC or such other depository as shall be specified in the Company Order with respect thereto to the Indenture Trustee, as the Company's agent for such purpose; *provided, however*, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities to be redeemed and ending on the relevant Redemption Date if the Security for which exchange is requested may be among those selected for redemption; and *provided further* that no Bearer Security delivered in exchange for a portion of a permanent Global Security shall be mailed or otherwise delivered to any location in the United States. If a Registered Security is issued in exchange for any portion of a permanent Global Security after the close of business at the office or agency where such exchange occurs on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and the opening of business at

such office or agency on the related proposed date for payment of Defaulted Interest, interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such permanent Global Security is payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of 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 registration of transfer or exchange.

Every Registered Security presented or surrendered for registration of transfer or for exchange or redemption shall (if so required by the Company or the Security Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of 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 registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.04, 9.06, 11.07 or 13.05 not involving any transfer.

The Company or the Indenture Trustee, as applicable, shall not be required (i) to issue, register the transfer of or exchange any Security if such Security may be among those selected for redemption during a period beginning at the opening of business 15 days before selection of the Securities to be redeemed under Section 11.03 and ending at the close of business on (A) if such Securities are issuable only as Registered Securities, the day of the mailing of the relevant notice of redemption and (B) if such Securities are issuable as Bearer Securities, the day of the first publication of the relevant notice of redemption or, if such Securities are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption in whole or in part, except, in the case of any Registered Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except that such a Bearer Security may be exchanged for a Registered Security of that series and like tenor, *provided* that such Registered Security shall be simultaneously surrendered for redemption, or (iv) to issue, register the transfer of or exchange any Security which has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

SECTION 3.06 Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security or a Security with a mutilated coupon appertaining to it is surrendered to the Indenture Trustee or the Company, together with, in proper cases, such security or indemnity as may be required by the Company or the Indenture Trustee to save each of them or any agent of either of them harmless, the Company shall execute and the Indenture Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to the surrendered Security.

If there shall be delivered to the Company and the Indenture Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Indenture Trustee that such Security or coupon has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Indenture Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen), a new Security of the same series and principal

amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains.

Notwithstanding the provisions of the previous two paragraphs, in case any such mutilated, destroyed, lost or stolen Security or coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains, pay such Security or coupon; *provided, however*, that payment of principal of (and premium, if any), any interest on and any Additional Amounts with respect to, Bearer Securities shall, except as otherwise provided in Section 10.02, be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 3.01, any interest on Bearer Securities shall be payable only upon presentation and surrender of the coupons appertaining thereto.

Upon the issuance of any new Security under this Section, 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 Indenture Trustee) connected therewith.

Every new Security of any series with its coupons, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen coupon appertains, shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security and its coupons, if any, or the destroyed, lost or stolen coupon 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 of that series and their coupons, if any, duly issued hereunder.

The provisions of this Section 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 or coupons.

SECTION 3.07 *Payment of Interest; Interest Rights Preserved.* Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 3.01, interest on any Registered 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 at the office or agency of the Company maintained for such purpose pursuant to Section 10.02; *provided, however*, that each installment of interest on any Registered Security may at the Company's option be paid by (i) mailing a check for such interest, payable to or upon the written order of the Person entitled thereto pursuant to Section 3.08, to the address of such Person as it appears on the Security Register or (ii) transfer to an account maintained by the payee located inside the United States.

Unless otherwise provided as contemplated by Section 3.01 with respect to the Securities of any series, payment of interest may be made, in the case of a Bearer Security, by transfer to an account maintained by the payee with a bank located outside the United States.

Unless otherwise provided as contemplated by Section 3.01, every permanent global Security will provide that interest, if any, payable on any Interest Payment Date will be paid by DTC, Euroclear and/or CEDEL, as the case may be, with respect to that portion of such permanent global Security held for its account by Cede & Co. or the Common Depository, as the case may be, for the purpose of permitting such party to credit the interest received by it in respect of such permanent global Security to the accounts of the beneficial owners thereof.

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In case a Bearer Security of any series is surrendered in exchange for a Registered Security of such series after the close of business (at an office or agency in a Place of Payment for such series) on any Regular Record Date and before the opening of business (at such office or agency) on the next succeeding Interest Payment Date, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date and interest will not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 3.01, any interest on any Registered Security of any series that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder thereof 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 clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Indenture Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Registered Security of such series and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Indenture Trustee), and at the same time the Company shall deposit with the Indenture Trustee an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.01 for the Securities of such series) equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Indenture Trustee for such deposit on or 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 as in this clause provided. Thereupon the Indenture Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Indenture Trustee of the notice of the proposed payment. The Indenture 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 Registered Securities of such series at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Indenture Trustee may, in its discretion, in the name and at the expense of the Company, cause a similar notice to be published at least once in an Authorized Newspaper in each Place of Payment, but such publications shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2). In case a Bearer Security of any series is surrendered at the office or agency in a Place of Payment for such series in exchange for a Registered Security of such series after the close of business at such office or agency on any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such proposed date of payment and Defaulted Interest will not be payable on such proposed date of payment in respect of the Registered Security issued in exchange

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for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

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

Subject to the foregoing provisions of this Section and Section 3.05, each Security delivered under this Indenture upon registration of 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, which were carried by such other Security.

SECTION 3.08 *Persons Deemed Owners*. Prior to due presentment of a Registered Security for registration of transfer, the Company, the Indenture Trustee and any agent of the Company or the Indenture Trustee may treat the Person in whose name such Registered Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Sections 3.05 and 3.07) interest on, such Registered Security and for all other purposes whatsoever, whether or not such Registered Security be overdue, and neither the Company, the Indenture Trustee nor any agent of the Company or the Indenture Trustee shall be affected by notice to the contrary. All such payments so made to any such Person, or upon such Person's order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for money payable upon any such Security.

Title to any Bearer Security and any coupons appertaining thereto shall pass by delivery. The Company, the Indenture Trustee and any agent of the Company or the Indenture Trustee may treat the Holder of any Bearer Security and the Holder of any coupon as the absolute owner of such Security or coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or coupon be overdue, and neither the Company, the Indenture Trustee nor any agent of the Company or the Indenture Trustee shall be affected by notice to the contrary.

Title to any Bearer Security and any coupons appertaining thereto shall pass by delivery. The Company, the Indenture Trustee and any agent of the Company or the Indenture Trustee may treat the Holder of any Bearer Security and the Holder of any coupon as the absolute owner of such Security or coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or coupon be overdue, and neither the Company, the Indenture Trustee, nor any agent of the Company or the Indenture Trustee shall be affected by notice to the contrary.

No Holder of any beneficial interest in any Global Security held on its behalf by a depository shall have any rights under this Indenture with respect to such Global Security and such depository shall be treated by the Company, the Indenture Trustee, and any agent of the Company or the Indenture Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Indenture Trustee, any Paying Agent or the Security Registrar 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 for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Indenture Trustee, or any agent of the Company or the Indenture Trustee, from giving effect to any written certification, proxy or other authorization furnished by any depository, as a

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Holder, with respect to such Global Security or impair, as between such depository and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such depository (or its nominee) as Holder of such Global Security.

SECTION 3.09 *Cancellation*. All Securities and coupons surrendered for payment, redemption, repayment at the option of the Holder, registration of transfer or exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Indenture Trustee, be delivered to the Indenture Trustee, and any such Securities and coupons surrendered directly to the Indenture Trustee for any such purpose shall be promptly cancelled by it. The Company may at any time deliver to the Indenture Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Indenture Trustee (or to any other Person for delivery to the Indenture Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Indenture Trustee. If the Company shall so acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are surrendered to the Indenture Trustee for cancellation. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. Cancelled Securities and coupons held by the Indenture Trustee shall be destroyed by the Indenture Trustee and the Indenture Trustee shall deliver a certificate of such destruction to the Company, unless the Indenture Trustee is otherwise directed by a Company Order.

SECTION 3.10 *Computation of Interest*. Except as otherwise specified as contemplated by Section 3.01 with respect to Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

ARTICLE IV

SATISFACTION AND DISCHARGE

SECTION 4.01 *Satisfaction and Discharge of Indenture*. This Indenture shall upon Company Request cease to be of further effect with respect to any series of Securities specified in such Company Request (except as to any surviving rights of registration of transfer or exchange of Securities of such series herein expressly provided for and any right to receive Additional Amounts, as provided in Section 10.10), and the Indenture Trustee, upon receipt of a Company Order, and at the expense of the Company, shall execute instruments in form and substance reasonably satisfactory to the Indenture Trustee and the Company acknowledging satisfaction and discharge of this Indenture as to such series when

(1) either

(A) all Securities of such series theretofore authenticated and delivered and all coupons, if any, appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 3.05, (ii) Securities and coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06, (iii) coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date, whose surrender has been waived as provided in Section 11.06, and (iv) Securities and coupons of such series 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 10.03) have been delivered to the Indenture Trustee for cancellation; or (B) all Securities of such series and, in the case of (i) or (ii) below, any coupons appertaining thereto not theretofore delivered to the Indenture Trustee for cancellation

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(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Indenture Trustee for the giving of notice of redemption by the Indenture Trustee in the name, and at the expense, of the Company.

and the Company, in the case of (i), (ii) or (iii) above, has irrevocably deposited or caused to be deposited with the Indenture Trustee as trust funds in trust for the purpose an amount in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable, sufficient to pay and discharge the entire indebtedness on such Securities and such coupons not theretofore delivered to the Indenture Trustee for cancellation, for principal (and premium, if any) and interest, and any Additional Amounts with respect thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

(3) the Company has delivered to the Indenture 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 as to such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Indenture Trustee and any predecessor Indenture Trustee under Section 6.06, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with and held by the Indenture Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Indenture Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive.

SECTION 4.02 *Application of Trust Funds*. Subject to the provisions of the last paragraph of Section 10.03, all money deposited with the Indenture Trustee pursuant to Section 4.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Indenture Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any), and any interest and Additional Amounts for whose payment such money has been deposited with or received by the Indenture Trustee, but such money need not be segregated from other funds except to the extent required by law.

ARTICLE V

REMEDIES

SECTION 5.01 *Events of Default*. "Event of Default," wherever used herein with respect to any particular series of Securities, means any one of the following events (whatever the reason for such Event of Default and whether or not 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):

(1) default in the payment of any interest upon or any Additional Amounts payable in respect of any Security of that series or of any coupon appertaining thereto, when such interest, Additional Amounts or coupon becomes due and payable, and continuance of such default for a period of 30 days; or

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(2) default in the payment of the principal of (or premium, if any, on) any Security of that series when it becomes due and payable at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of any Security of that series; or

(4) default in the performance or breach of any covenant or warranty of the Company in this Indenture with respect to any Security of that series (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Indenture Trustee or to the Company and the Indenture Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series 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; or

(5) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law;

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors; or

(6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Significant Subsidiary in an involuntary case,

(B) appoints a Custodian of the Company or any Significant Subsidiary or for all or substantially all of either of its property, or

(C) orders the liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 90 days; or

(7) any other Event of Default provided with respect to Securities of that series.

As used in this Section 5.01, the term "Bankruptcy Law" means title 11, U.S. Code or any similar Federal or state law for the relief of debtors and the term "Custodian" means any receiver, trustee, assignee, liquidator or other similar official under any Bankruptcy Law.

SECTION 5.02 *Acceleration of Maturity; Rescission and Annulment*. If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Indenture Trustee or the Holders of not less than 25% in principal amount of all the Securities of that series will have the right to declare the principal amount (or, if the Securities of that series are Original Issue Discount Securities or Indexed Securities, such

portion of the principal as may be specified in the terms thereof) to be due and payable immediately, by a notice in writing to the Company (and to the Indenture Trustee if given by the Holders), and upon any such declaration such principal or specified portion thereof shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount

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of the Outstanding Securities of that series, by written notice to the Company and the Indenture Trustee, may rescind and annul such declaration of acceleration and its consequences if:

(1) the Company has paid or deposited with the Indenture Trustee a sum sufficient to pay in the currency, currency unit or composite currency in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.01 for the Securities of such series):

(A) all overdue installments of interest on and any Additional Amounts payable in respect of all Outstanding Securities of that series and any related coupons,

(B) the principal of (and premium, if any, on) any Outstanding Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates borne by or provided for in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest and any Additional Amounts at the rate or rates borne by or provided for in such Securities, and

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

(2) all Events of Default with respect to Securities of that series, other than the nonpayment of the principal of (or premium, if any) or interest on Securities of that series which have become due solely by such declaration of 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 5.03 *Collection of Indebtedness and Suits For Enforcement by Indenture Trustee.* The Company covenants that if:

(1) default is made in the payment of any installment of interest or Additional Amounts, if any, on any Security of any series and any related coupon when such interest or Additional Amount becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security of any series at its Maturity,

then the Company will, upon demand of the Indenture Trustee, pay to the Indenture Trustee, for the benefit of the Holders of such Securities of such series and coupons, the whole amount then due and payable on such Securities and coupons for principal (and premium, if any) and interest and Additional Amounts, with interest upon any overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest or Additional Amounts, if any, at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Indenture 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 of such series 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 such Securities of such series, wherever situated.

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If an Event of Default with respect to Securities of any series occurs and is continuing, the Indenture Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series and any related coupons by such appropriate judicial proceedings as the Indenture 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 5.04 *Indenture Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Indenture Trustee (irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Indenture Trustee shall have made any demand on the Company for the payment of overdue principal, premium, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of principal (and premium, if any) and interest and Additional Amounts, if any, owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(ii) 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 of Securities of such series and coupons to make such payments to the Indenture Trustee, and in the event that the Indenture Trustee shall consent to the making of such payments directly to the Holders, to pay to the Indenture Trustee any amount due to it for the reasonable compensation, expenses, disbursements

and advances of the Indenture Trustee and any predecessor Indenture Trustee, their agents and counsel, and any other amounts due the Indenture Trustee or any predecessor Indenture Trustee under Section 6.06.

Nothing herein contained shall be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities or coupons or the rights of any Holder thereof, or to authorize the Indenture Trustee to vote in respect of the claim of any Holder of a Security or coupon in any such proceeding.

In any proceedings brought by the Indenture Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Indenture Trustee shall be a party) the Indenture Trustee shall be held to represent all the Holders of the Securities, and it shall not be necessary to make any Holders of the Securities parties to any such proceedings.

SECTION 5.05 Indenture Trustee May Enforce Claims Without Possession of Securities or Coupons. All rights of action and claims under this Indenture or any of the Securities or coupons may be prosecuted and enforced by the Indenture Trustee without the possession of any of the Securities or coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, be for the

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ratable benefit of the Holders of the Securities and coupons in respect of which such judgment has been recovered.

SECTION 5.06 Application of Money Collected. Any money collected by the Indenture Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Indenture Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest and any Additional Amounts, upon presentation of the Securities or coupons, or both, as the case may be, 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 Indenture Trustee and any predecessor Indenture Trustee under Section 6.06;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and coupons for principal (and premium, if any) and interest and any Additional Amounts payable, 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 aggregate amounts due and payable on such Securities and coupons for principal (and premium, if any), interest and Additional Amounts, respectively; and

THIRD: To the payment of the remainder, if any, to the Company.

SECTION 5.07 Limitation on Suits. No Holder of any Security of any series or any related coupon shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

- (1) such Holder has previously given written notice to the Indenture Trustee of a continuing Event of Default with respect to the Securities of that series;
- (2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to institute proceedings in respect of such Event of Default in its own name as Indenture Trustee hereunder;
- (3) such Holder or Holders have offered to the Indenture Trustee indemnity reasonably satisfactory to the Indenture Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Indenture Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Indenture Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

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 of such Holders, 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 5.08 Unconditional Right of Holders to Receive Principal, Premium, If Any, Interest and Additional Amounts. Notwithstanding any other provision in this Indenture, the Holder of any Security or coupon shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and (subject to Sections 3.05 and 3.07) interest on, and any Additional Amounts in respect of, such Security or payment of such coupon on the respective due dates expressed in such Security or coupon (or, in the case of redemption, on the Redemption Date) and to institute

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suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 5.09 Restoration of Rights and Remedies. If the Indenture Trustee or any Holder of a Security or coupon 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 Indenture Trustee or to such Holder, then and in every such case, the Company, the Indenture Trustee and the Holders of Securities and coupons 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 Indenture Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 5.10 Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Holders of Securities or coupons 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 no 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 Indenture Trustee or of any Holder of any Security or coupon 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 or by law to the Indenture Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Holders of Securities or coupons, as the case may be.

SECTION 5.12 *Control By Holders of Securities*. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee or exercising any trust or power conferred on the Indenture Trustee with respect to the Securities of such series, *provided* that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture,
- (2) the Indenture Trustee may take any other action deemed proper by the Indenture Trustee which is not inconsistent with such direction, and
- (3) the Indenture Trustee need not take any action which might involve it in personal liability or be unduly prejudicial to the Holders of Securities of such series not joining therein.

Nothing in this Indenture shall impair the right of the Indenture Trustee in its discretion to take any action deemed proper by the Indenture Trustee and which is not inconsistent with such direction by Holders.

SECTION 5.13 *Waiver of Past Defaults*. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series and any related coupons waive any past default hereunder with respect to such series and its consequences, except a default

- (1) in the payment of the principal of (or premium, if any) or interest on or Additional Amounts payable in respect of any Security of such series or any related coupons, or

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- (2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such 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 default or Event of Default or impair any right consequent thereon.

SECTION 5.14 *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 Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 5.15 *Undertaking For Costs*. All parties to this Indenture agree, and each Holder of any Security by his 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 Indenture Trustee for any action taken or omitted by it as Indenture 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, 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; but the provisions of this Section shall not apply to any suit instituted by the Indenture Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).

ARTICLE VI

THE INDENTURE TRUSTEE

SECTION 6.01 *Notice of Defaults*. Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Company shall transmit in the manner and to the extent provided in TIA Section 313(c), notice of such default hereunder known to the Indenture Trustee, unless such default shall have been cured or waived; *provided, however*, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on or any Additional Amounts with respect to any Security of such series, or in the payment of any sinking fund installment with respect to the Securities of such series, the Indenture Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Indenture Trustee in good faith determine that the withholding of such notice is in the interests of the Holders of the Securities and coupons of such series; and *provided further* that in the case of any default or breach of the character specified in Section 5.01(4) with respect to the Securities and coupons of such series, no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to the Securities of such series.

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SECTION 6.02 *Certain Rights of Indenture Trustee*. Subject to the provisions of TIA Section 315(a) through 315(d):

- (1) the Indenture Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (other than delivery of any Security, together with any coupons appertaining thereto, to the Indenture Trustee for authentication and delivery pursuant to Section 3.03 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

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

(4) the Indenture Trustee may consult with counsel and the written 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;

(5) the Indenture 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 of Securities of any series or any related coupons pursuant to this Indenture, unless such Holders shall have offered to the Indenture Trustee security or indemnity reasonably satisfactory to the Indenture Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Indenture 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, debenture, note, coupon or other paper or document, unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series; *provided* that, if the payment within a reasonable time to the Indenture Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Indenture Trustee, not reasonably assured to the Indenture Trustee by the security afforded to it by the terms of this Indenture, the Indenture Trustee may require reasonable indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such examination shall be paid by the Holders or, if paid by the Indenture Trustee, shall be repaid by the Holders upon demand. The Indenture Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Indenture Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, relevant to the facts or matters that are the subject of its inquiry, personally or by agent or attorney;

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

(8) the Indenture Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

The Indenture Trustee shall not be required 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.

Except during the continuance of an Event of Default, the Indenture Trustee undertakes to perform 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 Indenture Trustee.

SECTION 6.03 *Not Responsible For Recitals or Issuance of Securities.* The recitals contained herein and in the Securities, except the Indenture Trustee's certificate of authentication, and in any coupons shall be taken as the statements of the Company, and neither the Indenture Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or coupons, except that the Indenture Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder. Neither the Indenture Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 6.04 *May Hold Securities.* The Indenture Trustee, any Paying Agent, Security Registrar, Authenticating Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and coupons and, subject to TIA Sections 310(b) and 311, may otherwise deal with the Company with the same rights it would have if it were not Indenture Trustee, Paying Agent, Security Registrar, Authenticating Agent or such other agent.

SECTION 6.05 *Money Held In Trust.* Money held by the Indenture Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Indenture Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 6.06 *Compensation and Reimbursement.* The Company agrees:

(1) to pay to the Indenture Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of an Indenture Trustee of an express trust);

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

(3) to indemnify each of the Indenture Trustee and any predecessor Indenture Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts 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.

When the Indenture Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(5) or Section 5.01(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

As security for the performance of the obligations of the Company under this Section, the Indenture Trustee shall have a lien prior to the Securities upon all property and funds held or collected

by the Indenture Trustee as such, except funds held in trust for the payment of principal of (or premium, if any) or interest on particular Securities or any coupons.

The provisions of this Section shall survive the termination of this Indenture.

SECTION 6.07 *Corporate Indenture Trustee Required; Eligibility; Conflicting Interests.* There shall at all times be an Indenture Trustee hereunder which shall be eligible to act as Indenture Trustee under TIA Section 310(a)(1) and shall have a combined capital and surplus of at least \$25,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or the requirements of Federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation 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 Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article. Neither the Company nor any Person directly or indirectly controlling, controlled by, or under common control with the Company shall serve as Indenture Trustee.

SECTION 6.08 *Resignation and Removal; Appointment of Successor.* (a) No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Indenture Trustee in accordance with the applicable requirements of Section 6.09.

(b) The Indenture Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(c) The Indenture Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Indenture Trustee and to the Company.

(d) If at any time:

(1) the Indenture Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(2) the Indenture Trustee shall cease to be eligible under Section 6.07 and shall fail to resign after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(3) the Indenture Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent or a receiver of the Indenture Trustee or of its property shall be appointed or any public officer shall take charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by or pursuant to a Board Resolution may remove the Indenture Trustee and appoint a successor Indenture Trustee with respect to all Securities, or (ii) subject to TIA Section 315(e), any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Indenture Trustee with respect to all Securities and the appointment of a successor Indenture Trustee or Indenture Trustees.

(e) If the Indenture Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Indenture Trustee for any cause with respect to the Securities of

one or more series, the Company, by or pursuant to a Board Resolution, shall promptly appoint a successor Indenture Trustee or Indenture Trustees with respect to the Securities of that or those series (it being understood that any such successor Indenture Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Indenture Trustee with respect to the Securities of any particular series). If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Indenture Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Indenture Trustee, the successor Indenture Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee with respect to the Securities of such series and to that extent supersede the successor Indenture Trustee appointed by the Company. If no successor Indenture Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner hereinafter provided, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee with respect to Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Indenture Trustee with respect to the Securities of any series in the manner provided for notices to the Holders of Securities in Section 1.06. Each notice shall include the name of the successor Indenture Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

SECTION 6.09 *Acceptance of Appointment By Successor.* (a) In case of the appointment hereunder of a successor Indenture Trustee with respect to all Securities, every such successor Indenture Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Indenture Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Indenture Trustee shall become effective and such successor Indenture Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Indenture Trustee;

but, on request of the Company or the successor Indenture Trustee, such retiring Indenture Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Indenture Trustee all the rights, powers and trusts of the retiring Indenture Trustee, and shall duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such retiring Indenture Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 6.06.

(b) In case of the appointment hereunder of a successor Indenture Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Indenture Trustee and each successor Indenture Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto, pursuant to Article IX hereof, wherein each successor Indenture Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Indenture Trustee all the rights, powers, trusts and duties of the retiring Indenture Trustee with respect to the Securities of that or those series to which the appointment of such successor Indenture Trustee relates, (2) if the retiring Indenture Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Indenture Trustee with respect to the Securities of that or those series as to which the retiring Indenture Trustee is not retiring shall continue to be vested in the retiring Indenture Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Indenture Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Indenture Trustees co-trustees of the same trust and that each such Indenture Trustee shall be trustee of a trust

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or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Indenture Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Indenture Trustee shall become effective to the extent provided therein and each such successor Indenture Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Indenture Trustee with respect to the Securities of that or those series to which the appointment of such successor Indenture Trustee relates; but, on request of the Company or any successor Indenture Trustee, such retiring Indenture Trustee shall duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such retiring Indenture Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Indenture Trustee relates.

(c) Upon request of any such successor Indenture Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section 6.09, as the case may be.

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

SECTION 6.10 *Merger, Conversion, Consolidation or Succession to Business.* Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, shall be the successor of the Indenture Trustee hereunder, *provided* such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities or coupons shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Securities or coupons so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Securities or coupons. In case any Securities or coupons shall not have been authenticated by such predecessor Indenture Trustee, any such successor Indenture Trustee may authenticate and deliver such Securities or coupons, in either its own name or that of its predecessor Indenture Trustee, with the full force and effect which this Indenture provides for the certificate of authentication of the Indenture Trustee.

SECTION 6.11 *Appointment of Authenticating Agent.* At any time when any of the Securities remain Outstanding, the Indenture Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Indenture Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption or repayment thereof, 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 Indenture Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by a Responsible Officer of the Indenture Trustee, a copy of which instrument shall be promptly furnished to the Company. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Indenture Trustee or the Indenture Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Indenture Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Indenture Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a bank or trust company or corporation organized and doing business and in good standing under the laws of the United States of America or of any state or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$25,000,000 and subject to supervision or examination by Federal or state authorities. If such Authenticating Agent publishes reports of condition at least annually, pursuant to laws or the

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requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, 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. In case at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or further act on the part of the Indenture Trustee or the Authenticating Agent.

An Authenticating Agent for any series of Securities may at any time resign by giving written notice of resignation to the Indenture Trustee for such series and to the Company. The Indenture Trustee for any series of Securities may at any time terminate the agency of an Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in any case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Indenture Trustee for such series may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve in the manner set forth in Section 1.06. 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 herein. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation including reimbursement of its reasonable expenses for its services under this Section.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Indenture Trustee's certificate of authentication, an alternate certificate of authentication substantially in the following form:

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

U.S. BANK TRUST NATIONAL ASSOCIATION
as Indenture Trustee

By: _____

as Authenticating Agent

By: _____

Authorized Signatory

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ARTICLE VII

HOLDERS' LISTS AND REPORTS BY INDENTURE TRUSTEE AND COMPANY

SECTION 7.01 *Disclosure of Names and Addresses of Holders*. Every Holder of Securities or coupons, by receiving and holding the same, agrees with the Company and the Indenture Trustee that neither the Company nor the Indenture Trustee nor any Authenticating Agent nor any Paying Agent nor any Security Registrar shall be held accountable by reason of the disclosure of any information as to the names and addresses of the Holders of Securities in accordance with TIA Section 312, regardless of the source from which such information was derived, and that the Indenture Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under TIA Section 312(b).

SECTION 7.02 *Reports By Indenture Trustee*. Within 60 days after May 15 of each year (commencing with May 15, 2001), the Indenture Trustee shall transmit by mail to all Holders of Securities as provided in TIA Section 313(c) a brief report dated as of May 15 if required by TIA Section 313(a).

SECTION 7.03 *Reports By Company*. The Company will:

(1) file with the Indenture Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then it will file with the Indenture Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Indenture Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to the Holders of Securities, within 30 days after the filing thereof with the Indenture Trustee, in the manner and to the extent provided in TIA Section 313(c), such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

SECTION 7.04 *Company To Furnish Indenture Trustee Names and Addresses of Holders*. The Company will furnish or cause to be furnished to the Indenture Trustee:

(a) semiannually, not later than 15 days after the Regular Record Date for interest for each series of Securities, a list, in such form as the Indenture Trustee may reasonably require, of the names and addresses of the Holders of Registered Securities of such series as of such Regular Record Date, or if there is no Regular Record Date for interest for such series of Securities, semiannually, upon such dates as are set forth in the Board Resolution or indenture supplemental hereto authorizing such series, and

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(b) at such other times as the Indenture Trustee may request in writing, within 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 15 days prior to the time such list is furnished,

provided, however, that, so long as the Indenture Trustee is the Security Registrar, no such list shall be required to be furnished.

ARTICLE VIII

CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

SECTION 8.01 *Consolidations and Mergers of Company and Sales, Leases and Conveyances Permitted Subject To Certain Conditions.* The Company may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into any other corporation, provided that in any such case, (1) either the Company shall be the continuing corporation, or the successor corporation shall be a corporation organized and existing under the laws of the United States or a State thereof and such successor corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any) and any interest (including all Additional Amounts, if any, payable pursuant to Section 10.10) on all of the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture, complying with Article IX hereof, satisfactory to the Indenture Trustee, executed and delivered to the Indenture Trustee by such corporation and (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or any Subsidiary as a result thereof as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

SECTION 8.02 *Rights and Duties of Successor Corporation.* In case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and the predecessor corporation, except in the event of a lease, shall be relieved of any further obligation under this Indenture and the Securities. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Indenture Trustee; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Indenture Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Indenture Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Indenture Trustee for that purpose. 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 as though all of such Securities had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

SECTION 8.03 *Officers' Certificate and Opinion of Counsel.* Any consolidation, merger, sale, lease or conveyance permitted under Section 8.01 is also subject to the condition that the Indenture Trustee receive an Officers' Certificate and an Opinion of Counsel to the effect that any such consolidation, merger, sale, lease or conveyance, and the assumption by any successor corporation, complies with the provisions of this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.01 *Supplemental Indentures Without Consent of Holders.* Without the consent of any Holders of Securities or coupons, the Company, when authorized by or pursuant to a Board Resolution, and the Indenture Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Indenture Trustee, for any of the following purposes:

- (1) 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 contained; or
- (2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or
- (3) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such Events of Default are to be for the benefit of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of such series); *provided, however,* that in respect of any such additional Events of Default such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Indenture Trustee upon such default or may limit the right of the Holders of a majority in aggregate principal amount of that or those series of Securities to which such additional Events of Default apply to waive such default; or
- (4) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be issued in exchange for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated form, *provided* that any such action shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or
- (5) to change or eliminate any of the provisions of this Indenture, *provided* that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or
- (6) to secure the Securities; or
- (7) to establish the form or terms of Securities of any series and any related coupons as permitted by Sections 2.01 and 3.01, including the provisions and procedures relating to Securities convertible into Common Shares or Preferred Shares, as the case may be; or
- (8) to evidence and provide for the acceptance of appointment hereunder by a successor Indenture Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Indenture Trustee; or
- (9) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with

respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture, *provided* such provisions shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or

(10) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Sections 4.01, 14.02 and 14.03; *provided* that any such action shall not adversely affect the interests of the Holders of Securities of such series and any related coupons or any other series of Securities in any material respect.

SECTION 9.02 *Supplemental Indentures With Consent of Holders.* With the consent of the Holders of not less than a majority in principal amount of all Outstanding Securities affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Indenture Trustee, the Company, when authorized by or pursuant to a Board Resolution, and the Indenture 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 and any related coupons under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) change the Stated Maturity of the principal of (or premium, if any, on) or any installment of principal of or interest on, any Security; or reduce the principal amount thereof or the rate or amount of interest thereon or any Additional Amounts payable in respect thereof, or any premium payable upon the redemption thereof, or change any obligation of the Company to pay Additional Amounts pursuant to Section 10.10 (except as contemplated by Section 8.01(1) and permitted by Section 9.01(1)), or reduce the amount of principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.02 or the amount thereof provable in bankruptcy pursuant to Section 5.04, or adversely affect any right of repayment at the option of the Holder of any Security, or change any Place of Payment where, or the currency or currencies, currency unit or units or composite currency or currencies in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption or repayment at the option of the Holder, on or after the Redemption Date or the Repayment Date, as the case may be), or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver with respect to such series (or compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the requirements of Section 15.04 for quorum or voting, or

(3) modify any of the provisions of this Section, Section 5.13 or Section 10.11, except to increase the required percentage to effect such action or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

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

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such

covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

SECTION 9.03 *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Indenture Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Indenture Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 9.04 *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, 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 and of any coupon appertaining thereto shall be bound thereby.

SECTION 9.05 *Conformity With Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 9.06 *Reference in Securities to Supplemental Indentures.* Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall, if required by the Indenture Trustee, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Indenture Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Securities of such series.

ARTICLE X

COVENANTS

SECTION 10.01 *Payment of Principal, Premium, If Any; Interest and Additional Amounts.* The Company covenants and agrees for the benefit of the Holders of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on and any Additional Amounts payable in respect of the Securities of that series in accordance with the terms of such series of Securities, any coupons appertaining thereto and this Indenture. Unless otherwise specified as contemplated by Section 3.01 with respect to any series of Securities, any interest due on and any Additional Amounts payable in respect of Bearer Securities on or before Maturity, other than Additional Amounts, if any, payable as provided in Section 10.10 in respect of principal of (or premium, if any, on) such a Security, shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as

they severally mature. Unless otherwise specified with respect to Securities of any series pursuant to Section 3.01, at the option of the Company, all payments of principal may be paid by check to the registered Holder of the Registered Security or other person entitled thereto against surrender of such Security.

SECTION 10.02 *Maintenance of Office or Agency.* If Securities of a series are issuable only as Registered Securities, the Company shall maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment or conversion, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Company will maintain: (A) in the Borough of Manhattan, The City of New York, an office or agency where any

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Registered Securities of that series may be presented or surrendered for payment or conversion, where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange, where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served and where Bearer Securities of that series and related coupons may be presented or surrendered for payment or conversion in the circumstances described in the following paragraph (and not otherwise); (B) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States, an office or agency where Securities of that series and related coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Securities of that series pursuant to Section 10.10) or conversion; *provided, however*, that if the Securities of that series are listed on any stock exchange located outside the United States and such stock exchange shall so require, the Company will maintain a Paying Agent for the Securities of that series in any required city located outside the United States, as the case may be, so long as the Securities of that series are listed on such exchange; and (C) subject to any laws or regulations applicable thereto, in a Place of Payment for that series located outside the United States an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Indenture Trustee of the location, and any change in the location, of each such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Indenture Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Indenture Trustee, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Bearer Securities of that series pursuant to Section 10.10) or conversion at the offices specified in the Security, in London, England, and the Company hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands, and the Company hereby appoints the Indenture Trustee its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 3.01, no payment of principal, premium or interest on or Additional Amounts in respect of Bearer Securities shall be made at any office or agency of the Company in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; *provided, however*, that, if the Securities of a series are payable in Dollars, payment of principal of and any premium and interest on any Bearer Security (including any Additional Amounts payable on Securities of such series pursuant to Section 10.10) shall be made at the office of the Company's Paying Agent in the Borough of Manhattan, The City of New York, if (but only if) payment in Dollars of the full amount of such principal, premium, if any, interest or Additional Amounts, as the case may be, at all offices or agencies outside the United States maintained for the purpose by the Company in accordance with this Indenture, is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all of such purposes, and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Company will give prompt written notice to the Indenture Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless otherwise specified with respect to any Securities pursuant to Section 3.01 with respect to a series of Securities, the Company hereby designates as a Place of Payment for each series of Securities the office or agency of the Company in the Borough of Manhattan, The City of New York, and initially appoints the Indenture

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Trustee at its Corporate Trust Office as Paying Agent in such city and as its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 3.01, if and so long as the Securities of any series (i) are denominated in a Foreign Currency or (ii) may be payable in a Foreign Currency, or so long as it is required under any other provision of the Indenture, then the Company will maintain with respect to each such series of Securities, or as so required, at least one exchange rate agent.

SECTION 10.03 *Money For Securities Payments to Be Held in Trust.* If the Company shall at any time act as its own Paying Agent with respect to any series of any Securities and any related coupons, it will, on or before each due date of the principal of (and premium, if any), or interest on or Additional Amounts in respect of, any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.01 for the Securities of such series) sufficient to pay the principal (and premium, if any) or interest or Additional Amounts so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Indenture Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities and any related coupons, it will, on or before each due date of the principal of (and premium, if any), or interest on or Additional Amounts in respect of, any Securities of that series, deposit with a Paying Agent a sum (in the currency or currencies, currency unit or units or composite currency or currencies described in the preceding paragraph) sufficient to pay the principal (and premium, if any) or interest or Additional Amounts, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest or Additional Amounts and (unless such Paying Agent is the Indenture Trustee) the Company will promptly notify the Indenture Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Indenture Trustee to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent shall agree with the Indenture Trustee, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for payment of principal of (and premium, if any) or interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Indenture Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any such payment of principal (and premium, if any) or interest on the Securities of that series; and

(3) at any time during the continuance of any such default upon the written request of the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent.

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 Indenture Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Indenture 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 Indenture Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Except as otherwise provided in the Securities of any series, any money deposited with the Indenture Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the

principal of (and premium, if any) or interest on, or any Additional Amounts in respect of, any Security of any series and remaining unclaimed for one year after such principal (and premium, if any), interest or Additional Amounts has become due and payable shall be paid to the Company upon Company Request or (if then held by the Company) shall 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 of such principal of (and premium, if any) or interest on, or any Additional Amounts in respect of, any Security, without interest thereon, and all liability of the Indenture Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Indenture 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 an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.04 *Existence*. Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, all material rights (by articles of incorporation, by-laws and statute) and material franchises, *provided, however*, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company.

SECTION 10.05 *Maintenance of Properties*. The Company will cause all of its material properties used or useful in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided, however*, that the Company and its Subsidiaries shall not be prevented from selling or otherwise disposing of their properties for value in the ordinary course of business.

SECTION 10.06 *Insurance*. The Company will cause each of its and its Subsidiaries' insurable properties to be insured against loss or damage in an amount at least equal to their then full insurable value with insurers of recognized responsibility.

SECTION 10.07 *Payment of Taxes and Other Claims*. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon it or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company or any Subsidiary; *provided, however*, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

SECTION 10.08 *Provision of Financial Information*. Whether or not the Company is subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company will prepare the annual reports, quarterly reports and other documents within 15 days of each of the respective dates by which the Company would have been required to file such annual reports, quarterly reports and other documents with the Commission pursuant to such Section 13 or 15(d) and will (i) transmit by mail to all Holders, as their names and addresses appear in the Security Register, without cost to such Holders copies of the annual reports, quarterly reports and other documents which the Company would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 if the Company were subject to such Sections, and (ii) file with the Indenture Trustee copies of the annual reports, quarterly reports and other documents which the Company would have

been required to file with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 if the Company were subject to such Sections and (iii) promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such documents to any prospective Holder.

SECTION 10.09 *Statement as to Compliance*. The Company will deliver to the Indenture Trustee, within 120 days after the end of each fiscal year, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture and, in the event of any noncompliance, specifying such noncompliance and the nature and status thereof. For purposes of this Section 10.09, such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

SECTION 10.10 *Additional Amounts*. If any Securities of a series provide for the payment of Additional Amounts, the Company will pay to the Holder of any Security of such series or any coupon appertaining thereto Additional Amounts as may be specified as contemplated by Section 3.01. Whenever in this Indenture there is mentioned, in any context except in the case of Section 5.02(1), the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or payment of any related coupon or the net proceeds received on the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established pursuant to Section 3.01 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise specified as contemplated by Section 3.01, if the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal and any premium is made), and at least 10 days prior to each date of payment of principal and any premium or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company will furnish the Indenture Trustee and the Company's principal Paying Agent or Paying Agents, if other than the Indenture Trustee, with an Officers' Certificate instructing the Indenture Trustee and such Paying Agent or Paying Agents whether such payment of principal, of any premium or of interest on the Securities of that series shall be made to Holders of Securities of that series or any related coupons who are not United States persons without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of the series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities of that series or related coupons and the Company will pay to the Indenture Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. In the event that the Indenture Trustee or any Paying Agent, as the case may be, shall not so receive the above-mentioned certificate, then the Indenture Trustee or such Paying Agent shall be entitled (i) to assume that no such withholding or deduction is required with respect to any payment of principal or interest with respect to any Securities of a series or related coupons until it shall have received a certificate advising otherwise and (ii) to make all payments of principal and interest with respect to the Securities of a series or related coupons without withholding or deductions until otherwise advised. The Company covenants to indemnify the Indenture Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them or in reliance on any Officers' Certificate furnished pursuant to this Section or in reliance on the Company's not furnishing such an Officers' Certificate.

SECTION 10.11 *Waiver of Certain Covenants*. The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 10.04 to 10.08, inclusive, if before or after the time for such compliance the Holders of at least a majority in principal amount of all outstanding Securities of such series, 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 and the duties of the Indenture Trustee in respect of any such term, provision or condition shall remain in full force and effect.

ARTICLE XI

REDEMPTION OF SECURITIES

SECTION 11.01 *Applicability of Article*. Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.01 for Securities of any series) in accordance with this Article.

SECTION 11.02 *Election to Redeem; Notice to Indenture Trustee*. The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of less than all of the Securities of any series, the Company shall, at least 45 days prior to the giving of the notice of redemption in Section 11.04 (unless a shorter notice shall be satisfactory to the Indenture Trustee), notify the Indenture Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Indenture Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 11.03 *Selection By Indenture Trustee of Securities to Be Redeemed*. If less than all the Securities of any series issued on the same day with the same terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Indenture Trustee, from the Outstanding Securities of such series issued on such date with the same terms not previously called for redemption, by such method as the Indenture Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series.

The Indenture Trustee shall promptly notify the Company and the Security Registrar (if other than itself) 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 the 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 which has been or is to be redeemed.

SECTION 11.04 *Notice of Redemption*. Notice of redemption shall be given in the manner provided in Section 1.06, not less than 15 days nor more than 60 days prior to the Redemption Date, unless a shorter period is specified by the terms of such series established pursuant to Section 3.01, to each Holder of Securities to be redeemed, but failure to give such notice in the manner herein provided to the Holder of any Security designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Security or portion thereof.

Any notice that is mailed to the Holders of Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price, accrued interest to the Redemption Date payable as provided in Section 11.06, if any, and Additional Amounts, if any,
- (3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed,
- (4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the holder will receive, without a charge, a new Security or Securities of authorized denominations for the principal amount

thereof remaining unredeemed,

(5) that on the Redemption Date, the Redemption Price and accrued interest to the Redemption Date payable as provided in Section 11.06, if any, will become due and payable upon each such Security, or the portion thereof, to be redeemed and, if applicable, that interest thereon shall cease to accrue on and after said date,

(6) the Place or Places of Payment where such Securities, together in the case of Bearer Securities with all coupons pertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and accrued interest, if any, or for conversion,

(7) that the redemption is for a sinking fund, if such is the case,

(8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all coupons maturing subsequent to the date fixed for redemption or the amount of any such missing coupon or coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Company, the Indenture Trustee for such series and any Paying Agent is furnished,

(9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on this Redemption Date pursuant to Section 3.05 or otherwise, the last date, as determined by the Company, on which such exchanges may be made,

(10) the CUSIP number of such Security, if any, and

(11) if applicable, that a Holder of Securities who desires to convert Securities for redemption must satisfy the requirements for conversion contained in such Securities, the then existing conversion price or rate, the place or places where such Securities may be surrendered for conversion, and the date and time when the option to convert shall expire.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Indenture Trustee in the name and at the expense of the Company.

SECTION 11.05 *Deposit of Redemption Price.* On or prior to any Redemption Date, the Company shall deposit with the Indenture Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, which it may not do in the case of a sinking fund payment under Article Twelve, segregate and hold in trust as provided in Section 10.03) an amount of money in the currency or currencies, currency unit or units or composite currency of currencies in which the Securities of such

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series are payable (except as otherwise specified pursuant to Section 3.01 for the Securities of such series) sufficient to pay on the Redemption Date the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof which are to be redeemed on that date.

If any Securities called for redemption are converted, any money deposited with the Indenture Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

SECTION 11.06 *Securities Payable on Redemption Date.* Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified in the currency or currencies, currency unit or units of composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.01 for the Securities of such series) (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Company at the Redemption Price, together with accrued interest, if any, to the Redemption Date; *provided, however*, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 10.02) and, unless otherwise specified as contemplated by Section 3.01, only upon presentation and surrender of coupons for such interest; and *provided* further that, except as otherwise provided with respect to Securities convertible into Common Shares or Preferred Shares, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.07.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Indenture Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Indenture Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; *provided, however*, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 10.02) and, unless otherwise specified as contemplated by Section 3.01, only upon presentation and surrender of those coupons.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Security.

SECTION 11.07 *Securities Redeemed in Part.* Any Registered Security which is to be redeemed only in part (pursuant to the provisions of this Article or of Article XII) shall be surrendered at a Place of Payment therefor (with, if the Company or the Indenture Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Indenture Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall

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execute and the Indenture Trustee shall authenticate and deliver to the Holder of such Security without service charge a new Security or Securities of the same series, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Global Security is so surrendered, the Company shall execute and the Indenture Trustee shall authenticate and deliver to the depository, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Security so surrendered.

ARTICLE XII

SINKING FUNDS

SECTION 12.01 *Applicability of Article.* The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.01 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of such Securities of any series is herein referred to as an "optional sinking fund payment." If provided for by the terms of any Securities of any series, the cash amount of any mandatory sinking fund payment may be subject to reduction as provided in Section 12.02. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

SECTION 12.02 *Satisfaction of Sinking Fund Payments With Securities.* The Company may, in satisfaction of all or any part of any mandatory sinking fund payment with respect to the Securities of a series, (1) deliver Outstanding Securities of such series (other than any previously called for redemption) together in the case of any Bearer Securities of such series with all unmatured coupons appertaining thereto and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, as provided for by the terms of such Securities, or which have otherwise been acquired by the Company; *provided* that such Securities so delivered or applied as a credit have not been previously so credited. Such Securities shall be received and credited for such purpose by the Indenture Trustee at the applicable Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

SECTION 12.03 *Redemption of Securities For Sinking Fund.* Not less than 60 days prior to each sinking fund payment date for Securities of any series, the Company will deliver to the Indenture Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.01 for the Securities of such series) and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 12.02, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Indenture Trustee any Securities to be so delivered and credited. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Company shall thereupon be obligated to pay the amount therein specified. Not less than 30 days before each such sinking fund payment date the Indenture Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the

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manner provided in Section 11.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.06 and 11.07.

ARTICLE XIII

REPAYMENT AT THE OPTION OF HOLDERS

SECTION 13.01 *Applicability of Article.* Repayment of Securities of any series before their Stated Maturity at the option of Holders thereof shall be made in accordance with the terms of such Securities, if any, and (except as otherwise specified by the terms of such series established pursuant to Section 3.01) in accordance with this Article.

SECTION 13.02 *Repayment of Securities.* Securities of any series subject to repayment in whole or in part at the option of the Holders thereof will, unless otherwise provided in the terms of such Securities, be repaid at a price equal to the principal amount thereof, together with interest, if any, thereon accrued to the Repayment Date specified in or pursuant to the terms of such Securities. The Company covenants that on or prior to the Repayment Date it will deposit with the Indenture Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.01 for the Securities of such series) sufficient to pay the principal (or, if so provided by the terms of the Securities of any series, a percentage of the principal) of, and (except if the Repayment Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof, as the case may be, to be repaid on such date.

SECTION 13.03 *Exercise of Option.* Securities of any series subject to repayment at the option of the Holders thereof will contain an "Option to Elect Repayment" form on the reverse of such Securities. In order for any Security to be repaid at the option of the Holder, the Indenture Trustee must receive at the Place of Payment therefor specified in the terms of such Security (or at such other place or places of which the Company shall from time to time notify the Holders of such Securities) not earlier than 60 days nor later than 30 days prior to the Repayment Date (1) the Security so providing for such repayment together with the "Option to Elect Repayment" form on the reverse thereof duly completed by the Holder (or by the Holder's attorney duly authorized in writing) or (2) a telegram, telex, facsimile transmission or a letter from a member of a national securities exchange, or the National Association of Securities Dealers, Inc. ("NASD"), or a commercial bank or trust company in the United States setting forth the name of the Holder of the Security, the principal amount of the Security, the principal amount of the Security to be repaid, the CUSIP number, if any, or a description of the tenor and terms of the Security, a statement that the option to elect repayment is being exercised thereby and a guarantee that the Security to be repaid, together with the duly completed form entitled "Option to Elect Repayment" on the reverse of the Security, will be received by the Indenture Trustee not later than the fifth Business Day after the date of such telegram, telex, facsimile transmission or letter; *provided, however,* that such telegram, telex, facsimile transmission or letter shall only be effective if such Security and form duly completed are received by the Indenture Trustee by such fifth Business Day. If less than the entire principal amount of such Security is to be repaid in accordance with the terms of such Security, the principal amount of such Security to be repaid, in increments of the minimum denomination for Securities of such series, and the denomination or denominations of the Security or Securities to be issued to the Holder for the portion of the principal amount of such Security surrendered

that is not to be repaid, must be specified. The principal amount of any Security providing for repayment at the option of the Holder thereof may not be repaid in part if, following such repayment, the unpaid principal amount of such Security would be less than the minimum authorized denomination of Securities of the series of which such Security to be repaid is a part. Except as otherwise may be provided by the terms of any Security providing for repayment at the

option of the Holder thereof, exercise of the repayment option by the Holder shall be irrevocable unless waived by the Company.

SECTION 13.04 *When Securities Presented For Repayment Become Due and Payable.* If Securities of any series providing for repayment at the option of the Holders thereof shall have been surrendered as provided in this Article and as provided by or pursuant to the terms of such Securities, such Securities or the portions thereof, as the case may be, to be repaid shall become due and payable and shall be paid by the Company on the Repayment Date therein specified, and on and after such Repayment Date (unless the Company shall default in the payment of such Securities on such Repayment Date) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be repaid, except to the extent provided below, shall be void. Upon surrender of any such Security for repayment in accordance with such provisions, together with all coupons, if any, appertaining thereto maturing after the Repayment Date, the principal amount of such Security so to be repaid shall be paid by the Company, together with accrued interest, if any, to the Repayment Date; *provided, however*, that coupons whose Stated Maturity is on or prior to the Redemption Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 10.02) and, unless otherwise specified pursuant to Section 3.01, only upon presentation and surrender of such coupons; and *provided further* that, in the case of Registered Securities, installments of interest, if any, whose Stated Maturity is on or prior to the Repayment Date shall be payable (but without interest thereon, unless the Company shall default in the payment thereof) to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.07.

If any Bearer Security surrendered for repayment shall not be accompanied for all appurtenant coupons maturing after the Repayment Date, such Security may be paid after deducting from the amount payable therefor as provided in Section 13.02 an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Indenture Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Indenture Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made as provided in the preceding sentence, such Holder shall be entitled to receive the amount so deducted; *provided, however*, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 10.02) and, unless otherwise specified as contemplated by Section 3.01, only upon presentation and surrender of those coupons.

If the principal amount of any Security surrendered for repayment shall not be so repaid upon surrender thereof, such principal amount (together with interest, if any, thereon accrued to such Repayment Date) shall, until paid, bear interest from the Repayment Date at the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) set forth in such Security.

SECTION 13.05 *Securities Repaid in Part.* Upon surrender of any Registered Security which is to be repaid in part only, the Company shall execute and the Indenture Trustee shall authenticate and deliver to the Holder of such Security, without service charge and at the expense of the Company, a new Registered Security or Securities of the same series, of any authorized denomination specified by the Holder, in an aggregate principal amount equal to and in exchange for the portion of the principal of such Security so surrendered which is not to be repaid.

ARTICLE XIV

DEFEASANCE AND COVENANT DEFEASANCE

SECTION 14.01 *Applicability of Article; Company's Option to Effect Defeasance or Covenant Defeasance.* If, pursuant to Section 3.01, provision is made for either or both of (a) defeasance of the Securities of or within a series under Section 14.02 or (b) covenant defeasance of the Securities of or within a series under Section 14.03, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article (with such modifications thereto as may be specified pursuant to Section 3.01 with respect to any Securities), shall be applicable to such Securities and any coupons appertaining thereto, and the Company may at its option by Board Resolution, at any time, with respect to such Securities and any coupons appertaining thereto, elect to have Section 14.02 (if applicable) or Section 14.03 (if applicable) be applied to such Outstanding Securities and any coupons appertaining thereto upon compliance with the conditions set forth below in this Article.

SECTION 14.02 *Defeasance and Discharge.* Upon the Company's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Securities and any coupons appertaining thereto on the date the conditions set forth in Section 14.04 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Securities and any coupons appertaining thereto, which shall thereafter be deemed to be "Outstanding" only for the purposes of Section 14.05 and the other Sections of this Indenture referred to in clauses (A) and (B) below, and to have satisfied all of its other obligations under such Securities and any coupons appertaining thereto and this Indenture insofar as such Securities and any coupons appertaining thereto are concerned (and the Indenture Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of such Outstanding Securities and any coupons appertaining thereto to receive, solely from the trust fund described in Section 14.04 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest, if any, on such Securities and any coupons appertaining thereto when such payments are due, (B) the Company's obligations with respect to such Securities under Sections 3.05, 3.06, 10.02 and 10.03 and with respect to the payment of Additional Amounts, if any, on such Securities as contemplated by Section 10.10, (C) the rights, powers, trusts, duties and immunities of the Indenture Trustee hereunder and (D) this Article. Subject to compliance with this Article XIV, the Company may exercise its option under this Section notwithstanding the prior exercise of its option under Section 14.03 with respect to such Securities and any coupons appertaining thereto.

SECTION 14.03 *Covenant Defeasance.* Upon the Company's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Company shall be released from its obligations under Sections 10.04 to 10.08, inclusive, and, if specified pursuant to Section 3.01, its obligations under any other covenant, with respect to such Outstanding Securities and any coupons appertaining thereto on and after the date the conditions set forth in Section 14.04 are satisfied (hereinafter, "covenant defeasance"), and such Securities and any coupons appertaining thereto shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with

Sections 10.04 to 10.08, inclusive, or such other covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Securities and any coupons appertaining thereto, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such

omission to comply shall not constitute a default or an Event of Default under Section 5.01(4) or 5.01(8) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities and any coupons appertaining thereto shall be unaffected thereby.

SECTION 14.04 *Conditions to Defeasance or Covenant Defeasance.* The following shall be the conditions to application of Section 14.02 or Section 14.03 to any Outstanding Securities of or within a series and any coupons appertaining thereto:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Indenture Trustee (or another trustee satisfying the requirements of Section 6.07 who shall agree to comply with the provisions of this Article XIV 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 such Securities and any coupons appertaining thereto, (1) an amount in such currency, currencies or currency unit in which such Securities and any coupons appertaining thereto are then specified as payable at Stated Maturity, or (2) Government Obligations applicable to such securities and coupons appertaining thereto (determined on the basis of the currency, currencies or currency unit in which such Securities and coupons appertaining thereto are then specified as payable at Stated Maturity) 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 of principal of (and premium, if any) and interest, if any, on such Securities and any coupons appertaining thereto, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Indenture Trustee, to pay and discharge, and which shall be applied by the Indenture Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium, if any) and interest, if any, on such Outstanding Securities and any coupons appertaining thereto on the Stated Maturity of such principal or installment of principal or interest and (ii) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities and any coupons appertaining thereto on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities and any coupons appertaining thereto.

(b) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities and any coupons appertaining thereto shall have occurred and be continuing on the date of such deposit or, insofar as Sections 5.01(6) and 5.01(7) are concerned, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(d) In the case of an election under Section 14.02, the Company shall have delivered to the Indenture Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the Holders of such Outstanding Securities and any coupons appertaining thereto will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.

(e) In the case of an election under Section 14.03, the Company shall have delivered to the Indenture Trustee an Opinion of Counsel to the effect that the Holders of such Outstanding Securities and any coupons appertaining thereto will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(f) The Company shall have delivered to the Indenture Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under Section 14.02 or the covenant defeasance under Section 14.03 (as the case may be) have been complied with and an Opinion of Counsel to the effect that either (i) as a result of a deposit pursuant to subsection (a) above and the related exercise of the Company's opinion under Section 14.02 or Section 14.03 (as the case may be), registration is not required under the Investment Company Act of 1940, as amended, by the Company, with respect to the trust funds representing such deposit or by the Indenture Trustee for such trust funds or (ii) all necessary registrations under said Act have been effected.

(g) Notwithstanding any other provisions of this Section, such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.01.

SECTION 14.05 *Deposited Money and Government Obligations to Be Held in Trust; Other Miscellaneous Provisions.* Subject to the provisions of the last paragraph of Section 10.03, all money and Government Obligations (or other property as may be provided pursuant to Section 3.01) (including the proceeds thereof) deposited with the Indenture Trustee (or other qualifying trustee, collectively for purposes of this Section 14.05, the "Indenture Trustee") pursuant to Section 14.04 in respect of any Outstanding Securities of any series and any coupons appertaining thereto shall be held in trust and applied by the Indenture Trustee, in accordance with the provisions of such Securities and any coupons appertaining thereto and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Indenture Trustee may determine, to the Holders of such Securities and any coupons appertaining thereto of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

Unless otherwise specified with respect to any Security pursuant to Section 3.01, if, after a deposit referred to in Section 14.04(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 3.01 or the terms of such Security to receive payment in a currency or currency unit other than that in which the deposit pursuant to Section 14.04(a) has been made in respect of such Security, or (b) a Conversion Event

occurs in respect of the currency or currency unit in which the deposit pursuant to Section 14.04(a) has been made, the indebtedness represented by such Security and any coupons appertaining thereto shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, on such Security as the same becomes due out of the process yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the currency or currency unit in which such Security become payable as a result of such election or Conversion Event based on the applicable market exchange rate for such currency or currency unit in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such currency or currency unit in effect (as nearly as feasible) at the time of the Conversion Event.

The Company shall pay and indemnify the Indenture Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 14.04 or the

principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities and any coupons appertaining thereto.

Anything in this Article to the contrary notwithstanding, subject to Section 6.06, the Indenture Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in Section 14.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Indenture Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Article.

ARTICLE XV

MEETINGS OF HOLDERS OF SECURITIES

SECTION 15.01 *Purposes For Which Meetings May Be Called.* A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

SECTION 15.02 *Call, Notice and Place of Meetings.* (a) The Indenture Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 15.01, to be held at such time and at such place as the Indenture Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.06, not less than 20 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution or the Holders of at least 25% in principal amount of the Outstanding Securities of any series shall have requested the Indenture Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 15.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Indenture Trustee shall not have made the first publication of the notice of such meeting within 20 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

SECTION 15.03 *Persons Entitled to Vote at Meetings.* To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Indenture Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 15.04 *Quorum; Action.* The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; *provided, however,* that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than a specified percentage in principal amount of the Outstanding Securities of a series, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time

appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at the reconvening of any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days; at the reconvening of any meeting adjourned or further adjourned for lack of a quorum, the persons entitled to vote 25% in aggregate principal amount of the then Outstanding Securities shall constitute a quorum for the taking of any action set forth in the notice of the original meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 15.02(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened.

Except as limited by the proviso to Section 9.02, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities represented at such meeting; *provided, however,* that, except as limited by the proviso to Section 9.02, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the related coupons, whether or not present or represented at the meeting.

Notwithstanding the foregoing provisions of this Section 15.04, if any action is to be taken at a meeting of Holders of Securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of all Outstanding Securities affected thereby, or of the Holders of such series and one or more additional series:

(i) there shall be no minimum quorum requirement for such meeting; and

(ii) the principal amount of the Outstanding Securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under this Indenture.

SECTION 15.05 *Determination of Voting Rights; Conduct and Adjournment of Meetings.* (a) Notwithstanding any provisions of this Indenture, the Indenture Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of a series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 1.04 and the appointment of any proxy shall be proved in the manner specified in Section 1.04 or by having the signature of the Person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 1.04 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.04 or other proof.

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(b) The Indenture Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 15.02(b), in which case the Company or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(c) At any meeting each Holder of a Security of such series or proxy shall be entitled to one vote for each \$1,000 principal amount of the Outstanding Securities of such series held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(d) Any meeting of Holders of Securities of any series duly called pursuant to Section 15.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 15.06 *Counting Votes and Recording Action of Meetings.* The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities of any Series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the fact, setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 15.02 and, if applicable, Section 15.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Indenture Trustee to be preserved by the Indenture Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

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SIGNATURES

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

BEAZER HOMES USA, INC.

By: /s/ DAVID S. WEISS

Title: Executive Vice President

Attest: /s/ TERESA ROSE DIETZ

Title: Secretary

U.S. BANK TRUST NATIONAL ASSOCIATION
as Indenture Trustee

By: /s/ JULIE EDDINGTON

Title: Assistant Vice President

Attest: /s/ JOEL GEIST

EXHIBIT A**FORM OF REDEEMABLE OR NON-REDEEMABLE SECURITY**

[Face of Security]

[If the Holder of this Security (as indicated below) is The Depository Trust Company ("DTC") or a nominee of DTC, this Security is a Global Security and the following two legends apply:

Unless this Security is presented by an authorized representative of The Depository Trust Company ("DTC"), 55 Water Street, New York, New York to the Issuer or its agent for registration of transfer, exchange or payment, and such Security issued is registered in the name of CEDE & CO., or such other name as 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, since the registered owner hereof, CEDE & CO., has an interest herein.

Unless and until this Security is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except as a whole by DTC to a nominee thereof or by a nominee thereof to DTC or another nominee of DTC or by DTC or any such nominee to a successor of DTC or a nominee of such successor.]

[IF THIS SECURITY IS AN ORIGINAL ISSUE DISCOUNT SECURITY, INSERT—FOR PURPOSES OF SECTION 1273 AND 1275 OF THE UNITED STATES INTERNAL REVENUE CODE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS SECURITY IS ___% OF ITS PRINCIPAL AMOUNT, THE ISSUE DATE IS _____, 20__ [AND] THE YIELD TO MATURITY IS ___%. [THE METHOD USED TO DETERMINE THE AMOUNT OF ORIGINAL ISSUE DISCOUNT APPLICABLE TO THE SHORT ACCRUAL PERIOD OF _____, 20__ TO _____, 20__, IS ___% OF THE PRINCIPAL AMOUNT OF THIS SECURITY.]

BEAZER HOMES USA, INC.

[Designation of Series]

No.

\$

BEAZER HOMES USA, INC., a Delaware corporation (therein referred to as the "Company," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to _____ or registered assigns the principal sum of _____ Dollars on _____ (the "Stated Maturity Date") [or INSERT DATE FIXED FOR EARLIER REDEMPTION (the "Redemption Date," and together with the Stated Maturity Date with respect to principal repayable on such date, the "Maturity Date.")]

[IF THE SECURITY IS TO BEAR INTEREST PRIOR TO MATURITY, INSERT—and to pay interest thereon from _____ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on _____ and _____ in each year (each, an "Interest Payment Date"), commencing _____, at the rate of ___% per annum, until the principal hereof is paid or duly provided for. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Holder 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, which shall be the _____ or _____ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date at the office or agency of the Company maintained for such purpose; *provided, however*, that such interest may be paid, at the Company's option, by mailing a check to such Holder at its registered address or by transfer of funds to an account maintained by such Holder within the United States. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable

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to the Holder on such Regular Record Date, and may be paid to the Holder 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 Indenture Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Interest will be computed on the basis of a 360-day year of twelve 30-day months.]

[IF THE SECURITY IS NOT TO BEAR INTEREST PRIOR TO MATURITY, INSERT—The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at the [Stated] Maturity Date and in such case the overdue principal of this Security shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such default in payment to the date payment of such principal has been made or duly provided for. Interest on any overdue principal shall be payable on demand. Any such interest on any overdue principal that is not so paid on demand shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such demand for payment to the date payment of such interest has been made or duly provided for, and such interest shall also be payable on demand.]

The principal of this Security payable on the Stated Maturity Date [or the principal of, premium, if any, and, if the Redemption Date is not an Interest Payment Date, interest on this Security payable on the Redemption Date] will be paid against presentation of this Security at the office or agency of the Company maintained for that purpose in _____, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

Interest payable on this Security on any Interest Payment Date and on the [Stated] Maturity Date [or Redemption Date, as the case may be,] will include interest accrued from and including the next preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or from and including _____, if no interest has been paid on this Security) to but excluding such Interest Payment Date or the [Stated] Maturity Date [or Redemption Date, as the case may be,] If any Interest Payment Date or the [Stated] Maturity Date or [Redemption Date] falls on a day that is not a Business Day, as defined below, principal, premium, if any, and/or interest payable with respect to such Interest Payment Date or [Stated] Maturity Date [or Redemption Date, as the case may be,] will be paid on the next succeeding Business Day with the same force and effect as if it were paid on the date such payment was due, and no interest shall accrue

on the amount so payable for the period from and after such Interest Payment Date or [Stated] Maturity Date [or Redemption Date, as the case may be.] "Business Day" means any day, other than a Saturday or Sunday, on which banks in _____ are not required or authorized by law or executive order to close.

[IF THIS SECURITY IS A GLOBAL SECURITY, INSERT—All payments of principal, premium, if any, and interest in respect of this Security will be made by the Company in immediately available funds.]

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the Certificate of Authentication hereon has been executed by the Indenture Trustee by manual signature of one of its authorized signatories, this Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its facsimile corporate seal.

Dated: _____

BEAZER HOMES USA, INC.

By: _____

Attest:

Secretary

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[Reverse of Security]

BEAZER HOMES USA, INC.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of _____, 20__ (herein called the "Indenture") between the Company and _____, as Indenture Trustee (herein called the "Indenture Trustee," which term includes any successor trustee under the Indenture with respect to the series of which this Security is a part), 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 Indenture Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the duly authorized series of Securities designated on the face hereof (collectively, the "Securities"), [IF APPLICABLE, INSERT—and the aggregate principal amount of the Securities to be issued under such series is limited to \$___ (except for Securities authenticated and delivered upon transfer of, or in exchange for, or in lieu of other Securities).] All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

If an Event of Default, as defined in the Indenture, shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

[IF APPLICABLE, INSERT—The Securities are subject to redemption [(i) (IF APPLICABLE, INSERT—on _____ in any year commencing with the year ___ and ending with the year ___ through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (2) [IF APPLICABLE, INSERT—at any time [on or after _____], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as a percentage of the principal amount):

If redeemed on or before _____, ___% and if redeemed during the 12-month period beginning _____ of the years indicated at the Redemption Prices indicated below.

| YEAR | REDEMPTION PRICE | YEAR | REDEMPTION PRICE |
|-------|------------------|-------|------------------|
| _____ | _____ | _____ | _____ |

and thereafter at a Redemption Price equal to ___% of the principal amount, together in the case of any such redemption [IF APPLICABLE, INSERT—(whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date; *provided, however*, that installments of interest on this Security whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[IF APPLICABLE, INSERT—The Securities are subject to redemption (1) on ___ in any year commencing with the year ___ and ending with the year ___ through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [on or after _____], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages

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of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning ___ of the years indicated,

| Year | Redemption Price for Redemption Through Operation | Redemption Price for Redemption Otherwise Than Through Operation of |
|-------|---|---|
| _____ | _____ | _____ |

and thereafter at a Redemption Price equal to ___% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date; *provided, however*, that installments of interest on this Security whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[IF APPLICABLE, INSERT—The sinking fund for the Securities provides for the redemption on ___ in each year, beginning with the year ___ and ending with the year ___, of [not less than] \$___] ["mandatory sinking fund") and not more than \$___] aggregate principal amount of the Securities. [The Securities acquired or redeemed by the Company otherwise than through [mandatory] sinking fund payments may be credited against subsequent [mandatory] sinking fund payments otherwise required to be made in the [DESCRIBE ORDER] order in which they become due.]]

Notice of redemption will be given by mail to Holders of Securities, not less than 15 nor more than 60 days prior to the Redemption Date, all as provided in the Indenture.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

[IF APPLICABLE, INSERT CONVERSION PROVISIONS SET FORTH IN ANY BOARD RESOLUTION OR INDENTURE SUPPLEMENTAL TO THE INDENTURE.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Indenture Trustee with the consent of the Holders of not less than a majority of the aggregate principal amount of all Securities issued under the Indenture at the time Outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority of the aggregate principal amount of the Outstanding Securities, on behalf of the Holders of all such Securities, to waive compliance by the Company with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of not less than a majority of the aggregate principal amount, in certain instances, of the Outstanding Securities of any series to waive, on behalf of all of the Holders of Securities of such series, 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 other Securities issued upon the registration of transfer hereof or in exchange hereof 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 premium, if any) and interest on this Security at the times, places and rate, and in the coin or currency, herein prescribed.

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As provided in the Indenture and subject to certain limitations therein [and herein] set forth, the transfer of this Security is registrable in the Security Register of the Company upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein [and herein] set forth, this Security is exchangeable for a like aggregate principal amount of Securities of different authorized denominations but otherwise having the same terms and conditions, as requested by the Holder hereof surrendering the same.

The Securities of this series are issuable only in registered form [without coupons] in denominations of \$_____ and any integral multiple thereof.

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.

Prior to due presentment of this Security for registration of transfer, the Company, the Indenture Trustee and any agent of the Company or the Indenture 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 Indenture Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or premium, if any, or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any past, present or future shareholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as party of the consideration for the issue hereof, expressly waived and released.

The Indenture and the Securities shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed entirely in such State.

A-6

EXHIBIT B

FORMS OF CERTIFICATION

B-1

EXHIBIT B-1

**FORM OF CERTIFICATE TO BE GIVEN BY PERSON ENTITLED
TO RECEIVE BEARER SECURITY OR TO OBTAIN INTEREST
PAYABLE PRIOR TO THE EXCHANGE DATE**

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, as of the date hereof, and except as set forth below, the above-captioned Securities held by you for your account (i) are owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) are owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in the United States Treasury Regulations Section 2.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution hereby agrees, on its own behalf or through its agent, that you may advise Beazer Homes USA, Inc. or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) are owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, in addition, if the owner is a United States or foreign financial institution described in clause (iii) above (whether or not also described in clause (i) or (ii), this is to further certify that such financial institution has not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We undertake to advise you promptly by tested telex or electronic transmission on or prior to the date on which you intend to submit your certification relating to the above-captioned Securities held by you for our account in accordance with your Operating Procedures if any applicable statement herein is not correct on such date, and in the absence of any such notification it may be assumed that this certification applied as of such date.

This certificate excepts and does not relate to [U.S.\$] of such interest in the above-captioned Securities in respect of which we are not able to certify and as to which we understand an exchange for an interest in a permanent Global Security or an exchange for and delivery of definitive Securities (or, if relevant, collection of any interest) cannot be made until we do so certify.

We understand that this certificate may be required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

B-1-1

Dated: _____, _____

[To be dated no earlier than the 15th day prior to (i) the Exchange Date or (ii) the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Name of Person Making Certification]

(Authorized Signature)

Name:

Title:

B-1-2

EXHIBIT B-2

**FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR
AND CEDEL S.A. IN CONNECTION WITH THE EXCHANGE OF
A PORTION OF A TEMPORARY GLOBAL SECURITY OR TO
OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE**

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, based solely on written certifications that we have received in writing, by tested telex or by electronic transmission from each of the persons appearing in our records as persons entitled to a portion of the principal amount set forth below (our "Member Organizations") substantially in the form attached hereto, as of the date hereof, [U.S.\$] principal amount of the above-captioned Securities (i) is owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in U.S. Treasury Regulations Section 1.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such financial institution has agreed, on its own behalf or through its agent, that we may advise Beazer Homes USA, Inc. or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) is owned by United States or foreign

financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163- 5(c)(2)(i)(D)(7)), and, to the further effect, that financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) have certified that they have not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "Possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We further certify that (i) we are not making available herewith for exchange (or, if relevant, collection of any interest) any portion of the temporary Global Security representing the above-captioned Securities excepted in the above-referenced certificates of Member Organizations and (ii) as of the date hereof we have not received any notification from any of our Member Organizations to the effect that the statements made by such Member Organizations with respect to any portion of the part submitted herewith for exchange (or, if relevant, collection of any interest) are no longer true and cannot be relied upon as of the date hereof.

We understand that this certification is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

B-2-1

Dated: _____

[To be dated no earlier than the Exchange Date or the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Morgan Guaranty Trust Company
of New York, Brussels Office,] as Operator
of the Euroclear System [CEDEL S.A.]

By: _____

B-2-2

QuickLinks

[Exhibit 4.4](#)

BEAZER HOMES USA, INC. AND THE SUBSIDIARY GUARANTORS PARTY HERETO

8-5/8% Senior Notes Due 2011

First Supplemental Indenture

Dated as of May 21, 2001

U.S. BANK TRUST NATIONAL ASSOCIATION,
as Trustee

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FIRST SUPPLEMENTAL INDENTURE dated as of May 21, 2001 (this "*Supplemental Indenture*"), to the Indenture dated as of May 21, 2001 (as amended, modified or supplemented from time to time in accordance therewith, the "*Indenture*"), by and between BEAZER HOMES USA, INC., a Delaware corporation (the "*Company*"), and U.S. BANK TRUST NATIONAL ASSOCIATION, as trustee (the "*Trustee*").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the holders of Notes (as defined herein):

WHEREAS, the Company and the Trustee have duly authorized the execution and delivery of the Indenture to provide for the issuance from time to time of debt securities (the "*Securities*") to be issued in one or more series as in the Indenture provided;

WHEREAS, the Company and the Subsidiary Guarantors desire and have requested the Trustee to join them in the execution and delivery of this Supplemental Indenture in order to establish and provide for the issuance by the Company of a series of Securities designated as its 8-5/8% Senior Notes Due 2011, substantially in the form attached hereto as Exhibit A (the "*Notes*"), on the terms set forth herein;

WHEREAS, the Company's obligations under the Notes shall be unconditionally guaranteed by the Subsidiary Guarantors on the terms set forth herein;

WHEREAS, Section 3.01 of the Indenture provides that a supplemental indenture may be entered into by the Company and the Trustee for such purpose provided certain conditions are met;

WHEREAS, the conditions set forth in the Indenture for the execution and delivery of this Supplemental Indenture have been complied with; and

WHEREAS, all things necessary to make this Supplemental Indenture a valid agreement of the Company, the Subsidiary Guarantors and the Trustee, in accordance with its terms, and a valid amendment of, and supplement to, the Indenture have been done;

NOW, THEREFORE:

In consideration of the premises and the purchase and acceptance of the Notes by the holders thereof the Company and the Subsidiary Guarantors mutually covenant and agree with the Trustee, for the equal and ratable benefit of the holders, that the Indenture is supplemented and amended, to the extent expressed herein, as follows:

ARTICLE ONE

The 8-5/8% Senior Notes Due 2011

Section 1.01. *Designation of 8-5/8% Senior Notes Due 2011.*

The changes, modifications and supplements to the Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and govern the terms of, the Notes, which shall not be limited in aggregate principal amount, and shall not apply to any other Securities that may be issued under the Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. Pursuant to this Supplemental Indenture, there is hereby created and designated a series of Securities under the Indenture entitled "8-5/8% Senior Notes Due 2011." The Notes shall be in the form of *Exhibit A* hereto. The Notes shall be guaranteed by the Subsidiary Guarantors as provided herein. The Notes may bear an appropriate legend regarding original issue discount for federal income tax purposes. Subject to the terms herein, including compliance with Section 3.03 hereof, the Company may, at its option, without consent from the Holders, issue additional Notes from time to time.

Section 1.02. *Interest.*

The Notes shall bear interest at the rate set forth in the Notes. Interest on the Notes shall be payable to the persons in whose name the Notes are registered at the close of business on the record date for such interest payment. The date from which interest shall accrue for each Note shall be the most recent to occur of May 21, 2001 or the most recent Interest Payment Date.

Section 1.03. *Redemption.*

The Company, at its option, may redeem the Notes in accordance with the provisions of and at the Redemption Prices set forth in the Notes and in accordance with the provisions of the Indenture, including, without limitation, Article Eleven thereof.

Section 1.04. *Maturity.*

The date on which the principal of the Notes is payable, unless accelerated pursuant to the terms hereof, shall be May 15, 2011.

Section 1.05. *Other Terms of the Notes.*

Without limiting the foregoing provisions of this Article One, the terms of the Notes shall be as set forth in the form of Notes set forth in Exhibit A hereto and as provided in the Indenture.

The Notes shall be payable and may be presented for payment, purchase, conversion, registration of transfer and exchange, without service charge, at the office of the Company maintained for such purpose in New York, New York, which shall initially be the office or agency of the Trustee.

ARTICLE TWO

Certain Definitions

The following terms have the meanings set forth below in this Supplemental Indenture. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Indenture. To the extent terms defined herein differ from the Indenture the terms defined herein will govern.

"*Acquisition Indebtedness*" means Indebtedness of any Person and its Subsidiaries existing at the time such Person became a Subsidiary of the Company (or such Person is merged with or into the Company or one of the Company's Subsidiaries) or assumed in connection with the acquisition of assets from any such Person, including, without limitation, Indebtedness Incurred in connection with, or in contemplation of, (a) such Person being merged with or into or becoming a Subsidiary of the

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Company or one of its Subsidiaries (but excluding Indebtedness of such Person which is extinguished, retired or repaid in connection with such Person being merged with or into or becoming a Subsidiary of the Company or one of its Subsidiaries) or (b) such acquisition of assets from any such Person.

"*Affiliate*" of any Person means any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes hereof, each executive officer and director of the Company and each Subsidiary of the Company will be an Affiliate of the Company. In addition, for purposes hereof, control of a 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. Notwithstanding the foregoing, the term "Affiliate" will not include, with respect to the Company or any Restricted Subsidiary which is a Wholly Owned Subsidiary of the Company, any Restricted Subsidiary which is a Wholly Owned Subsidiary of the Company.

"*Agent*" means any Registrar, Paying Agent, or co-Registrar.

"*Asset Sale*" for any Person means the sale, lease, conveyance or other disposition (including, without limitation, by merger, consolidation or sale and leaseback transaction, and whether by operation of law or otherwise) of any of that Person's assets (including, without limitation, the sale or other disposition of Capital Stock of any Subsidiary of such Person, whether by such Person or such Subsidiary), whether owned on the date hereof or subsequently acquired in one transaction or a series of related transactions, in which such Person and/or its Subsidiaries receive cash and/or other consideration (including, without limitation, the unconditional assumption of Indebtedness of such Person and/or its Subsidiaries) having an aggregate Fair Market Value of \$500,000 or more as to each such transaction or series of related transactions; *provided, however*, that

- (i) a transaction or series of related transactions that results in a Change of Control will not constitute an Asset Sale,
- (ii) sales of homes in the ordinary course of business will not constitute Asset Sales,
- (iii) sales, leases, conveyances or other dispositions, including, without limitation, exchanges or swaps of real estate in the ordinary course of business, for development of the Company's or any of its Subsidiaries' projects, will not constitute Asset Sales,
- (iv) sales, leases, sale-leasebacks or other dispositions of amenities, model homes and other improvements at the Company's or its Subsidiaries' projects in the ordinary course of business will not constitute Asset Sales, and
- (v) transactions between the Company and any of its Restricted Subsidiaries which are Wholly Owned Subsidiaries, or among such Restricted Subsidiaries which are Wholly Owned Subsidiaries of the Company, will not constitute Asset Sales.

"*Bank Credit Facility*" means the credit facility among the Company, as borrower thereunder, the Subsidiary Guarantors and the financial institutions named therein, as such facility may be amended, restated, supplemented or otherwise modified from time to time, and includes any facility extending the maturity of, or refinancing or restructuring (including, without limitation, the inclusion of additional borrowers thereunder that are Unrestricted Subsidiaries) all or any portion of, the Indebtedness under such facility or any successor facilities and includes any facility with one or more lenders refinancing or replacing all or any portion of the Indebtedness under such facility or any successor facilities.

"*Bankruptcy Law*" means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Stock*" of any Person means any and all shares, rights to purchase, warrants or options (whether or not currently exercisable), participations or other equivalents of or interests in (however

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designated and whether voting or non-voting) the equity (which includes, but is not limited to, common stock, preferred stock and partnership and joint venture interests) of such Person (excluding any debt securities that are convertible into, or exchangeable for, such equity).

"*Capitalized Lease Obligations*" of any Person means the obligations of such Person to pay rent or other amounts under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, and the amount of such obligation will be the capitalized amount thereof determined in accordance with GAAP.

"*Change of Control*" means any of the following:

- (i) the sale, lease, conveyance or other disposition of all or substantially all of the Company's assets as an entirety or substantially as an entirety to any Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) in one or a series of transactions; *provided* that a transaction where the holders of all classes of Common Equity of the Company immediately prior to such transaction own, directly or indirectly, 50 percent or more of the aggregate voting power of all classes of Common Equity of such Person or group immediately after such transaction will not be a Change of Control;

(ii) the acquisition by the Company and/or any of its Subsidiaries of 50 percent or more of the aggregate voting power of all classes of Common Equity of the Company in one transaction or a series of related transactions;

(iii) the liquidation or dissolution of the Company; *provided* that a liquidation or dissolution of the Company which is part of a transaction or series of related transactions that does not constitute a Change of Control under the "provided" clause of clause (i) above will not constitute a Change of Control under this clause (iii);

(iv) any transaction or a series of related transactions (as a result of a tender offer, merger, consolidation or otherwise) that results in, or that is in connection with, (a) any Person, including a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) acquiring "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50 percent or more of the aggregate voting power of all classes of Common Equity of the Company or of any Person that possesses "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50 percent or more of the aggregate voting power of all classes of Common Equity of the Company or (b) less than 50 percent (measured by the aggregate voting power of all classes) of the Common Equity of the Company being registered under Section 12(b) or 12(g) of the Exchange Act; or

(v) a majority of the Board of Directors of the Company not being comprised of Continuing Directors.

"Commission" means the U.S. Securities and Exchange Commission.

"Common Equity" of any Person means all Capital Stock of such Person that is generally entitled to (i) vote in the election of directors of such Person, or (ii) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management and policies of such Person.

"Consolidated Cash Flow Available for Fixed Charges" of the Company and its Restricted Subsidiaries means for any period the sum of the amounts for such period of

(i) Consolidated Net Income, *plus*

(ii) Consolidated Income Tax Expense (without regard to income tax expense or credits attributable to extraordinary and nonrecurring gains or losses on Asset Sales), *plus*

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(iii) Consolidated Interest Expense, *plus*

(iv) all depreciation, and, without duplication, amortization (including, without limitation, capitalized interest amortized to cost of sales), *plus*

(v) all other noncash items reducing Consolidated Net Income during such period,

minus all other noncash items increasing Consolidated Net Income during such period, all as determined on a consolidated basis for the Company and its Restricted Subsidiaries in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" of the Company means, with respect to any determination date, the ratio of (i) Consolidated Cash Flow Available for Fixed Charges of the Company for the prior four full fiscal quarters for which financial results have been reported immediately preceding the determination date, to (ii) the aggregate Consolidated Interest Incurred of the Company for the prior four full fiscal quarters for which financial results have been reported immediately preceding the determination date; *provided* that

(1) with respect to any Indebtedness Incurred during, and remaining outstanding at the end of, such four full fiscal quarter period, such Indebtedness will be assumed to have been Incurred as of the first day of such four full fiscal quarter period,

(2) with respect to Indebtedness repaid (other than a repayment of revolving credit obligations repaid solely out of operating cash flows) during such four full fiscal quarter period, such Indebtedness will be assumed to have been repaid on the first day of such four full fiscal quarter period,

(3) with respect to the Incurrence of any Acquisition Indebtedness, such Indebtedness and any proceeds therefrom will be assumed to have been Incurred and applied as of the first day of such four full fiscal quarter period, and the results of operations of any Person and any Subsidiary of such Person that, in connection with or in contemplation of such Incurrence, becomes a Subsidiary of the Company or is merged with or into the Company or one of the Company's Subsidiaries or whose assets are acquired, will be included, on a pro forma basis, in the calculation of the Consolidated Fixed Charge Coverage Ratio as if such transaction had occurred on the first day of such four full fiscal quarter period, and

(4) with respect to any other transaction pursuant to which any Person becomes a Subsidiary of the Company or is merged with or into the Company or one of the Company's Subsidiaries or pursuant to which any Person's assets are acquired, such Consolidated Fixed Charge Coverage Ratio shall be calculated on a pro forma basis as if such transaction had occurred on the first day of such four full fiscal quarter period, but only if such transaction would require a pro forma presentation in financial statements prepared pursuant to Rule 11-02 of Regulation S-X under the Securities Act.

"Consolidated Income Tax Expense" of the Company for any period means the income tax expense of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" of the Company for any period means the Interest Expense of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Consolidated Interest Incurred" of the Company for any period means the Interest Incurred of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

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"*Consolidated Net Income*" of the Company for any period means the aggregate net income (or loss) of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; *provided* that there will be excluded from such net income (to the extent otherwise included therein), without duplication:

(i) the net income (or loss) of any Person (other than a Restricted Subsidiary) in which any Person (including, without limitation, an Unrestricted Subsidiary) other than the Company or any Restricted Subsidiary has an ownership interest, except to the extent that any such income has actually been received by the Company or any Restricted Subsidiary in the form of cash dividends or similar cash distributions during such period, or in any other form but converted to cash during such period,

(ii) except to the extent includible in Consolidated Net Income pursuant to the foregoing clause (i), the net income (or loss) of any Person that accrued prior to the date that (a) such Person becomes a Restricted Subsidiary or is merged with or into or consolidated with the Company or any of its Restricted Subsidiaries or (b) the assets of such Person are acquired by the Company or any of its Restricted Subsidiaries,

(iii) the net income of any Restricted Subsidiary to the extent that (but only so long as) the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of that income is not permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary during such period,

(iv) in the case of a successor to the Company by consolidation, merger or transfer of its assets, any earnings of the successor prior to such merger, consolidation or transfer of assets and

(v) the gains (but not losses) realized during such period by the Company or any of its Restricted Subsidiaries resulting from (a) the acquisition of securities issued by the Company or extinguishment of Indebtedness of the Company or any of its Restricted Subsidiaries, (b) Asset Sales by the Company or any of its Restricted Subsidiaries and (c) other extraordinary items realized by the Company or any of its Restricted Subsidiaries.

Notwithstanding the foregoing, in calculating Consolidated Net Income, the Company will be entitled to take into consideration the tax benefits associated with any loss described in clause (v) of the preceding sentence, but only to the extent such tax benefits are actually recognized by the Company or any of its Restricted Subsidiaries during such period; *provided, further*, that there will be included in such net income, without duplication, the net income of any Unrestricted Subsidiary to the extent such net income is actually received by the Company or any of its Restricted Subsidiaries in the form of cash dividends or similar cash distributions during such period, or in any other form but converted to cash during such period.

"*Consolidated Tangible Assets*" of the Company as of any date means the total amount of assets of the Company and its Restricted Subsidiaries (less applicable reserves) on a consolidated basis at the end of the fiscal quarter immediately preceding such date, as determined in accordance with GAAP, less: (i) Intangible Assets and (ii) appropriate adjustments on account of minority interests of other Persons holding equity investments in Restricted Subsidiaries, in the case of each of clauses (i) and (ii) above, as reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the fiscal quarter immediately preceding such date.

"*Consolidated Tangible Net Worth*" of the Company as of any date means the stockholders' equity (including any Preferred Stock that is classified as equity under GAAP, other than Disqualified Stock) of the Company and its Restricted Subsidiaries on a consolidated basis at the end of the fiscal quarter immediately preceding such date, as determined in accordance with GAAP, plus any amount of unvested deferred compensation included, in accordance with GAAP, as an offset to stockholders'

equity, less the amount of Intangible Assets reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the fiscal quarter immediately preceding such date.

"*Continuing Director*" means at any date a member of the Board of Directors of the Company who

(i) was a member of the Board of Directors of the Company on the initial issuance date of the Notes hereunder or

(ii) was nominated for election or elected to the Board of Directors of the Company with the affirmative vote of at least a majority of the directors who were Continuing Directors at the time of such nomination or election.

"*Custodian*" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

"*Default*" means any event, act or condition that is, or after notice or the passage of time, or both, would be, an Event of Default.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the final maturity date of the Notes; *provided* that any Capital Stock which would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require the Company to repurchase or redeem such Capital Stock upon the occurrence of a change of control occurring prior to the final maturity of the Notes will not constitute Disqualified Stock if the change of control provisions applicable to such Capital Stock are no more favorable to the holders of such Capital Stock than those contained in Section 3.06 hereof and such Capital Stock specifically provides that the Company will not repurchase or redeem (or be required to repurchase or redeem) any such Capital Stock pursuant to such provisions prior to the Company's repurchase of Notes pursuant to Section 3.06 hereof.

"*Disqualified Stock Dividend*" of any Person means, for any dividend payable with regard to Disqualified Stock issued by such Person, the amount of such dividend multiplied by a fraction, the numerator of which is one and the denominator of which is one minus the maximum statutory combined federal, state and local income tax rate (expressed as a decimal number between 1 and 0) then applicable to such Person.

"*Equity Offering*" means a public or private equity offering by the Company for cash of Capital Stock, other than an offering of Disqualified Stock.

"*Event of Default*" has the meaning set forth in Section 5.01 hereof.

"*Exchange Act*" means the Securities Exchange Act of 1934.

"Existing Indebtedness" means all of the Indebtedness of the Company and its Subsidiaries that is outstanding on the date hereof.

"Fair Market Value" with respect to any asset or property means the sale value that would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy. Fair Market Value shall be determined by the Board of Directors of the Company acting in good faith and shall be evidenced by a board resolution (certified by the Secretary or Assistant Secretary of the Company) delivered to the Trustee.

"GAAP" means generally accepted accounting principles set forth in the opinions and interpretations of the Accounting Principles Board of the American Institute of Certified Public

Accountants and statements and interpretations of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect on the date hereof.

"Hedging Obligations" of any Person means the obligations of such Person pursuant to any interest rate swap agreement, foreign currency exchange agreement, interest rate collar agreement, option or futures contract or other similar agreement or arrangement relating to interest rates or foreign exchange rates.

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

"Incur" means to, directly or indirectly, create, incur, assume, guarantee, extend the maturity of, or otherwise become liable with respect to, any Indebtedness; provided, however, that neither the accrual of interest (whether such interest is payable in cash or kind) nor the accretion of original issue discount shall be considered an Incurrence of Indebtedness.

"Indebtedness" of any Person at any date means, without duplication,

(i) all indebtedness of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof),

(ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments,

(iii) all fixed obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto), other than standby letters of credit issued for the benefit of, or surety and performance bonds issued by, such Person in the ordinary course of business,

(iv) all obligations of such Person with respect to Hedging Obligations (other than those that fix or cap the interest rate on variable rate Indebtedness otherwise permitted hereunder or that fix the exchange rate in connection with Indebtedness denominated in a foreign currency and otherwise permitted hereunder),

(v) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, including, without limitation, all conditional sale obligations of such Person and all obligations under any title retention agreement; provided, however, that (a) any obligations described in this clause (v) which are non-interest bearing and which have a maturity of not more than six months from the date of Incurrence thereof shall not constitute Indebtedness and (b) trade payables and accrued expenses Incurred in the ordinary course of business shall not constitute Indebtedness,

(vi) all Capitalized Lease Obligations of such Person,

(vii) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person,

(viii) all Indebtedness of others guaranteed by, or otherwise the liability of, such Person to the extent of such guarantee or liability, and

(ix) all Disqualified Stock issued by such Person (the amount of Indebtedness represented by any Disqualified Stock will equal the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends).

The amount of Indebtedness of any Person at any date will be

(a) the outstanding balance at such date of all unconditional obligations as described above,

(b) the maximum liability of such Person for any contingent obligations under clause (viii) above and

(c) in the case of clause (vii) (if the Indebtedness referred to therein is not assumed by such Person), the lesser of the (A) Fair Market Value of all assets subject to a Lien securing the Indebtedness of others on the date that the Lien attaches and (B) amount of the Indebtedness secured.

"Independent Financial Advisor" means an accounting, appraisal or investment banking firm of nationally recognized standing that is, in the reasonable judgment of the Company's Board of Directors, (i) qualified to perform the task for which it has been engaged, and (ii) disinterested and independent, in a direct and indirect manner, of the parties to the Affiliate Transaction with respect to which such firm has been engaged.

"Intangible Assets" of the Company means all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights and all other items which would be treated as intangibles on the consolidated balance sheet of the Company and its Restricted Subsidiaries prepared in accordance with GAAP.

"Interest Expense" of any Person for any period means, without duplication, the aggregate amount of (i) interest which, in conformity with GAAP, would be set opposite the caption "interest expense" or any like caption on an income statement for such Person (including, without limitation, imputed interest included in Capitalized Lease Obligations, all commissions, discounts and other fees and charges owed with respect to letters of credit securing financial obligations and

bankers' acceptance financing, the net costs associated with Hedging Obligations, amortization of other financing fees and expenses, the interest portion of any deferred payment obligation, amortization of discount or premium, if any, and all other noncash interest expense other than interest and other charges amortized to cost of sales) and includes, with respect to the Company and its Restricted Subsidiaries, without duplication (including duplication of the foregoing items), all interest amortized to cost of sales for such period, and (ii) the amount of Disqualified Stock Dividends recognized by the Company on any Disqualified Stock whether or not paid during such period.

"*Interest Incurred*" of any Person for any period means, without duplication, the aggregate amount of (i) interest which, in conformity with GAAP, would be set opposite the caption "interest expense" or any like caption on an income statement for such Person (including, without limitation, imputed interest included in Capitalized Lease Obligations, all commissions, discounts and other fees and charges owed with respect to letters of credit securing financial obligations and bankers' acceptance financing, the net costs associated with Hedging Obligations, amortization of other financing fees and expenses, the interest portion of any deferred payment obligation, amortization of discount or premium, if any, and all other noncash interest expense other than interest and other charges amortized to cost of sales) and includes, with respect to the Company and its Restricted Subsidiaries, without duplication (including duplication of the foregoing items), all interest capitalized for such period, all interest attributable to discontinued operations for such period to the extent not set forth on the income statement under the caption "interest expense" or any like caption, and all interest actually paid by the Company or a Restricted Subsidiary under any guarantee of Indebtedness (including, without limitation, a guarantee of principal, interest or any combination thereof) of any other Person during such period and (ii) the amount of Disqualified Stock Dividends recognized by the Company on any Disqualified Stock whether or not declared during such period.

"*Investments*" of any Person means all (i) investments by such Person in any other Person in the form of loans, advances or capital contributions, (ii) guarantees of Indebtedness or other obligations of any other Person by such Person, (iii) purchases (or other acquisitions for consideration) by such Person of Indebtedness, Capital Stock or other securities of any other Person and (iv) other items that

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would be classified as investments on a balance sheet of such Person determined in accordance with GAAP.

"*Issue Date*" means the date of original issuance of the Notes.

"*Joint Venture Entity*" means the joint venture between the Company and Corporacion GEO S.A. de C.V.

"*Legal Holiday*" means Saturday, Sunday or a day on which banking institutions in New York, New York, Chicago, Illinois, or at a place of payment are authorized or obligated by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment shall be made at that place on the next succeeding day that is not a Legal Holiday.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or other similar encumbrance of any kind upon or in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including, without limitation, any conditional sale or other title retention agreement, and any lease in the nature thereof, any option or other agreement to sell, and any filing of, or agreement to give, any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

"*Material Subsidiary*" means any Subsidiary of the Company which accounted for five percent or more of the Consolidated Tangible Assets or Consolidated Cash Flow Available for Fixed Charges of the Company on a consolidated basis for the fiscal year ending immediately prior to any Default or Event of Default.

"*Net Proceeds*" means

- (i) cash (in U.S. dollars or freely convertible into U.S. dollars) received by the Company or any Restricted Subsidiary from an Asset Sale net of
 - (a) all brokerage commissions, investment banking fees and all other fees and expenses (including, without limitation, fees and expenses of counsel, financial advisors, accountants and investment bankers) related to such Asset Sale,
 - (b) provisions for all income and other taxes measured by or resulting from such Asset Sale of the Company or any of its Restricted Subsidiaries,
 - (c) payments made to retire Indebtedness that was Incurred in accordance with the terms hereof and that either (1) is secured by a Lien incurred in accordance with the terms hereof on the property or assets sold or (2) is required in connection with such Asset Sale to the extent actually repaid in cash,
 - (d) amounts required to be paid to any Person (other than the Company or a Restricted Subsidiary) owning a beneficial interest in the assets subject to the Asset Sale and
 - (e) appropriate amounts to be provided by the Company or any Restricted Subsidiary thereof, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary thereof, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations or post-closing purchase price adjustments associated with such Asset Sale, all as reflected in an Officers' Certificate delivered to the Trustee, and
- (ii) all noncash consideration received by the Company or any of its Restricted Subsidiaries from such Asset Sale upon the liquidation or conversion of such consideration into cash, without duplication, net of all items enumerated in subclauses (a) through (e) of clause (i) hereof.

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"*Non-Recourse Indebtedness*" with respect to any Person means Indebtedness of such Person for which (i) the sole legal recourse for collection of principal and interest on such Indebtedness is against the specific property identified in the instruments evidencing or securing such Indebtedness and such property was acquired with the proceeds of such Indebtedness or such Indebtedness was Incurred within 90 days after the acquisition of such property and (ii) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness.

"*Officer*" means the chairman, the chief executive officer, the president, the chief financial officer, the chief operating officer, the chief accounting officer, the treasurer, or any assistant treasurer, the controller, the secretary, any assistant secretary or any vice president of a Person.

"*Officers' Certificate*" means a certificate signed by two Officers, one of whom must be the Person's chief executive officer, chief operating officer, chief financial officer or chief accounting officer.

"*Paying Agent*" means any office or agency where Notes and the Subsidiary Guarantees may be presented for payment.

"*Permitted Investments*" of any Person means Investments of such Person in

(i) direct obligations of the United States or any agency thereof or obligations guaranteed by the United States or any agency thereof, in each case maturing within 180 days of the date of acquisition thereof,

(ii) certificates of deposit maturing within 180 days of the date of acquisition thereof issued by a bank, trust company or savings and loan association which is organized under the laws of the United States or any state thereof having capital, surplus and undivided profits aggregating in excess of \$250 million and a Keefe Bank Watch Rating of C or better,

(iii) certificates of deposit maturing within 180 days of the date of acquisition thereof issued by a bank, trust company or savings and loan association organized under the laws of the United States or any state thereof other than banks, trust companies or savings and loan associations satisfying the criteria in (ii) above, *provided* that the aggregate amount of all certificates of deposit issued to the Company at any one time by such bank, trust company or savings and loan association will not exceed \$100,000,

(iv) commercial paper given the highest rating by two established national credit rating agencies and maturing not more than 180 days from the date of acquisition thereof,

(v) repurchase agreements or money-market accounts which are fully secured by direct obligations of the United States or any agency thereof and

(vi) in the case of the Company and its Subsidiaries, any receivables or loans taken by the Company or a Subsidiary in connection with the sale of any asset otherwise permitted hereunder.

"*Permitted Liens*" means

(i) Liens for taxes, assessments or governmental charges or claims that either (a) are not yet delinquent or (b) are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established or other provisions have been made in accordance with GAAP,

(ii) statutory Liens of landlords and carriers', warehousemen's, mechanics', suppliers', materialmen's, repairmen's or other Liens imposed by law and arising in the ordinary course of business and with respect to amounts that, to the extent applicable, either (a) are not yet delinquent or (b) are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established or other provisions have been made in accordance with GAAP,

(iii) Liens (other than any Lien imposed by the Employee Retirement Income Security Act of 1974, as amended) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security,

(iv) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory obligations, surety and appeal bonds, progress payments, government contracts and other obligations of like nature (exclusive of obligations for the payment of borrowed money), in each case incurred in the ordinary course of business of the Company and its Subsidiaries,

(v) attachment or judgment Liens not giving rise to a Default or an Event of Default and which are being contested in good faith by appropriate proceedings,

(vi) easements, rights-of-way, restrictions and other similar charges or encumbrances not materially interfering with the ordinary course of business of the Company and its Subsidiaries,

(vii) zoning restrictions, licenses, restrictions on the use of real property or minor irregularities in title thereto which do not materially impair the use of such real property in the ordinary course of business of the Company and its Subsidiaries or the value of such real property for the purpose of such business,

(viii) leases or subleases granted to others not materially interfering with the ordinary course of business of the Company and its Subsidiaries,

(ix) purchase money mortgages (including, without limitation, Capitalized Lease Obligations and purchase money security interests),

(x) Liens securing Refinancing Indebtedness; *provided* that such Liens only extend to assets which are similar to the type of assets securing the Indebtedness being refinanced and such refinanced Indebtedness was previously secured by such similar assets,

(xi) Liens securing Indebtedness of the Company and its Restricted Subsidiaries permitted to be Incurred hereunder; *provided* that the aggregate amount of Indebtedness secured by Liens (other than Non-Recourse Indebtedness secured by Liens) will not exceed 40 percent of Consolidated Tangible Assets,

(xii) any interest in or title of a lessor to property subject to any Capitalized Lease Obligations incurred in compliance with the provisions hereof,

(xiii) Liens existing on the date hereof, including, without limitation, Liens securing Existing Indebtedness,

(xiv) any option, contract or other agreement to sell an asset; *provided* such sale is not otherwise prohibited by the terms hereof,

(xv) Liens securing Non-Recourse Indebtedness of the Company or a Restricted Subsidiary thereof, *provided* that such Liens apply only to the property financed out of the net proceeds of such Non-Recourse Indebtedness within 90 days of the Incurrence of such Non-Recourse Indebtedness,

(xvi) Liens on property or assets of any Restricted Subsidiary securing Indebtedness of such Restricted Subsidiary owing to the Company or one or more Restricted Subsidiaries,

(xvii) Liens securing Indebtedness of an Unrestricted Subsidiary,

(xviii) any right of a lender or lenders to which the Company or a Restricted Subsidiary may be indebted to offset against, or appropriate and apply to the payment of, such Indebtedness any and all balances, credits, deposits, accounts or monies of the Company or a Restricted Subsidiary with or held by such lender or lenders,

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(xix) any pledge or deposit of cash or property in conjunction with obtaining surety and performance bonds and letters of credit required to engage in constructing on-site and off-site improvements required by municipalities or other governmental authorities in the ordinary course of business of the Company or any Restricted Subsidiary,

(xx) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

(xxi) Liens encumbering customary initial deposits and margin deposits, and other Liens that are customary in the industry and incurred in the ordinary course of business securing Indebtedness under Hedging Obligations and forward contracts, options, futures contracts, futures options or similar agreements or arrangements designed to protect the Company or any of its Subsidiaries from fluctuations in the price of commodities, and

(xxii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Company or any of its Subsidiaries in the ordinary course of business.

"*Person*" means any individual, corporation, partnership, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or other agency or political subdivision thereof or other entity of any kind.

"*Preferred Stock*" of any Person means all Capital Stock of such Person which has a preference in liquidation or with respect to the payment of dividends.

"*Refinancing Indebtedness*" means Indebtedness that refunds, refinances or extends any Existing Indebtedness or other Indebtedness permitted to be incurred by the Company or its Restricted Subsidiaries pursuant to the terms hereof, but only to the extent that

(i) the Refinancing Indebtedness is subordinated to the Notes or the Subsidiary Guarantees, as the case may be, to the same extent as the Indebtedness being refunded, refinanced or extended, if at all,

(ii) the Refinancing Indebtedness is scheduled to mature either (a) no earlier than the Indebtedness being refunded, refinanced or extended, or (b) after the maturity date of the Notes,

(iii) the portion, if any, of the Refinancing Indebtedness that is scheduled to mature on or prior to the maturity date of the Notes has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Weighted Average Life to Maturity of the portion of the Indebtedness being refunded, refinanced or extended that is scheduled to mature on or prior to the maturity date of the Notes,

(iv) such Refinancing Indebtedness is in an aggregate amount that is equal to or less than the aggregate amount then outstanding under the Indebtedness being refunded, refinanced or extended,

(v) such Refinancing Indebtedness is Incurred by the same Person that initially Incurred the Indebtedness being refunded, refinanced or extended, except that the Company may Incur Refinancing Indebtedness to refund, refinance or extend Indebtedness of any Restricted Subsidiary, and

(vi) such Refinancing Indebtedness is Incurred within 180 days after the Indebtedness being refunded, refinanced or extended is so refunded, refinanced or extended.

"*Registrar*" means an office or agency where Notes may be presented for registration of transfer or for exchange.

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"*Restricted Investment*" with respect to any Person means any Investment (other than any Permitted Investment) by such Person in any (i) of its Affiliates, (ii) executive officer or director or any Affiliate of such Person, or (iii) any other Person other than a Restricted Subsidiary; *provided, however*, that with respect to the Company and its Restricted Subsidiaries, any loan or advance to an executive officer or director of the Company or a Subsidiary will not constitute a Restricted Investment provided such loan or advance is made in the ordinary course of business and, if such loan or advance exceeds \$100,000 (other than a readily marketable mortgage loan not exceeding \$500,000) such loan or advance has been approved by the Board of Directors of the Company or a disinterested committee thereof. Notwithstanding the above, a Subsidiary Guarantee shall not be deemed a Restricted Investment.

"*Restricted Payment*" with respect to any Person means

(i) the declaration of any dividend or the making of any other payment or distribution of cash, securities or other property or assets in respect of such Person's Capital Stock (except that a dividend payable solely in Capital Stock (other than Disqualified Stock) of such Person will not constitute a Restricted Payment),

(ii) any payment on account of the purchase, redemption, retirement or other acquisition for value of such Person's Capital Stock or any other payment or distribution made in respect thereof (other than payments or distributions excluded from the definition of Restricted Payment in clause (i) above), either

directly or indirectly,

(iii) any Restricted Investment, and

(iv) any principal payment, redemption, repurchase, defeasance or other acquisition or retirement of any Indebtedness of any Unrestricted Subsidiary or of Indebtedness of the Company which is subordinated in right of payment to the Notes or of Indebtedness of a Restricted Subsidiary which is subordinated in right of payment to its Subsidiary Guarantee;

provided, however, that with respect to the Company and its Subsidiaries, Restricted Payments will not include (a) any payment described in clause (i), (ii) or (iii) above made to the Company or any of its Restricted Subsidiaries which are Wholly Owned Subsidiaries by any of the Company's Subsidiaries, or (b) any purchase, redemption, retirement or other acquisition for value of Indebtedness or Capital Stock of such Person or its Subsidiaries if the consideration therefor consists solely of Capital Stock (other than Disqualified Stock) of such Person.

"*Restricted Subsidiary*" means each of the Subsidiaries of the Company which is not an Unrestricted Subsidiary.

"*Security Register*" is a register of the Notes and of their transfer and exchange kept by the Registrar.

"*Subsidiary*" of any Person means any (i) corporation of which at least a majority of the aggregate voting power of all classes of the Common Equity is directly or indirectly beneficially owned by such Person, and (ii) any entity other than a corporation of which such Person, directly or indirectly, beneficially owns at least a majority of the Common Equity.

"*Subsidiary Guarantee*" means the guarantee of the Notes by each Subsidiary Guarantor hereunder.

"*Subsidiary Guarantors*" means each of (i) Beazer Homes Corp., a Tennessee corporation, Beazer/ Squires Realty, Inc., a North Carolina corporation, Beazer Homes Sales Arizona Inc., a Delaware corporation, Beazer Realty Corp., a Georgia corporation, Beazer Mortgage Corporation, a Delaware corporation, Beazer Homes Holdings Corp., a Delaware corporation, Beazer Homes Texas Holdings, Inc., a Delaware corporation and Beazer Homes Texas, L.P., a Delaware limited partnership and (ii) each of the Company's Subsidiaries that becomes a guarantor of the Notes pursuant to the provisions hereof.

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"*Trust Officer*" means any vice president, trust officer or other authorized person of the Trustee assigned by the Trustee to administer its corporate trust matters.

"*Trustee*" means the party named as such until a successor replaces such party in accordance with the applicable provisions of the Indenture and thereafter means the successor trustee serving under the Indenture.

"*Unrestricted Subsidiary*" means United Home Insurance Corp., Homebuilders Title Services, Inc., Homebuilders Title Services of Virginia, Inc., Universal Solutions Insurance Agency, Inc., Texas Lone Star Title, LP, Beazer Realty, Inc., Security Title Insurance Company and each of the Subsidiaries of the Company so designated by a resolution adopted by the Board of Directors of the Company as provided below and provided that (a) neither the Company nor any of its other Subsidiaries (other than Unrestricted Subsidiaries) (1) provides any direct or indirect credit support for any Indebtedness of such Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness) or (2) is directly or indirectly liable for any Indebtedness of such Subsidiary, (b) the creditors with respect to Indebtedness for borrowed money of such Subsidiary have agreed in writing that they have no recourse, direct or indirect, to the Company or any other Subsidiary of the Company (other than Unrestricted Subsidiaries), including, without limitation, recourse with respect to the payment of principal or interest on any Indebtedness of such Subsidiary and (c) no default with respect to any Indebtedness of such Subsidiary (including any right which the holders thereof may have to take enforcement action against such Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Company and of its other Subsidiaries (other than other Unrestricted Subsidiaries), to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity. The Board of Directors of the Company may designate an Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that (i) any such redesignation will be deemed to be an Incurrence by the Company and its Restricted Subsidiaries of the Indebtedness (if any) of such redesignated Subsidiary in accordance with Section 3.03 hereof as of the date of such redesignation, (ii) immediately after giving effect to such redesignation and the Incurrence of any such additional Indebtedness, the Company and its Restricted Subsidiaries could incur \$1.00 of additional Indebtedness under the Consolidated Fixed Charge Coverage Ratio contained in Section 3.03 hereof and (iii) the Liens of such Unrestricted Subsidiary could then be incurred in accordance with Section 3.08 hereof as of the date of such redesignation. Subject to the foregoing, the Board of Directors of the Company also may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (i) all previous Investments by the Company and its Restricted Subsidiaries in such Restricted Subsidiary (net of any returns previously paid on such Investments) will be deemed to be Restricted Payments at the time of such designation and will reduce the amount available for Restricted Payments under Section 3.02, (ii) immediately after giving effect to such designation and reduction of amounts available for Restricted Payments under Section 3.02, the Company and its Restricted Subsidiaries could incur \$1.00 of additional Indebtedness under the Consolidated Fixed Charge Coverage Ratio contained in Section 3.03 hereof and (iii) no Default or Event of Default shall have occurred or be continuing. Any such designation or redesignation by the Board of Directors of the Company will be evidenced to the Trustee by the filing with the Trustee of a certified copy of the resolution of the Board of Directors of the Company giving effect to such designation or redesignation and an Officers' Certificate certifying that such designation or redesignation complied with the foregoing conditions and setting forth the underlying calculations.

"*Weighted Average Life To Maturity*" means, when applied to any Indebtedness or portion thereof, at any date, the number of years obtained by dividing (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including, without limitation, payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between

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such date and the making of such payment by (ii) the sum of all such payments described in clause (a) above.

"*Wholly Owned Subsidiary*" of any Person means (i) a Subsidiary, of which 100 percent of the Common Equity (except for directors' qualifying shares or certain minority interests owned by other Persons solely due to local law requirements that there be more than one stockholder, but which interest is not in excess of what is required for such purpose) is owned directly by such Person or through one or more other Wholly Owned Subsidiaries of such Person, or (ii) any entity other than a corporation in which such Person, directly or indirectly, owns all of the Common Equity of such entity.

"Working Capital Facilities" means, collectively, the Bank Credit Facility and one or more other facilities among the Company, as borrower thereunder, any Subsidiary Guarantor and one or more lenders pursuant to which the Company may incur Indebtedness for working capital purposes or to finance the acquisition, holding or development of property by the Company and the Restricted Subsidiaries (including the financing of any related interest reserve), as any such facility may be amended, restated, supplemented or otherwise modified from time to time, and includes any agreement extending the maturity of, or restructuring (including, without limitation, the inclusion of additional borrowers thereunder that are Unrestricted Subsidiaries), all or any portion of the Indebtedness under such facility or any successor facilities and includes any facility with one or more lenders refinancing or replacing all or any portion of the Indebtedness under such facility or any successor facility.

ARTICLE THREE

Covenants

Section 3.01. *Disposition of Proceeds of Asset Sales.*

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, make any Asset Sale unless

(i) the Company or the Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value for the shares or assets sold or otherwise disposed of; provided that the aggregate Fair Market Value of the consideration received from any Asset Sale that is not in the form of cash or cash equivalents (in U.S. dollars or freely convertible into U.S. dollars) shall not, when aggregated with the Fair Market Value of all other noncash consideration received by the Company and its Restricted Subsidiaries from all previous Asset Sales since the date hereof that has not been converted into cash or cash equivalents (in U.S. dollars or freely convertible into U.S. dollars), exceed five percent of the Consolidated Tangible Assets of the Company at the time of the Asset Sale under consideration, and

(ii) the Company shall apply or shall cause one or more of its Restricted Subsidiaries to apply an amount equal to the aggregate Net Proceeds received by the Company or any Restricted Subsidiary from all Asset Sales occurring subsequent to the date hereof as follows: (A) to repay any outstanding Indebtedness of the Company that is not subordinated to the Notes or other Indebtedness of the Company, or to the payment of any Indebtedness of any Restricted Subsidiary that is not subordinated to the Subsidiary Guarantee of such Restricted Subsidiary, in each case within one year after such Asset Sale; or (B) to acquire properties and assets that shall be used in the businesses of the Company and its Restricted Subsidiaries existing on the date hereof within one year after such Asset Sale,

provided, however, that (x) in the case of applications contemplated by clause (ii)(A) the payment of such Indebtedness shall result in a permanent reduction in committed amounts, if any, under the Indebtedness repaid at least equal to the amount of the payment made, (y) in the case of applications contemplated by clause (ii)(B), the Board of Directors has, within such one year period, adopted in good faith a resolution committing such Net Proceeds to such use and (z) none of such Net Proceeds shall be used to make any Restricted Payment.

The amount of such Net Proceeds neither used to repay the Indebtedness described above nor used or invested as set forth in the preceding sentence constitutes "Excess Proceeds." Notwithstanding the above, any Asset Sale that is subject to Section 3.11 hereof shall not be subject to this Section 3.01.

(b) Notwithstanding Section 3.01 hereof, to the extent the Company or any of its Restricted Subsidiaries receives securities or other noncash property or assets as proceeds of an Asset Sale, the Company shall not be required to make any application of such noncash proceeds required by clause (ii) of this Section 3.01 until it receives cash or cash equivalent proceeds from a sale, repayment, exchange, redemption or retirement of or extraordinary dividend or return of capital on such noncash property. Any amounts deferred pursuant to the preceding sentence shall be applied in accordance with clause (ii) of this Section 3.01 when cash or cash equivalent proceeds are thereafter received from a sale, repayment, exchange, redemption or retirement of or extraordinary dividend or return of capital on such noncash property.

(c) When the aggregate amount of Excess Proceeds equals \$10,000,000 or more, the Company shall so notify the Trustee in writing by delivery of an Officers' Certificate and shall offer to purchase from all Holders (an "Excess Proceeds Offer"), and shall purchase from Holders accepting such Excess Proceeds Offer on the date fixed for the closing of such Excess Proceeds Offer (the "Asset Sale Offer Date"), the maximum principal amount (expressed as a multiple of \$1,000) of Notes plus accrued and

unpaid interest thereon, if any, to the Asset Sale Offer Date that may be purchased and paid, as the case may be, out of the Excess Proceeds, at an offer price (the "Asset Sale Offer Price") in cash in an amount equal to 100 percent of the principal amount thereof plus accrued and unpaid interest, if any, to the Asset Sale Offer Date, in accordance with the procedures set forth in this Section 3.01. To the extent that the aggregate amount of Notes tendered pursuant to an Excess Proceeds Offer is less than the Excess Proceeds relating thereto, then the Company may use such Excess Proceeds, or a portion thereof, for general corporate purposes in the business of the Company and its Restricted Subsidiaries existing on the date hereof. Upon completion of an Excess Proceeds Offer, the amount of Excess Proceeds shall be reset at zero.

(d) Within 30 days after the date on which the amount of Excess Proceeds equals \$10,000,000 or more, the Company (with notice to the Trustee) or the Trustee at the Company's request (and at the expense of the Company) will send or cause to be sent by first-class mail to all Persons who were Holders on the date such Excess Proceeds equaled \$10,000,000, at their respective addresses appearing in the Security Register, a notice of such occurrence and of such Holders' rights arising as a result thereof. Such notice will contain all instructions and materials necessary to enable Holders to tender their Notes to the Company. Such notice, which will govern the terms of the Excess Proceeds Offer, will state:

- (i) that the Excess Proceeds Offer is being made pursuant to this Section 3.01 and the length of time such Excess Proceeds Offer will remain open;
- (ii) that the Holder has the right to require the Company to repurchase such Holder's Notes at the Asset Sale Offer Price;
- (iii) that any Note not tendered will continue to accrue interest;
- (iv) that any Note accepted for payment pursuant to the Excess Proceeds Offer will cease to accrue interest on the Asset Sale Offer Date;

(v) that the Asset Sale Offer Date will be no earlier than 45 days nor later than 60 days from the date such notice is mailed;

(vi) that Holders electing to have a Note purchased pursuant to any Excess Proceeds Offer will be required to surrender the Note to the Company, a depositary, if appointed by the Company, or a Paying Agent at the address specified in the notice prior to termination of the Excess Proceeds Offer;

(vii) that Holders will be entitled to withdraw their election if the Company, depositary or Paying Agent, as the case may be, receives, not later than the expiration of the Excess Proceeds Offer, or such longer period as may be required by law, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have the Note purchased;

(viii) that Holders whose Notes are purchased only in part will be issued Notes equal in principal amount to the unpurchased portion of the Notes surrendered; and

(ix) information concerning the details of the Excess Proceeds Offer and the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Sales otherwise described in the offering materials relating to the Excess Proceeds Offer (or corresponding successor reports) (or in the event the Company is not required to prepare any of

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the foregoing Forms, the comparable information required pursuant to Section 3.12 hereof); *provided* that the Company may at its option incorporate by reference any such filed reports in the notice, (B) a description of material developments in the Company's business subsequent to the date of the latest of such reports and (C) if material, appropriate pro forma financial information.

(e) In the event the aggregate principal amount of Notes surrendered by Holders together with accrued interest thereon exceeds the amount of Excess Proceeds, the Company will select the Notes to be purchased on a pro rata basis from all Notes so surrendered, with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of \$1,000, or integral multiples thereof, will be purchased. To the extent that the Excess Proceeds remaining are less than \$1,000, the Company may use such Excess Proceeds for general corporate purposes. Holders whose Notes are purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(f) Not later than one Business Day after the Asset Sale Offer Date in connection with which the Excess Proceeds offer is being made, the Company will (i) accept for payment Notes or portions thereof tendered pursuant to the Excess Proceeds Offer (on a pro rata basis if required), (ii) deposit with the Paying Agent money sufficient, in immediately available funds, to pay the purchase price of all Notes or portions thereof so accepted and (iii) deliver to the Paying Agent an Officers' Certificate identifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent will promptly mail or deliver to Holders so accepted payment in an amount equal to the Asset Sale Offer Price of the Notes purchased from each such Holder, and the Company will execute and upon receipt of an Officers' Certificate of the Company the Trustee will promptly authenticate and mail or deliver to such Holder a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted will be promptly mailed or delivered by the Paying Agent at the Company's expense to the Holder thereof. The Company will publicly announce the results of the Excess Proceeds Offer promptly after the Asset Sale Offer Date. For purposes of this Section 3.01(f), the Company will choose a Paying Agent which will not be the Company or a Subsidiary thereof.

(g) Any Excess Proceeds Offer will be conducted by the Company in compliance with applicable law, including, without limitation, Section 14(e) of the Exchange Act and Rule 14e -1 thereunder, if applicable.

(h) Whenever Excess Proceeds are received by the Company, and prior to the allocation of such Excess Proceeds pursuant to this Section 3.01, such Excess Proceeds will be set aside by the Company in a separate account to be held in trust for the benefit of the Holders; *provided, however*, that in the event the Company will be unable to set aside such Excess Proceeds in a separate account because of provisions of applicable law or of the Working Capital Facilities, the Company will not be required to set aside such Excess Proceeds.

(i) Notwithstanding the foregoing, an Excess Proceeds Offer may be made by one or more Restricted Subsidiaries in lieu of the Company.

Section 3.02. *Limitations on Restricted Payments.*

(a) The Company shall not, and shall not cause or permit any of its Restricted Subsidiaries to, make any Restricted Payment, directly or indirectly, after the date hereof if at the time of such Restricted Payment:

(i) the amount of such proposed Restricted Payment (the amount of such Restricted Payment, if other than in cash, shall be determined in good faith by a majority of the disinterested members of the Board of Directors of the Company), when added to the aggregate amount of all Restricted Payments declared or made after the date hereof, exceeds the sum of:

(1) \$100 million, *plus*

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(2) 50 percent of the Company's Consolidated Net Income accrued during the period (taken as a single period) commencing April 1, 2001 and ending on the last day of the fiscal quarter immediately preceding the fiscal quarter in which the Restricted Payment is to occur (or, if such aggregate Consolidated Net Income is a deficit, minus 100 percent of such aggregate deficit), *plus*

(3) the net cash proceeds derived from the issuance and sale of Capital Stock of the Company and its Restricted Subsidiaries that is not Disqualified Stock (other than a sale to a Subsidiary of the Company) after the date hereof, *plus*

(4) 100 percent of the principal amount of, or, if issued at a discount, the accreted value of, any Indebtedness of the Company or a Restricted Subsidiary which is issued (other than to a Subsidiary of the Company) after the date hereof that is converted into or exchanged for Capital Stock

of the Company that is not Disqualified Stock, *plus*

(5) 100 percent of the aggregate amounts received by the Company or any Restricted Subsidiary from the sale, disposition or liquidation (including by way of dividends) of any Investment (other than to any Subsidiary of the Company and other than to the extent sold, disposed of or liquidated with recourse to the Company or any of its Subsidiaries or to any of their respective properties or assets) but only to the extent (x) not included in clause (2) above and (y) that the making of such Investment constituted a permitted Restricted Investment, *plus*

(6) 100 percent of the principal amount of, or if issued at a discount, the accreted value of, any Indebtedness or other obligation that is the subject of a guarantee by the Company which is released (other than due to a payment on such guarantee) after the date hereof, but only to the extent that such guarantee constituted a permitted Restricted Payment; or

(ii) the Company would be unable to incur \$1.00 of additional Indebtedness under the Consolidated Fixed Charge Coverage Ratio contained in Section 3.03 hereof; or

(iii) a Default or Event of Default has occurred and is continuing or occurs as a consequence thereof.

(b) Notwithstanding the foregoing, the provisions of this Section 3.02 shall not prevent:

(i) the payment of any dividend within 60 days after the date of declaration thereof if the payment thereof would have complied with the limitations herein contained on the date of declaration, *provided* that (x) such dividend shall be deemed to have been paid as of its date of declaration for the purposes of this Section 3.02 and (y) at the time of payment of such dividend no other Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) the retirement of shares of the Company's Capital Stock or the Company's or a Restricted Subsidiary of the Company's Indebtedness for, or out of the net proceeds of a substantially concurrent sale (other than a sale to a Subsidiary of the Company) of, other shares of its Capital Stock (other than Disqualified Stock), *provided* that the proceeds of any such sale shall be excluded in any computation made under clause (3) above;

(iii) the redemption, repurchase, defeasance or retirement for value of Indebtedness, including premium, if any, with the proceeds of Refinancing Indebtedness;

(iv) payments or distributions pursuant to or in connection with a merger, consolidation or transfer of assets that complies with the provisions hereof applicable to mergers, consolidations and transfers of all or substantially all of the property and assets of the Company or any Guarantor; or

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(v) Investments in the Joint Venture Entity in an aggregate amount not to exceed \$6.0 million.

Section 3.03. *Limitations on Additional Indebtedness.*

(a) The Company shall not, and shall not cause or permit any of its Subsidiaries, directly or indirectly, to, Incur any Indebtedness (other than Indebtedness between the Company and its Restricted Subsidiaries which are Wholly Owned Subsidiaries or among such Restricted Subsidiaries which are Wholly Owned Subsidiaries) including Acquisition Indebtedness, unless, after giving effect thereto and the application of the proceeds therefrom, either (i) the Company's Consolidated Fixed Charge Coverage Ratio on the date thereof would be at least 2.0 to 1.0 or (ii) the ratio of Indebtedness of the Company and the Restricted Subsidiaries to Consolidated Tangible Net Worth is less than 2.25 to 1.

(b) Notwithstanding the foregoing, the provisions hereof shall not prevent:

(i) the Company from Incurring (A) Refinancing Indebtedness, (B) Non-Recourse Indebtedness, (C) Indebtedness evidenced by the Notes issued on the Issue Date, or (D) Indebtedness Incurred under Working Capital Facilities not to exceed the greater of \$75 million or 15% of Consolidated Tangible Assets,

(ii) Unrestricted Subsidiaries from Incurring Indebtedness,

(iii) any Subsidiary Guarantee of Indebtedness of the Company under the Notes,

(iv) the Company and its Restricted Subsidiaries from Incurring Indebtedness under any deposits made to secure performance of tenders, bids, leases, statutory obligations, surety and appeal bonds, progress statements, government contracts and other obligations of like nature (exclusive of the obligation for the payment of borrowed money), and

(v) the Company and its Restricted Subsidiaries from guaranteeing Indebtedness of the Joint Venture Entity in an amount not to exceed \$6.0 million less the amount of all other Investments made by the Company and its Restricted Subsidiaries in the Joint Venture Entity, in each case Incurred in the ordinary course of business of the Company or the Restricted Subsidiary.

(c) The Company shall not, and the Company shall not cause or permit any Subsidiary Guarantor that is a Restricted Subsidiary to, directly or indirectly, in any event Incur any Indebtedness that purports to be by its terms (or by the terms of any agreement governing such Indebtedness) subordinated to any other Indebtedness of the Company or of such Subsidiary Guarantor, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinated to the Notes or the Subsidiary Guarantee of such Subsidiary Guarantor, as the case may be, to the same extent and in the same manner as such Indebtedness is subordinated to such other Indebtedness of the Company or such Subsidiary Guarantor, as the case may be.

(d) For purposes of determining compliance with this Section 3.03, in the event an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in the above clauses of this Section 3.03, the Company, in its sole discretion, shall classify such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of such clauses.

Section 3.04. *Restrictions on Restricted Subsidiary Indebtedness.*

In addition to the limitations provided for under Section 3.03 hereof, the Company shall not permit any Restricted Subsidiaries to, directly or indirectly, incur any additional Indebtedness after the date hereof other than:

- (i) any guarantee of Indebtedness of the Company permitted to be Incurred hereunder (other than Non-Recourse Indebtedness),
- (ii) Refinancing Indebtedness,
- (iii) Non-Recourse Indebtedness,
- (iv) Acquisition Indebtedness not to exceed \$20 million aggregate principal amount at any one time outstanding,
- (v) Indebtedness to the Company for so long as held by the Company; provided that such Indebtedness is subordinated to any Subsidiary Guarantee,
- (vi) Indebtedness to another Restricted Subsidiary which is a Wholly Owned Subsidiary so long as held by such Restricted Subsidiary; provided that such Indebtedness is subordinated to any Subsidiary Guarantee,
- (vii) any Subsidiary Guarantee of Indebtedness of the Company under the Notes and
- (viii) any deposits made to secure performance of tenders, bids, leases, statutory obligations, surety and appeal bonds, progress statements, government contracts, and other obligations of like nature (exclusive of the obligation for the payment of borrowed money),

in each case Incurred in the ordinary course of business of the Restricted Subsidiary, consistent with past practice.

Section 3.05. *Limitations and Restrictions on Issuance of Capital Stock of Restricted Subsidiaries.*

The Company shall not permit any Restricted Subsidiary to issue, or permit to be outstanding at any time, Preferred Stock or any other Capital Stock constituting Disqualified Stock other than any such Capital Stock issued to or held by the Company or any Restricted Subsidiary of the Company which is a Wholly Owned Subsidiary.

Section 3.06. *Change of Control.*

(a) Upon the occurrence of any Change of Control, the Company shall so notify the Trustee in writing by delivery of an Officers' Certificate and shall offer to purchase (a "Change of Control Offer") from all Holders, and shall purchase from Holders accepting such Change of Control Offer on the date fixed for the closing of such Change of Control Offer (the "Change of Control Payment Date"), the outstanding principal amount of Notes at an offer price (the "Change of Control Price") in cash in an amount equal to 101 percent of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to the Change of Control Payment Date in accordance with the procedures set forth in this Section 3.06.

(b) Within 30 days after the date on which a Change of Control occurs, the Company (with notice to the Trustee) or the Trustee at the Company's request (and at the expense of the Company), will send or cause to be sent by first class mail, postage prepaid, to all Persons who were Holders on the date of the Change of Control at their respective addresses appearing in the Security Register, a notice of such occurrence and of such Holders' rights arising as a result thereof. Such notice will contain all instructions and materials necessary to enable Holders to tender their Notes to the Company. Such notice, which will govern the terms of the Change of Control Offer, will state:

(i) that the Change of Control Offer is being made pursuant to Section 3.06(a) hereof and the length of time the Change of Control Offer will remain open;

(ii) that the Holder has the right to require the Company to repurchase such Holder's Notes at the Change of Control Price;

(iii) that any Note not tendered will continue to accrue interest;

(iv) that any Note accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(v) that the Change of Control Payment Date will be no earlier than 45 days nor later than 60 days from the date such notice is mailed;

(vi) that Holders electing to have a Note purchased pursuant to any Change of Control Offer will be, required to surrender the Note to the Company, a depository, if appointed by the Company, or a Paying Agent at the address specified in the notice prior to termination of the Change of Control Offer;

(vii) that Holders will be entitled to withdraw their election if the Company, depository or Paying Agent, as the case may be, receives, not later than the expiration of the Change of Control Offer, or such longer period as may be required by law, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have the Note purchased;

(viii) that Holders which elect to have their Notes purchased only in part will be issued new Notes in a principal amount equal to the unpurchased portion of the Notes surrendered;

(ix) information concerning the date and details of the Change of Control and the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Sales otherwise described in the offering materials relating to the Change of Control Offer (or corresponding successor reports) (or in the event the Company is not required to prepare

any of the foregoing Forms, the comparable information required pursuant to Section 4.03 hereof); *provided* that the Company may at its option incorporate by reference any such filed reports in the notice, (B) a description of material developments in the Company's business subsequent to the date of the latest of such reports, and (C) if material, appropriate pro forma financial information).

(c) In the event of a Change of Control Offer, the Company will only be required to accept Notes in denominations of \$1,000 or integral multiples thereof.

(d) Not later than one Business Day after the Change of Control Payment Date in connection with which the Change of Control Offer is being made, the Company will (i) accept for payment Notes or portions thereof tendered pursuant to the Change of Control Offer, (ii) deposit with the Paying Agent money sufficient, in immediately available funds, to pay the purchase price of all Notes or portions thereof so accepted and (iii) deliver to the Paying Agent an Officers' Certificate identifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent will promptly mail or deliver to Holders of Notes so accepted payment in an amount equal to the Change of Control Price of the Notes purchased from each such Holder, and the Company will execute and, upon receipt of an Officers' Certificate of the Company, the Trustee will promptly authenticate and mail or deliver to such Holder a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted will be promptly mailed or delivered by the Paying Agent at the Company's expense to the Holder thereof. The Company will publicly announce the results of the

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Change of Control Offer promptly after the Change of Control Payment Date. For purposes of this Section 3.06(d), the Company will choose a Paying Agent which will not be the Company or a Subsidiary thereof.

(e) Any Change of Control Offer will be conducted by the Company in compliance with applicable law, including, without limitation, Section 14(e) of the Exchange Act and Rule 14e-1 thereunder.

Section 3.07. *Limitations on Transactions with Stockholders and Affiliates.*

The Company shall not, and shall not permit any of its Subsidiaries to, make any Investment, loan, advance, guarantee or capital contribution to or for the benefit of, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or for the benefit of, or purchase or lease any property or assets from, or enter into or amend any contract, agreement or understanding with, or for the benefit of, (i) any Affiliate of the Company or any Affiliate of the Company's Subsidiaries or (ii) any Person (or any Affiliate of such person) holding 10 percent or more of the Common Equity of the Company or any of its Subsidiaries (each an "*Affiliate Transaction*"), except on terms that are no less favorable to the Company or the relevant Subsidiary, as the case may be, than those that could have been obtained in a comparable transaction on an arm's length basis from a person that is not an Affiliate.

The Company shall not, and shall not permit any of its Subsidiaries to, enter into any Affiliate Transaction involving or having a value of more than \$1 million, unless, in each case, such Affiliate Transaction has been approved by a majority of the disinterested members of the Company's Board of Directors.

The Company shall not, and shall not permit any of its Subsidiaries to, enter into an Affiliate Transaction involving or having a value of more than \$5 million unless the Company has delivered to the Trustee an opinion of an Independent Financial Advisor to the effect that the transaction is fair to the Company or the relevant Subsidiary, as the case may be, from a financial point of view.

Notwithstanding the foregoing, an Affiliate Transaction shall not include (i) any contract, agreement or understanding with, or for the benefit of, or plan for the benefit of, employees of the Company or its Subsidiaries (in their capacity as such) that has been approved by the Company's Board of Directors, (ii) Capital Stock issuances to members of the Board of Directors, officers and employees, of the Company or its Subsidiaries pursuant to plans approved by the stockholders of the Company, (iii) any Restricted Payment otherwise permitted under Section 3.02 hereof, (iv) any transaction between the Company and a Restricted Subsidiary or a Restricted Subsidiary and another Restricted Subsidiary, (v) any transaction pursuant to the tax sharing agreement, the agreement with Beazer Homes Ltd. regarding use of name and the cross-indemnity agreement, in each case with the Company's former parent or affiliates, as such agreements are in effect on the date hereof or (vi) any transactions pursuant to the joint venture agreement with the Joint Venture Entity, as such agreement is in effect on the date hereof.

Section 3.08. *Limitations on Liens.*

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Liens, other than Permitted Liens, on any of its or their assets, property, income or profits therefrom unless contemporaneously therewith or prior thereto all payments due hereunder and under the Notes are secured on an equal and ratable basis with the obligation or liability so secured until such time as such obligation or liability is no longer secured by a Lien. No Liens shall be permitted to be created or suffered to exist on any Indebtedness from the Company in favor of any Restricted Subsidiary and that such Indebtedness shall not be permitted to be sold, disposed of or otherwise transferred.

Section 3.09. *Limitations on Restrictions on Distributions from Restricted Subsidiaries.*

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The Company shall not, and shall not permit any of its Restricted Subsidiaries to, create, assume or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (i) pay dividends or make any other distributions on its Capital Stock or any other interest or participation in, or measured by, its profits, owned by the Company or any of its other Restricted Subsidiaries, or pay interest on or principal of any Indebtedness owed to the Company or any of its other Restricted Subsidiaries, (ii) make loans or advances to the Company or any of its other Restricted Subsidiaries, or (iii) transfer any of its properties or assets to the Company or any of its other Restricted Subsidiaries, except for encumbrances or restrictions existing under or by reason of (a) applicable law, (b) covenants or restrictions contained in the agreements evidencing Existing Indebtedness as in effect on the date hereof, (c) any restrictions or encumbrances arising under Acquisition Indebtedness; *provided*, that such encumbrance or restriction applies only to the obligor on such Indebtedness and its Subsidiaries and that such Acquisition Indebtedness was not incurred by the Company or any of its Subsidiaries or by the Person being acquired in connection with or in anticipation of such acquisition, (d) any restrictions or encumbrances arising in connection with Refinancing Indebtedness; *provided* that any restrictions and encumbrances of the type described in this clause (d) that arise under such Refinancing Indebtedness are not more restrictive than those under the agreement creating or evidencing the Indebtedness being refunded, refinanced, replaced or extended, (e) any agreement restricting the sale or other disposition of property securing Indebtedness permitted by the terms hereof if such agreement does not expressly restrict the ability of a Subsidiary of the Company to pay dividends or make loans or advances, and (f) reasonable and customary borrowing base covenants set forth in agreements evidencing Indebtedness otherwise permitted by the terms hereof, which covenants restrict or limit the distribution of revenues or sale proceeds from real estate or

a real estate project based upon the amount of indebtedness outstanding on such real estate or real estate project and the value of some or all of the remaining real estate or the project's remaining assets, and customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Company or any of its Restricted Subsidiaries.

Section 3.10. *Maintenance of Consolidated Tangible Net Worth.*

(a) In the event that the Consolidated Tangible Net Worth of the Company is less than \$85,000,000 at the end of any two consecutive fiscal quarters (the last day of the second fiscal quarter being referred to herein as the "*Deficiency Date*"), within 30 days after the end of each such period, the Company shall so notify the Trustee in writing by delivery of an Officers' Certificate and shall offer to purchase from all Holders (a "*Net Worth Offer*"), and shall purchase from Holders accepting such Net Worth Offer on the date fixed for the closing of such Net Worth Offer (the "*Net Worth Offer Date*"), 10 percent of the original outstanding principal amount of the Notes (the "*Net Worth Amount*") at an offer price (the "*Net Worth Offer Price*") in cash in an amount equal to 100 percent of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to the Net Worth Offer Date. To the extent that the aggregate amount of Notes tendered pursuant to a Net Worth Offer is less than the Net Worth Amount relating thereto, then the Company may use the excess of the Net Worth Amount over the amount of Notes tendered, or a portion thereof, for general corporate purposes. In no event shall the Company's failure to meet the Consolidated Tangible Net Worth threshold at the end of any fiscal quarter be counted toward the making of more than one Net Worth Offer. The Company may reduce the principal amount of Notes to be purchased pursuant to the Net Worth Offer by subtracting 100 percent of the principal amount (excluding premium) of Notes acquired by the Company or any Wholly Owned Subsidiary subsequent to the Deficiency Date and surrendered for cancellation through purchase, redemption (other than pursuant to this Section 3.10) or exchange, and that were not previously used as a credit against any obligation to repurchase Notes pursuant to this Section 3.10.

(b) In the event the Consolidated Tangible Net Worth of the Company is less than \$85,000,000 at the end of any two consecutive fiscal quarters, within 30 days after the end of such period, the Company (with notice to the Trustee) or the Trustee at the Company's request (and at the expense of

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the Company) will send or cause to be sent by first-class mail, postage pre-paid, to all Persons who were Holders on the date of the end of the second such consecutive fiscal quarter, at their respective addresses appearing in the Security Register, a notice of such occurrence and of each Holder's rights arising as a result thereof. Such notice will contain all instructions and materials necessary to enable Holders to tender their Notes to the Company. Such notice, which will govern the terms of the Net Worth Offer, will state:

- (i) that the Net Worth Offer is being made pursuant to Section 3.10(a) hereof and the length of time such Net Worth Offer will remain open;
- (ii) that the Holder has the right to require the Company to repurchase such Holder's Notes at the Net Worth Offer Price;
- (iii) that any Note not tendered will continue to accrue interest;
- (iv) that any Note accepted for payment pursuant to the Net Worth Offer will cease to accrue interest on the Net Worth Offer Date;
- (v) that the Net Worth Offer Date will be no earlier than 45 days nor later than 60 days from the date such notice is mailed;
- (vi) that Holders electing to have a Note purchased pursuant to any Net Worth Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, to the Company, a depository, if appointed by the Company, or a Paying Agent at the address specified in the notice prior to termination of the Net Worth Offer;
- (vii) that Holders will be entitled to withdraw their election if the Company, depository or Paying Agent, as the case may be, receives, not later than the expiration of the Net Worth Offer, or such longer period as may be required by law, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for the purchase and a statement that such Holder is withdrawing its election to have the Note purchased;
- (viii) that Holders whose Notes are purchased only in part will be issued Notes equal in principal amount to the unpurchased portion of the Notes surrendered; and
- (ix) information concerning the period and details of the events requiring the Net Worth Offer and the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Sales otherwise described in the offering materials relating to the Net Worth Offer (or corresponding successor reports) (or in the event the Company is not required to prepare any of the foregoing Forms, the comparable information required pursuant to Section 3.12 hereof); *provided* that the Company may, at its option, incorporate by reference any such filed reports in the notice, (B) a description of material developments in the Company's business subsequent to the date of the latest of such reports, and (C) if material, appropriate pro forma financial information).

(c) In the event that the aggregate principal amount of Notes surrendered by Holders exceeds the Net Worth Amount, the Company will select the Notes to be purchased on a *pro rata* basis from all Notes so surrendered, with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of \$1,000, or integral multiples thereof, will be purchased. To the extent that the Net Worth Amount remaining is less than \$1,000, the Company may use such Net Worth

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Amount for general corporate purposes. Holders whose Notes are purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(d) Not later than one Business Day after the Net Worth Offer Date in connection with which the Net Worth Offer is being made, the Company will (i) accept for payment Notes or portions thereof tendered pursuant to the Net Worth offer (on a *pro rata* basis if required pursuant to Section 3.10(c) above), (ii) deposit with the Paying Agent money sufficient, in immediately available funds, to pay the purchase price of all Notes or portions thereof so accepted and (iii) deliver to the Paying Agent an Officers' Certificate identifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent will promptly mail or

deliver to Holders of Notes so accepted payment in an amount equal to the Net Worth Offer Price of the Notes purchased from each such Holder, and the Company will execute and the Trustee will promptly authenticate and mail or deliver to such Holder a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted will be promptly mailed or delivered by the Paying Agent at the Company's expense to the Holder thereof. The Company will publicly announce the results of the Net Worth Offer promptly after the Net Worth Offer Date. For purposes of this Section 3.10(d), the Company will choose a Paying Agent which will not be the Company or a Subsidiary thereof.

(e) Any Net Worth Offer will be conducted by the Company in compliance with applicable law, including, without limitation, Section 14(e) of the Exchange Act and Rule 14e-1 thereunder, if applicable.

Section 3.11. *Limitations on Mergers and Consolidations.*

(a) Neither the Company nor any Subsidiary Guarantor shall consolidate or merge with or into, or sell, lease, convey or otherwise dispose of all or substantially all of its assets (including, without limitation, by way of liquidation or dissolution), or assign any of its obligations under the Notes or the Guarantees or hereunder (as an entirety or substantially in one transaction or series of related transactions), to any Person or permit any of its Restricted Subsidiaries to do any of the foregoing (in each case other than with the Company or another Wholly Owned Restricted Subsidiary) unless:

(i) the Person formed by or surviving such consolidation or merger (if other than the Company or such Subsidiary Guarantor, as the case may be), or to which such sale, lease, conveyance or other disposition or assignment shall be made (collectively, the "Successor"), is a solvent corporation or other legal entity organized and existing under the laws of the United States or any state thereof or the District of Columbia, and the Successor assumes by supplemental indenture in a form reasonably satisfactory to the Trustee all of the obligations of the Company or such Subsidiary Guarantor, as the case may be, under the Notes or such Subsidiary Guarantor's Subsidiary Guarantee, as the case may be, and hereunder,

(ii) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing,

(iii) immediately after giving effect to such transaction and the use of any net proceeds therefrom, on a pro forma basis, the Consolidated Tangible Net Worth of the Company or the Successor (in the case of a transaction involving the Company), as the case may be, would be at least equal to the Consolidated Tangible Net Worth of the Company immediately prior to such transaction,

(iv) immediately after giving effect to such transaction and the use of any net proceeds therefrom, on a pro forma basis, the Consolidated Fixed Charge Coverage Ratio of the Company or the Successor (in the case of a transaction involving the Company), as the case may be, would be such that the Company or the Successor (in the case of a transaction involving the Company), as the case may be, would be entitled to Incur at least \$1.00 of additional Indebtedness under such Consolidated Fixed Charge Coverage Ratio test set forth in Section 3.03 hereof, and

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(v) The Company or any Subsidiary Guarantor, as the case may be, will deliver to the Trustee prior to the consummation of the proposed transaction an Officers' Certificate to the foregoing effect and an opinion of counsel stating that the proposed transaction and such supplemental indenture comply with this Indenture.

(b) Upon any consolidation or merger, or any sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company or any assignment of its obligations under this Indenture or the Notes in accordance with this Section 3.11, upon assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of, premium, if any, and interest on all of the Notes and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be performed or observed by the Company, the Successor formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance or other disposition or assignment is made will 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 has been named as the Company herein and such Successor may cause to be signed and may issue in its own name or in the name of the Company, any or all Notes issuable hereunder and the predecessor Company, in the case of a sale, lease, conveyance or other disposition or assignment, will be released from all obligations under this Indenture and the Notes.

Section 3.12. *Reports.*

As long as any of the Notes are outstanding, the Company shall deliver to the Trustee and mail to each Holder within 15 days after the filing of the same with the Commission copies of the quarterly and annual reports and of the information, documents and other reports with respect to the Company and the Subsidiary Guarantors, if any, which the Company and the Subsidiary Guarantors may be required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. Notwithstanding that neither the Company nor any of the Subsidiary Guarantors may be required to remain subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall continue to file with the Commission and provide the Trustee and Holders with such annual and quarterly reports and such information, documents and other reports with respect to the Company and the Subsidiary Guarantors as are required under Sections 13 and 15(d) of the Exchange Act. If filing of documents by the Company with the Commission as aforementioned in this paragraph is not permitted under the Exchange Act, the Company shall promptly upon written notice supply copies of such documents to any prospective holder. The Company and each Subsidiary Guarantor shall also comply with the other provisions of Section 314(a) of the Trust Indenture Act.

Section 3.13. *Subsidiary Guarantees.*

After the date hereof, the Company will cause each of its Subsidiaries that is or becomes a Restricted Subsidiary (other than, in the Company's discretion, any Restricted Subsidiary the assets of which have a book value of not more than \$5,000,000) to be a Subsidiary Guarantor hereunder in accordance with the provisions of Section 11.03 hereof. The Company may, in its discretion, cause any Unrestricted Subsidiary to become a Subsidiary Guarantor hereunder in the same manner.

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ARTICLE FOUR

Subsidiary Guarantees

Section 4.01. *Subsidiary Guarantees of Notes.*

Subject to the provisions of this Article 4, each Subsidiary Guarantor hereby jointly and severally unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company or any other Subsidiary Guarantors to the Holders or the Trustee hereunder or thereunder, that: (a) the principal of, premium, if any, and interest on the Notes will be duly and punctually paid in full when due, whether at maturity, by acceleration or otherwise, and interest on the overdue principal and (to the extent permitted by law) interest, if any, on the Notes and all other obligations of the Company or the Subsidiary Guarantors to the Holders or the Trustee hereunder or thereunder (including fees, expenses or other) and all other obligations with respect to the Notes, this Supplemental Indenture and the Indenture will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes, the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed, or failing performance of any other obligation of the Company to the Holders, for whatever reason, each Subsidiary Guarantor will be obligated to pay, or to perform or cause the performance of, the same immediately. An Event of Default under the Indenture, this Supplemental Indenture or the Notes shall constitute an event of default under this Subsidiary Guarantee, and shall entitle the Holders of Notes to accelerate the obligations of the Subsidiary Guarantors hereunder in the same manner and to the same extent as the obligations of the Company and the Subsidiary Guarantors.

Each of the Subsidiary Guarantors hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture or this Supplemental Indenture, the absence of any action to enforce the same, any waiver or consent by any holder of the Notes with respect to any provisions hereof or thereof, any release of any other Subsidiary Guarantor, the recovery of any judgment against the Company, any action to enforce the same, whether or not a Subsidiary Guarantee is affixed to any particular Note, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Subsidiary Guarantor. Each of the Subsidiary Guarantors hereby waives the benefit of diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that its Subsidiary Guarantee will not be discharged except by complete performance of the obligations contained in the Notes, this Indenture and this Subsidiary Guarantee. If any Holder or the Trustee is required by any court or otherwise to return to the Company or to any Subsidiary Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or such Subsidiary Guarantor, any amount paid by the Company or such Subsidiary Guarantor to the Trustee or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Subsidiary Guarantor further agrees that, as between it, on the one hand, and the Holders of Notes and the Trustee, on the other hand, (a) subject to this Article 4, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 5 hereof or Article 5 of the Indenture for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (b) in the event of any acceleration of such obligations as provided in Article 5 hereof or Article 5 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Subsidiary Guarantee.

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This Subsidiary Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Subsidiary Guarantees shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

No stockholder, officer, director, employer or incorporator, past, present or future, or any Subsidiary Guarantor, as such, shall have any personal liability under this Subsidiary Guarantee by reason of his, her or its status as such stockholder, officer, director, employer or incorporator.

The Subsidiary Guarantors shall have the right to seek contribution from any non-paying Subsidiary Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Subsidiary Guarantee.

Each Subsidiary Guarantor, and by its acceptance hereof each Holder, hereby confirms that it is the intention of all such parties that the guarantee by each Subsidiary Guarantor pursuant to its Subsidiary Guarantee not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar Federal or state law. To effectuate the foregoing intention, the Holders and each Subsidiary Guarantor hereby irrevocably agree that the obligations of each Subsidiary Guarantor under the Subsidiary Guarantees shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of each Subsidiary Guarantor, result in the obligations of each Subsidiary Guarantor under the Subsidiary Guarantees not constituting such fraudulent transfer or conveyance.

Section 4.02. *Execution and Delivery of Subsidiary Guarantee.*

To further evidence the Subsidiary Guarantee set forth in Section 4.01, each Subsidiary Guarantor hereby agrees that a notation of such Subsidiary Guarantee, substantially in the form included in Exhibit C hereto, shall be endorsed on each Note authenticated and delivered by the Trustee after such Subsidiary Guarantee is executed and executed by either manual or facsimile signature of an Officer of each Subsidiary Guarantor. The validity and enforceability of any Subsidiary Guarantee shall not be affected by the fact that it is not affixed to any particular Note.

Each of the Subsidiary Guarantors hereby agrees that its Subsidiary Guarantee set forth in Section 4.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

If an Officer of a Subsidiary Guarantor whose signature is on this Indenture or a Note no longer holds that office at the time the Trustee authenticates such Note or at any time thereafter, such Subsidiary Guarantor's Subsidiary Guarantee of such Note shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Subsidiary Guarantee set forth in this Indenture on behalf of the Subsidiary Guarantor.

Section 4.03. *Additional Subsidiary Guarantors.*

Any Person may become a Subsidiary Guarantor by executing and delivering to the Trustee (a) a supplemental indenture in form and substance satisfactory to the Trustee which subjects such Person to the provisions of this Indenture as a Subsidiary Guarantor, and (b) an opinion of Counsel to the effect

that such supplemental indenture has been duly authorized and executed by such Person and constitutes the legal, valid, binding and enforceable obligation of such Person (subject to such customary exceptions concerning fraudulent conveyance laws, creditors' rights and equitable principles as may be acceptable to the Trustee in its discretion).

Section 4.04. Release of a Subsidiary Guarantor.

(a) Except in the case where the prohibition on transfer in Section 3.11 is applicable, if all or substantially all of the assets of any Subsidiary Guarantor or all of the capital stock of any Subsidiary Guarantor is sold (including by issuance or otherwise) by the Company or any of its Subsidiaries in a transaction constituting an Asset Sale, and if the Net Proceeds from such Asset Sale are used in accordance with Section 3.01, then such Subsidiary Guarantor (in the event of a sale or other disposition of all of the capital stock of such Subsidiary Guarantor) or the corporation acquiring such assets (in the event of a sale or other disposition of all or substantially all of the assets of such Subsidiary Guarantor) shall be deemed automatically and unconditionally released and discharged from all obligations under this Article 4 without any further action required on the part of the Trustee or any Holder, *provided* that each such Subsidiary Guarantor (or its assets) is sold or disposed of in accordance with Section 3.01 and Article 5 hereof and Article 5 of the Indenture.

(b) The Trustee shall deliver an appropriate instrument evidencing the release of a Subsidiary Guarantor upon receipt of a request of the Company accompanied by an Officers' Certificate certifying as to the compliance with this Section 4.04. Any Subsidiary Guarantor not so released or the entity surviving such Subsidiary Guarantor, as applicable, will remain or be liable under its Subsidiary Guarantee as provided in this Article 4.

The Trustee shall execute any documents reasonably requested by the Company or a Subsidiary Guarantor in order to evidence the release of such Subsidiary Guarantor from its obligations under its Subsidiary Guarantee endorsed on the Notes and under this Article 4.

Except as set forth in Article 3 hereof and this Section 4.04, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Subsidiary Guarantor with or into the Company or another Subsidiary Guarantor or shall prevent any sale or conveyance of the property of a Subsidiary Guarantor as an entirety or substantially as an entirety to the Company or another Subsidiary Guarantor.

Section 4.05. Waiver of Subrogation.

Each Subsidiary Guarantor hereby irrevocably waives any claim or other rights which it may now or hereafter acquire against the Company or any of its Subsidiaries that arise from the existence, payment, performance or enforcement of such Subsidiary Guarantor's obligations under this Subsidiary Guarantee and this Indenture, including, without limitation, any right of subrogation, reimbursement, exoneration, indemnification, and any right to participate in any claim or remedy of any Holder of Notes against the Company or any of its Subsidiaries, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including, without limitation, the right to take or receive from the Company or any of its Subsidiaries, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Subsidiary Guarantor in violation of the preceding sentence and the Notes shall not have been paid in full, such amount shall have been deemed to have been paid to such Subsidiary Guarantor for the benefit of, and held in trust for the benefit of, the Holders of the Notes, and shall forthwith be paid to the Trustee for the benefit of such Holders to be credited and applied upon the Notes, whether matured or unmatured, in accordance with the terms of this Indenture. Each Subsidiary Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the waiver set forth in this Section 4.05 is knowingly made in contemplation of such benefits.

ARTICLE FIVE

Miscellaneous

Section 5.01. Events of Default. Sections 5.01 and 5.02 of the Indenture are hereby replaced in their entirety by the following:

(a) "Event of Default," wherever used herein, means any of the following events (whatever the reason for such Event of Default and whether it will 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):

(i) the failure by the Company to pay interest on any Note when the same becomes due and payable and the continuance of any such failure for a period of 30 days;

(ii) the failure by the Company to pay the principal or premium of any Note when the same becomes due and payable at maturity, upon acceleration or otherwise (including the failure to make payment pursuant to a Change of Control Offer, a Net Worth Offer or an Excess Proceeds Offer);

(iii) the failure by the Company or any of its Subsidiaries to comply with any of its agreements or covenants in, or provisions of, the Notes, the Subsidiary Guarantees or this Indenture and such failure continues for the period and after the notice specified below;

(iv) the acceleration of any Indebtedness (other than Non-Recourse Indebtedness) of the Company or any of its Subsidiaries that has an outstanding principal amount of \$3,000,000 or more in the aggregate;

(v) the failure by the Company or any of its Subsidiaries to make any principal or interest payment in respect of Indebtedness (other than Non-Recourse Indebtedness) of the Company or any of its Subsidiaries with an outstanding aggregate amount of \$3,000,000 or more within five days of such principal or interest payment becoming due and payable (after giving effect to any applicable grace period set forth in the documents governing such Indebtedness);

(vi) a final judgment or judgments that exceed \$3,000,000 or more in the aggregate, for the payment of money, having been entered by a court or courts of competent jurisdiction against the Company or any of its Subsidiaries and such judgment or judgments is not satisfied, stayed, annulled or rescinded within 60 days of being entered;

(vii) the Company or any Material Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

- (A) commences a voluntary case,
- (B) consents to the entry of an order for relief against it in an involuntary case,
- (C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or
- (D) makes a general assignment for the benefit of its creditors;

(viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (A) is for relief against the Company or any Material Subsidiary as debtor in an involuntary case,

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(B) appoints a Custodian of the Company or any Material Subsidiary or a Custodian for all or substantially all of the property of the Company or any Material Subsidiary, or

(C) orders the liquidation of the Company or any Material Subsidiary and the order or decree remains unstayed and in effect for 60 days; or

(ix) any Subsidiary Guarantee ceases to be in full force and effect (other than in accordance with the terms of such Subsidiary Guarantee and this Indenture) or is declared null and void and unenforceable or found to be invalid or any Subsidiary Guarantor denies its liability under its Subsidiary Guarantee (other than by reason of release of a Subsidiary Guarantor from its Subsidiary Guarantee in accordance with the terms of this Indenture and the Subsidiary Guarantee).

(b) The Trustee will not be deemed to know of a Default unless a Trust Officer has actual knowledge of such Default or receives written notice of such Default with specific reference to such Default.

(c) A Default under Section 5.01(a)(iii) hereof will not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25 percent in principal amount of the then outstanding Notes notify the Company and the Trustee, of the Default and the Company does not cure the Default within 60 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, it ceases.

(d) If an Event of Default (other than an Event of Default with respect to the Company specified in clause (vii) or (viii) of Section 5.01(a) hereof) shall have occurred and be continuing under this Indenture, the Trustee by notice to the Company, or the Holders of at least 25 percent in principal amount of the Notes then outstanding by notice to the Company and the Trustee, may declare all Notes to be due and payable immediately. Upon such declaration of acceleration, the amounts due and payable on the Notes, as determined in Section 5.01(e) hereof, will be due and payable immediately. If an Event of Default with respect to the Company specified in clause (vii) or (viii) of Section 5.01(a) hereof occurs, such an amount will *ipso facto* become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee and the Company or any Holder. The Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee and the Company may waive such Default or Event of Default (other than any Default or Event of Default in payment of principal or interest) on the Notes under this Indenture. Holders of a majority in principal amount of the then outstanding Notes may rescind an acceleration and its consequences (except an acceleration due to nonpayment of principal or interest on the Notes) if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived.

(e) In the event that the maturity of the Notes is accelerated pursuant to Section 5.01(d) hereof, 100 percent of the principal amount of the Notes (or, in the case of a default under Section 5.01(b)(ii) or (iii) hereof resulting from a breach of the covenant set forth in Section 3.06 hereof, 101 percent of the principal amount of the Notes) will become due and payable plus accrued interest, if any, to the date of payment.

Section 5.02. *Amendment, Supplement and Waiver.*

Subject to certain exceptions this Indenture Supplement or the Notes may be amended or supplemented with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of a majority in principal amount of the Notes then outstanding, and any existing Default or Event of Default (other than any continuing Default or Event of Default in the payment of interest on or the principal of the Notes) under, or compliance

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with any provision of, the Indenture or this Indenture Supplement may be waived with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of a majority in principal amount of the Notes then outstanding. Without the consent of any Holder, the Company, the Subsidiary Guarantors and the Trustee may amend this Indenture Supplement or the Notes or waive any provision of the Indenture to cure any ambiguity, defect or inconsistency, to comply with Section 3.11; to provide for uncertificated Notes in addition to certificated Notes; to make any change that does not adversely affect the legal rights under this Indenture Supplement of any Holder; to comply with or qualify the Indenture under the Trust Indenture Act; or to reflect a Subsidiary Guarantor ceasing to be liable on the Subsidiary Guarantees because it is no longer a Subsidiary of the Company.

Without the consent of each Holder affected, the Company may not

- (i) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver,
- (ii) reduce the rate of or change the time for payment of interest, including default interest, on any Note,
- (iii) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to redemption under the "Optional Redemption" section set forth in the Notes or with respect to mandatory offers to repurchase Notes pursuant to Sections 3.01, 3.06 and 3.10 of this

(iv) make any Note payable in money other than that stated in the Note,

(v) make any change in the "Waiver of Past Defaults" or "Unconditional Right of Holders to Receive Principal, Premium, If Any, Interest and Additional Amounts" sections set forth in the Indenture,

(vi) modify the ranking or priority of the Notes or any Subsidiary Guarantee,

(vii) release any Subsidiary Guarantor from any of its obligations under its Subsidiary Guarantee or the Indenture otherwise than in accordance with the terms of the Indenture, or

(viii) waive a continuing Default or Event of Default in the payment of principal of or interest on the Notes.

The right of any Holder to participate in any consent required or sought pursuant to any provision of the Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any Notes with respect to which such consent is required or sought as of a date identified by the Trustee in a notice furnished to Holders in accordance with the terms of the Indenture.

Section 5.03. *Indenture.*

In the event of any conflict between this Supplemental Indenture and the Indenture, the provisions of this Supplemental Indenture shall prevail.

Section 5.04. *Governing Law.*

The laws of the State of New York shall govern this Supplemental Indenture, the Securities of each Series and the Guarantees.

Section 5.05. *No Adverse Interpretation of Other Agreements.*

This Supplemental Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Supplemental Indenture.

Section 5.06. *Successors and Assigns.*

All covenants and agreements of the Company and the Subsidiary Guarantors in this Supplemental Indenture and the Notes shall bind its successors and assigns. All agreements of the Trustee in this Supplemental Indenture shall bind its successors and assigns.

Section 5.07. *Duplicate Originals.*

The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 5.08. *Severability.*

In case any one or more of the provisions contained in this Supplemental Indenture or in the Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Supplemental Indenture or of the Notes.

SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

BEAZER HOMES USA, INC.

By: /s/ DAVID S. WEISS

Name: David S. Weiss
Title: Executive Vice President

GUARANTORS:

BEAZER HOMES CORP.
BEAZER/SQUIRES REALTY, INC.
BEAZER HOMES SALE ARIZONA INC.
BEAZER REALTY CORP.
BEAZER MORTGAGE CORPORATION
BEAZER HOMES HOLDINGS CORP.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER HOMES TEXAS, L.P.

By: /s/ DAVID WEISS

U.S. BANK TRUST NATIONAL ASSOCIATION,
as Trustee

By: /s/ JULIE EDDINGTON

Name: Julie Eddington
Title: Assistant Vice President

EXHIBIT A

**FORM OF REDEEMABLE SECURITY
[Face of Security]**

Unless this Security is presented by an authorized representative of The Depository Trust Company ("DTC"), 55 Water Street, New York, New York to the Company or its agent for registration of transfer, exchange or payment, and such Security issued is registered in the name of CEDE & CO., or such other name as 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, since the registered owner hereof, CEDE & CO., has an interest herein.

Unless and until this Security is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except as a whole by DTC to a nominee thereof or by a nominee thereof to DTC or another nominee of DTC or by DTC or any such nominee to a successor of DTC or a nominee of such successor.

BEAZER HOMES USA, INC.
8⁵/₈% Senior Note Due 2011

No. \$

BEAZER HOMES USA, INC., a Delaware corporation (therein referred to as the "Company," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to or registered assigns the principal sum of Dollars on May 15, 2011 (the "Stated Maturity Date") and to pay interest thereon from May 21, 2001 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on May 15 and November 15 in each year (each, an "Interest Payment Date"), commencing November 15, 2001, at the rate of 8⁵/₈% per annum, until the principal hereof is paid or duly provided for. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Holder 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, which shall be the May 1 or November 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date at the office or agency of the Company maintained for such purpose; *provided, however*, that such interest may be paid, at the Company's option, by mailing a check to such Holder at its registered address or by transfer of funds to an account maintained by such Holder within the United States. 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 be paid to the Holder 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 Indenture Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The principal of this Security payable on the Stated Maturity Date or the principal of, premium, if any, and, if the Redemption Date is not an Interest Payment Date, interest on this Security payable on the Redemption Date will be paid against presentation of this Security at the office or agency of the Company maintained for that purpose in New York, New York, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

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Interest payable on this Security on any Interest Payment Date and on the Stated Maturity Date will include interest accrued from and including the next preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or from and including May 21, 2001, if no interest has been paid on this Security) to but excluding such Interest Payment Date or the Stated Maturity Date. If any Interest Payment Date or the Stated Maturity Date falls on a day that is not a Business Day, as defined below, principal, premium, if any, and/or interest payable with respect to such Interest Payment Date or Stated Maturity Date will be paid on the next succeeding Business Day with the same force and effect as if it were paid on the date such payment was due, and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Stated Maturity Date. "Business Day" means any day, other than a Saturday or Sunday, on which banks in New York, New York are not required or authorized by law or executive order to close.

All payments of principal, premium, if any, and interest in respect of this Security will be made by the Company in immediately available funds.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the Certificate of Authentication hereon has been executed by the Indenture Trustee by manual signature of one of its authorized signatories, this Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its facsimile corporate seal.

Dated: BEAZER HOMES USA, INC.

By: _____

Attest:

Secretary

A-2

CERTIFICATE OF AUTHENTICATION

This is one of the Securities designated as the "8⁵/₈% Senior Notes Due 2011" under the within-mentioned Indenture

U.S. BANK TRUST NATIONAL ASSOCIATION

By: _____

An Authorized Signatory

A-3

[Reverse of Security]

BEAZER HOMES USA, INC.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of May 21, 2001 (as the same has been supplemented by the First Supplemental Indenture dated as of May 21, 2001 (the "Supplemental Indenture") by and among the Company, the guarantors named therein and the Indenture Trustee (as defined herein), the "Indenture") between the Company and U.S. Bank Trust National Association, as Indenture Trustee (herein called the "Indenture Trustee," which term includes any successor trustee under the Indenture with respect to the series of which this Security is a part), 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 Indenture Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the duly authorized series of Securities designated on the face hereof (collectively, the "Securities"), and the aggregate principal amount of the Securities to be issued under such series is not limited, and subject to compliance with the terms of the Indenture, the Company may, at its option, without consent from the Holders, issue additional Notes from time to time All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

If an Event of Default, as defined in the Indenture, shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

The Securities are subject to redemption at any time on or after May 15, 2006, as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as a percentage of the principal amount) if redeemed during the 12-month period beginning on May 15 of the years indicated at the Redemption Prices indicated below.

| <u>Year</u> | <u>Redemption Price</u> |
|-------------|-------------------------|
| 2006 | 104.3125% |
| 2007 | 102.8750% |
| 2008 | 101.4375% |

and thereafter at a Redemption Price equal to 100.0% of the principal amount, together in the case of any such redemption with accrued interest to the Redemption Date; *provided, however*, that installments of interest on this Security whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

In addition, on or prior to May 15, 2004, the Company may, at its option, redeem up to 35% of the outstanding Securities with the net proceeds of an Equity Offering at 108.6250% of the principal amount thereof plus accrued and unpaid interest, if any, to the date fixed for redemption; *provided*, that at least \$130 million principal amount of the Securities remain outstanding after such redemption.

Notice of redemption will be given by mail to Holders of Securities, not less than 15 nor more than 60 days prior to the Redemption Date, all as provided in the Indenture.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the

Securities under the Indenture at any time by the Company and the Indenture Trustee with the consent of the Holders of not less than a majority of the aggregate principal amount of all Securities issued under the Indenture at the time Outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority of the aggregate principal amount of the Outstanding Securities, on behalf of the Holders of all such Securities, to waive compliance by the Company with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of not less than a majority of the aggregate principal amount, in certain instances, of the Outstanding Securities of any series to waive, on behalf of all of the Holders of Securities of such series, 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 other Securities issued upon the registration of transfer hereof or in exchange hereof 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 premium, if any) and interest on this Security at the times, places 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 registrable in the Security Register of the Company upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein set forth, this Security is exchangeable for a like aggregate principal amount of Securities of different authorized denominations but otherwise having the same terms and conditions, as requested by the Holder hereof surrendering the same.

The Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.

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.

Prior to due presentment of this Security for registration of transfer, the Company, the Indenture Trustee and any agent of the Company or the Indenture 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 Indenture Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or premium, if any, or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any past, present or future shareholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as party of the consideration for the issue hereof, expressly waived and released.

The Indenture and the Securities shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed entirely in such State.

EXHIBIT B

FORMS OF CERTIFICATION

B-1

EXHIBIT B-1

FORM OF CERTIFICATE TO BE GIVEN BY PERSON ENTITLED TO RECEIVE BEARER SECURITY OR TO OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, as of the date hereof, and except as set forth below, the above-captioned Securities held by you for your account (i) are owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) are owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in the United States Treasury Regulations Section 2.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution hereby agrees, on its own behalf or through its agent, that you may advise Beazer Homes USA, Inc. or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) are owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, in addition, if the owner is a United States or foreign financial institution

described in clause (iii) above (whether or not also described in clause (i) or (ii), this is to further certify that such financial institution has not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We undertake to advise you promptly by tested telex or electronic transmission on or prior to the date on which you intend to submit your certification relating to the above-captioned Securities held by you for our account in accordance with your Operating Procedures if any applicable statement herein is not correct on such date, and in the absence of any such notification it may be assumed that this certification applied as of such date.

This certificate excepts and does not relate to [U.S.\$] of such interest in the above-captioned Securities in respect of which we are not able to certify and as to which we understand an exchange for an interest in a permanent Global Security or an exchange for and delivery of definitive Securities (or, if relevant, collection of any interest) cannot be made until we do so certify.

We understand that this certificate may be required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

B-1-1

Dated: _____, _____

[To be dated no earlier than the 15th day prior to (i) the Exchange Date or (ii) the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Name of Person Making Certification]

(Authorized Signature)

Name:

Title:

B-1-2

EXHIBIT B-2

**FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR
AND CEDEL S.A. IN CONNECTION WITH THE EXCHANGE OF
A PORTION OF A TEMPORARY GLOBAL SECURITY OR TO
OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE
CERTIFICATE**

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, based solely on written certifications that we have received in writing, by tested telex or by electronic transmission from each of the persons appearing in our records as persons entitled to a portion of the principal amount set forth below (our "Member Organizations") substantially in the form attached hereto, as of the date hereof, [U.S.\$] principal amount of the above-captioned Securities (i) is owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in U.S. Treasury Regulations Section 1.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such financial institution has agreed, on its own behalf or through its agent, that we may advise Beazer Homes USA, Inc. or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) is owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, to the further effect, that financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) have certified that they have not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "Possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We further certify that (i) we are not making available herewith for exchange (or, if relevant, collection of any interest) any portion of the temporary Global Security representing the above-captioned Securities excepted in the above-referenced certificates of Member Organizations and (ii) as of the date hereof we have not received any notification from any of our Member Organizations to the effect that the statements made by such Member Organizations with respect to any portion of the part submitted herewith for exchange (or, if relevant, collection of any interest) are no longer true and cannot be relied upon as of the date hereof.

B-2-1

We understand that this certification is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: _____

[To be dated no earlier than the Exchange Date or the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Morgan Guaranty Trust Company
of New York, Brussels Office,] as Operator of the Euroclear System [CEDEL
S.A.]

By: _____

B-2-2

EXHIBIT C

[FORM OF SUBSIDIARY GUARANTEE]

For value received, each of the undersigned hereby, jointly and severally, unconditionally guarantees to the Holder of this Security the payments of principal of, premium, if any, and interest on this Security in the amounts and at the time when due and interest on the overdue principal, premium, if any, and interest, if any, of this Security, if lawful, and the payment or performance of all other obligations of the Company under the Indenture or the Securities, to the Holder of this Security and the Trustee, all in accordance with and subject to the terms and limitations of this Security, Article 4 of the Supplemental Indenture, the Indenture and this Subsidiary Guarantee. This Subsidiary Guarantee will become effective in accordance with Article 4 of the Supplemental Indenture and its terms shall be evidenced therein. The validity and enforceability of any Subsidiary Guarantee shall not be affected by the fact that it is not affixed to any particular Security.

The obligations of the undersigned to the Holders of Securities and to the Trustee pursuant to the Subsidiary Guarantee and the Indenture are expressly set forth in Article 4 of the Supplemental Indenture and reference is hereby made to the Indenture for the precise terms of the Subsidiary Guarantee and all of the other provisions of the Indenture to which this Subsidiary Guarantee relates.

This Subsidiary Guarantee is subject to release upon the terms set forth in the Indenture.

BEAZER HOMES CORP.
BEAZER/SQUIRES REALTY, INC.
BEAZER HOMES SALE ARIZONA INC.
BEAZER REALTY CORP.
BEAZER MORTGAGE CORPORATION
BEAZER HOMES HOLDINGS CORP.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER HOMES TEXAS, L.P.

By: _____

Title: Authorized Officer

C-1

QuickLinks

[EXHIBIT A FORM OF REDEEMABLE SECURITY \[Face of Security\]](#)

Unless this Security is presented by an authorized representative of The Depository Trust Company ("DTC"), 55 Water Street, New York, New York to the Company or its agent for registration of transfer, exchange or payment, and such Security issued is registered in the name of CEDE & CO., or such other name as 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, since the registered owner hereof, CEDE & CO., has an interest herein.

Unless and until this Security is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except as a whole by DTC to a nominee thereof or by a nominee thereof to DTC or another nominee of DTC or by DTC or any such nominee to a successor of DTC or a nominee of such successor.

BEAZER HOMES USA, INC.
8⁵/₈% Senior Note Due 2011

No. _____ § _____

BEAZER HOMES USA, INC., a Delaware corporation (therein referred to as the "Company," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to _____ or registered assigns the principal sum of _____ Dollars on May 15, 2011 (the "Stated Maturity Date") and to pay interest thereon from May 21, 2001 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on May 15 and November 15 in each year (each, an "Interest Payment Date"), commencing November 15, 2001, at the rate of 8⁵/₈% per annum, until the principal hereof is paid or duly provided for. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Holder 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, which shall be the May 1 or November 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date at the office or agency of the Company maintained for such purpose; *provided, however*, that such interest may be paid, at the Company's option, by mailing a check to such Holder at its registered address or by transfer of funds to an account maintained by such Holder within the United States. 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 be paid to the Holder 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 Indenture Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The principal of this Security payable on the Stated Maturity Date or the principal of, premium, if any, and, if the Redemption Date is not an Interest Payment Date, interest on this Security payable on the Redemption Date will be paid against presentation of this Security at the office or agency of the Company maintained for that purpose in New York, New York, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

Interest payable on this Security on any Interest Payment Date and on the Stated Maturity Date will include interest accrued from and including the next preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or from and including May 21, 2001, if no interest has been paid on this Security) to but excluding such Interest Payment Date or the Stated Maturity Date. If any Interest Payment Date or the Stated Maturity Date falls on a day that is not a Business

Day, as defined below, principal, premium, if any, and/or interest payable with respect to such Interest Payment Date or Stated Maturity Date will be paid on the next succeeding Business Day with the same force and effect as if it were paid on the date such payment was due, and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Stated Maturity Date. "Business Day" means any day, other than a Saturday or Sunday, on which banks in New York, New York are not required or authorized by law or executive order to close.

All payments of principal, premium, if any, and interest in respect of this Security will be made by the Company in immediately available funds.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the Certificate of Authentication hereon has been executed by the Indenture Trustee by manual signature of one of its authorized signatories, this Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its facsimile corporate seal.

Dated: _____

BEAZER HOMES USA, INC.

By: _____

Attest: _____

Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Securities designated as the "8⁵/₈% Senior Notes Due 2011" under the within-mentioned Indenture

U.S. BANK TRUST NATIONAL ASSOCIATION

By: _____

An Authorized Signatory

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[Reverse of Security]

BEAZER HOMES USA, INC.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of May 21, 2001 (as the same has been supplemented by the First Supplemental Indenture dated as of May 21, 2001 (the "Supplemental Indenture") by and among the Company, the guarantors named therein and the Indenture Trustee (as defined herein), the "Indenture") between the Company and U.S. Bank Trust National Association, as Indenture Trustee (herein called the "Indenture Trustee," which term includes any successor trustee under the Indenture with respect to the series of which this Security is a part), 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 Indenture Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the duly authorized series of Securities designated on the face hereof (collectively, the "Securities"), and the aggregate principal amount of the Securities to be issued under such series is not limited, and subject to compliance with the terms of the Indenture, the Company may, at its option, without consent from the Holders, issue additional Notes from time to time. All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

If an Event of Default, as defined in the Indenture, shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

The Securities are subject to redemption at any time on or after May 15, 2006, as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as a percentage of the principal amount) if redeemed during the 12-month period beginning on May 15 of the years indicated at the Redemption Prices indicated below.

| <u>Year</u> | <u>Redemption Price</u> |
|-------------|-------------------------|
| 2006 | 104.3125% |
| 2007 | 102.8750% |
| 2008 | 101.4375% |

and thereafter at a Redemption Price equal to 100.0% of the principal amount, together in the case of any such redemption with accrued interest to the Redemption Date; *provided, however*, that installments of interest on this Security whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

In addition, on or prior to May 15, 2004, the Company may, at its option, redeem up to 35% of the outstanding Securities with the net proceeds of an Equity Offering at 108.6250% of the principal amount thereof plus accrued and unpaid interest, if any, to the date fixed for redemption; *provided*, that at least \$130 million principal amount of the Securities remain outstanding after such redemption.

Notice of redemption will be given by mail to Holders of Securities, not less than 15 nor more than 60 days prior to the Redemption Date, all as provided in the Indenture.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the

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Securities under the Indenture at any time by the Company and the Indenture Trustee with the consent of the Holders of not less than a majority of the aggregate principal amount of all Securities issued under the Indenture at the time Outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority of the aggregate principal amount of the Outstanding Securities, on behalf of the Holders of all such Securities, to waive compliance by the Company with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of not less than a majority of the aggregate principal amount, in certain instances, of the Outstanding Securities of any series to waive, on behalf of all of the Holders of Securities of such series, 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 other Securities issued upon the registration of transfer hereof or in exchange hereof 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 premium, if any) and interest on this Security at the times, places 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 registrable in the Security Register of the Company upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein set forth, this Security is exchangeable for a like aggregate principal amount of Securities of different authorized denominations but otherwise having the same terms and conditions, as requested by the Holder hereof surrendering the same.

The Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.

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.

Prior to due presentment of this Security for registration of transfer, the Company, the Indenture Trustee and any agent of the Company or the Indenture 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 Indenture Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or premium, if any, or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any past, present or future shareholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as party of the consideration for the issue hereof, expressly waived and released.

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The Indenture and the Securities shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed entirely in such State.

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SUBSIDIARY GUARANTEE

For value received, each of the undersigned hereby, jointly and severally, unconditionally guarantees to the Holder of this Security the payments of principal of, premium, if any, and interest on this Security in the amounts and at the time when due and interest on the overdue principal, premium, if any, and interest, if any, of this Security, if lawful, and the payment or performance of all other obligations of the Company under the Indenture or the Securities, to the Holder of this Security and the Trustee, all in accordance with and subject to the terms and limitations of this Security, Article 4 of the Supplemental Indenture, the Indenture and this Subsidiary Guarantee. This Subsidiary Guarantee will become effective in accordance with Article 4 of the Supplemental Indenture and its terms shall be evidenced therein. The validity and enforceability of any Subsidiary Guarantee shall not be affected by the fact that it is not affixed to any particular Security.

The obligations of the undersigned to the Holders of Securities and to the Trustee pursuant to the Subsidiary Guarantee and the Indenture are expressly set forth in Article 4 of the Supplemental Indenture and reference is hereby made to the Indenture for the precise terms of the Subsidiary Guarantee and all of the other provisions of the Indenture to which this Subsidiary Guarantee relates.

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This Subsidiary Guarantee is subject to release upon the terms set forth in the Indenture.

BEAZER HOMES CORP.
BEAZER/SQUIRES REALTY, INC.
BEAZER HOMES SALE ARIZONA INC.
BEAZER REALTY CORP.
BEAZER MORTGAGE CORPORATION
BEAZER HOMES HOLDINGS CORP.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER HOMES TEXAS, L.P.

By: _____

An Authorized Signatory

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CREDIT AGREEMENT

Dated as of September 21, 2001

BEAZER HOMES USA, INC.,
The Guarantors Parties Thereto,

The Banks Parties Thereto,

BANK ONE, NA

As Agent,

and

COMERICA BANK,

GUARANTY BANK,

SUNTRUST BANK

and

WACHOVIA BANK, N.A.,

as Documentation Agents

and

AMSOUTH BANK,

and

PNC BANK, NA,

as Co-Agents

BANC ONE CAPITAL MARKETS, INC.,

Lead Arranger and Sole Bookrunner

\$250,000,000 REVOLVING CREDIT FACILITY

CREDIT AGREEMENT dated as of September 21, 2001 among BEAZER HOMES USA, INC., a Delaware corporation (the "Borrower"), BEAZER MORTGAGE CORPORATION, a Delaware corporation, BEAZER HOMES CORP., a Tennessee corporation, BEAZER HOMES SALES ARIZONA INC., a Delaware corporation, BEAZER REALTY CORP., a Georgia corporation, BEAZER/SQUIRES REALTY, INC., a North Carolina corporation, BEAZER HOMES HOLDINGS CORP., a Delaware corporation, BEAZER HOMES TEXAS HOLDINGS, INC., a Delaware corporation, BEAZER HOMES TEXAS, L.P., a Delaware limited partnership, BEAZER REALTY INC., a New Jersey corporation, HOMEBUILDERS TITLE SERVICES, INC., a Delaware corporation, TEXAS LONE STAR TITLE, L.P., a Texas limited partnership, HOMEBUILDERS TITLE SERVICES OF VIRGINIA, INC., a Virginia corporation, UNIVERSAL SOLUTIONS INSURANCE AGENCY, INC., a Delaware corporation, APRIL CORPORATION, a Colorado corporation, and BEAZER SPE, LLC, a Georgia limited liability company (collectively, the "Original Guarantors"), the Banks that are signatories hereto and BANK ONE, NA as Agent (the "Agent") for the Banks and as an Issuing Bank (as hereinafter defined).

The parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the following meanings (terms defined in the singular shall have the same meaning when used in the plural and vice versa):

"ABR Loan" means any Loan when and to the extent that the interest rate therefor is determined by reference to the Alternate Base Rate.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which the Borrower or any of its Subsidiaries (i) acquires any going concern or all or substantially all of the assets of any firm, corporation or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes or by percentage of voting power) of the Common Equity of another Person.

"Adjusted Land Value" means, as of any date, (i) the book value of all Land, less (ii) the sum of (a) the book value of Finished Lots that are subject to *bona fide* contracts of sale with Persons that are not Affiliates and (b) the lesser of (1) the product of (x) the number of Housing Units with respect to which the Borrower and its Subsidiaries (including any company or other entity acquired in an Acquisition by the Borrower or a Subsidiary as of such date) entered into *bona fide* contracts of sale with Persons that are not Affiliates during the six-month period ending on such date and (y) the average book value of all Finished Lots as of such date and (2) forty percent (40%) of Consolidated Tangible Net Worth as of such date.

"Affected Bank" has the meaning assigned to such term in Section 2.20(a).

"Affiliate" means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with, the Borrower or a Subsidiary; (2) which directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting stock of the Borrower or any Subsidiary; or (3) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Borrower or a Subsidiary. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agent" means Bank One.

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"Agent's Fee Letter" means that certain fee letter dated July 27, 2001 from the Agent and BOCM to the Borrower and accepted by the Borrower on July 31, 2001.

"Aggregate Commitments" means the aggregate Commitments of all the Banks, as reduced or increased from time to time pursuant to the terms of this Agreement.

"Agreement" means this Credit Agreement, as amended, supplemented, or modified from time to time.

"Alternate Base Rate" means a fluctuating rate per annum equal to the higher of (i) the Prime Rate, changing when and as said rate changes (without notice), or (ii) the sum of $\frac{1}{2}$ of 1% plus the Federal Funds Rate then in effect.

"Applicable ABR Margin" means, as at any date of determination, the margin indicated in Section 2.05 as then applicable to ABR Loans and Swing Line Loans (under Section 2.07(a)(i)).

"Applicable Commitment Rate" means, as at any date of determination, the rate per annum indicated in Section 2.05 as then applicable in the determination of the commitment fee (under Section 2.09). The Applicable Commitment Rate in the column in the table in Section 2.05 with the heading "Usage \geq 50%" shall apply in respect of any calendar quarter (or, in any case in which the commitment fee under Section 2.09 is payable with respect to a portion of a calendar quarter, then for that portion of such calendar quarter) during which the average daily unused portion of the Aggregate Commitments equals or exceeds fifty percent (50%) of the Aggregate Commitments, and the Applicable Commitment Rate in the column table in Section 2.05 with the heading "Usage $<$ 50%" shall apply in respect of any calendar quarter (or, in any case in which the commitment fee under Section 2.09 is payable with respect to a portion of a calendar quarter, then for that portion of such calendar quarter) during which the average daily unused portion of the Aggregate Commitments is less than fifty percent (50%) of the Aggregate Commitments.

"Applicable Letter of Credit Rate" means, as at any date of determination, a rate per annum equal to the Applicable LIBOR Margin.

"Applicable LIBOR Margin" means, as at any date of determination, the margin indicated in Section 2.05 as then applicable to LIBOR Loans (under Section 2.07(a)(ii)).

"Applicable Margin(s)" means the Applicable ABR Margin and/or the Applicable LIBOR Margin, as the case may be.

"Bank One" means Bank One, NA, having its principal office in Chicago, Illinois.

"Banks" means the Banks that are signatories to this Agreement, and their respective successors and assigns.

"BOCM" means Banc One Capital Markets, Inc.

"Borrowing" means a borrowing consisting of Loans of the same type made, renewed or converted on the same day.

"Borrowing Base" means, with respect to an Inventory Valuation Date for which it is to be determined, an amount equal to the sum of the following unencumbered assets of the Borrower and the Guarantors: (i) the lesser of (a) one hundred percent (100%) of the Unrestricted Cash and (b) \$10,000,000.00, (ii) one-hundred percent (100%) of the Receivables, (iii) ninety percent (90%) of the book value of Housing Units Under Contract, (iv) seventy-five percent (75%) of the book value of Speculative Housing Units, (v) seventy percent (70%) of the book value of Finished Lots (subject to the limitation set forth below), (vi) fifty percent (50%) of the book value of Lots under Development (subject to the limitation set forth below), and (vii) the lesser of (a) twenty-five percent (25%) of the book value of Entitled Land and (b) \$30,000,000.00 (subject to the limitation set forth below).

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Notwithstanding the foregoing, the Borrowing Base shall not include any amounts under clauses (v), (vi) and (vii) above to the extent that the sum of such amounts exceeds forty percent (40%) of the total Borrowing Base. The term "unencumbered" means that such asset is not subject to any Lien (except for Liens permitted under Sections 6.01(1), (2) or (6)).

"Borrowing Base Certificate" means a written certificate in a form acceptable to the Majority Banks setting forth the amount of the Borrowing Base with respect to the fiscal quarter, or (if applicable under Section 2.01(d) or (e)) calendar month, most recently completed, certified as true and correct by the Chief Financial Officer of the Borrower.

"Business Day" means (i) with respect to any Borrowing, payment or rate selection of LIBOR Loans, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago and New York for the conduct of substantially all of their commercial lending activities and on which dealings in United States dollars are carried on in the London interbank market and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago for the conduct of substantially all of their commercial lending activities.

"Capital Lease" means all leases which have been or should be capitalized on the books of the lessee in accordance with GAAP.

"Change of Control" means any of the following: (i) the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower or (except for an Internal Reorganization) of a Significant Guarantor or Significant Subsidiary, as an entirety or substantially as an entirety to any Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) in one or a series of transactions; (ii) the acquisition of fifty percent (50%) or more of the aggregate voting power of all classes of Common Equity of the Borrower or (except for an Internal Reorganization) of a Significant Guarantor or Significant Subsidiary in one transaction or a series of related transactions; (iii) the liquidation or dissolution of the Borrower or (except for an Internal Reorganization) of a Significant Guarantor or Significant Subsidiary; (iv) any transaction or a series of related transactions (as a result of a tender offer, merger, consolidation or otherwise but excluding an Internal Reorganization) that results in, or that is in connection with, (a) any Person, including, a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) acquiring "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the aggregate voting power of all classes of Common Equity of the Borrower, a Significant Guarantor or a Significant Subsidiary, or of any Person that possesses "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the aggregate voting power of all classes of Common Equity of the Borrower, a Significant Guarantor or a Significant Subsidiary, or (b) less than fifty percent (50%) (measured by the aggregate voting power of all classes) of the Common Equity of the Borrower being registered under Section 12(b) or 12(g) of the Exchange Act; (v) a majority of the Board of Directors of the Borrower, a Significant Guarantor or a Significant Subsidiary, not being comprised of persons who (a) were members of the Board of Directors of such Borrower, Significant Guarantor or Significant Subsidiary, as of the date of this Agreement ("Original Directors"), or (b) were nominated for election or elected to the Board of Directors of such Borrower, Significant Guarantor, or Significant Subsidiary, with the affirmative vote of at least a majority of the directors who themselves were Original Directors or who were similarly nominated for election or elected; or (vi) with respect to any Significant Guarantor or Significant Subsidiary which is not a corporation, any loss of the right or power to control the activities, directly, or indirectly through one or more intermediaries, or both. Nothing herein contained shall modify or otherwise affect the provisions of Section 6.06.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations and published interpretations thereof.

"Commitment" has the meaning assigned to such term in Section 2.01.

"Common Equity" of any Person means any and all shares, rights to purchase, warrants or options (whether or not currently exercisable), participations, or joint venture interests) of such Person (excluding any debt securities convertible into, or exchangeable for, such equity) to the extent that the foregoing is entitled to (i) vote in the election of directors of such Person or (ii) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or other persons that will control the management and policies of such Person.

"Commonly Controlled Entity" means an entity, whether or not incorporated, which is under common control with the Borrower within the meaning of Section 414(b) or 414(c) of the Code.

"Consolidated Debt" means the Debt of the Borrower and its Subsidiaries determined on a consolidated basis (but shall not include Debt of any Joint Venture or Debt of any Subsidiary which is not a Guarantor, except to the extent that such Debt is guaranteed by the Borrower or a Guarantor).

"Consolidated Subordinated Debt" means, as of any date, all Debt of the Borrower and the Guarantors (on a consolidated basis), the payment of which is, either expressly by its terms or otherwise, subordinated to payment of the Obligations to the satisfaction of the Majority Banks.

"Consolidated Tangible Assets" of the Borrower means, as of any date, the total amount of assets of the Borrower and its Subsidiaries (less applicable reserves) on a consolidated basis at the end of the fiscal quarter immediately preceding such date (or on such date if such date is the last day of the fiscal quarter), as determined in accordance with GAAP, less (i) Intangible Assets and (ii) appropriate adjustments on account of minority interests of other Persons holding equity Investments in Subsidiaries, in the case of each of clauses (i) and (ii) above, as would be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the fiscal quarter immediately preceding such date (or on such date if such date is the last day of the fiscal quarter), prepared in accordance with GAAP.

"Consolidated Tangible Net Worth" of the Borrower means, at any date, the consolidated stockholders' equity of the Borrower determined in accordance with GAAP, less Intangible Assets, all determined as of such date.

"Debt" means, without duplication, with respect to any Person (1) indebtedness or liability for borrowed money, including, without limitation, subordinated indebtedness (other than trade accounts payable and accruals incurred in the ordinary course of business); (2) obligations evidenced by bonds, debentures, notes, or other similar instruments; (3) obligations for the deferred purchase price of property (including, without limitation, seller financing of any Inventory) or services, *provided, however*, that Debt shall not include obligations with respect to options to purchase real property that have not been exercised; (4) obligations as lessee under Capital Leases to the extent that the same would, in accordance with GAAP, appear as liabilities in the Borrower's consolidated balance sheet; (5) current liabilities in respect of unfunded vested benefits under Plans and incurred withdrawal liability under any Multiemployer Plan; (6) reimbursement obligations under letters of credit (including contingent obligations with respect to letters of credit not yet drawn upon); (7) obligations under acceptance facilities; (8) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person or entity, or otherwise to assure a creditor against loss, provided, however, that "Debt" shall not include guaranties of performance obligations; (9) obligations secured by any Liens on any property of such Person, whether or not the obligations have

been assumed; and (10) net liabilities under interest rate swap, exchange or cap agreements (valued as the termination value thereof, computed in accordance with a method approved by the International Swaps and Derivatives Association and agreed to by such Person in the applicable agreement).

"Debt/Cap Ratio" means, as at any date of determination, the quotient obtained by dividing (a) Consolidated Debt as at such date by (b) the sum of Consolidated Debt and Consolidated Tangible Net Worth as at such date.

"Default" means any of the events specified in Section 8.01, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Dollars" and the sign "\$" mean lawful money of the United States of America.

"EBITDA" means, for any period, on a consolidated basis for the Borrower and its Subsidiaries, the sum of the amounts for such period of (i) Net Income (but excluding from such Net Income for the applicable period any income derived from any Investment in a Joint Venture referred to in Section 6.07(10) to the extent that such income exceeds the cash distributions thereof received by the Borrower or its Subsidiaries in such period), *plus* (ii) charges against income for foreign, federal, state and local taxes, *plus* (iii) Interest Expense, *plus* (iv) depreciation, *plus* (v) amortization expense, including, without limitation, amortization of goodwill and other intangible assets and amortization of deferred compensation expense, *plus* (vi) extraordinary losses, *minus* (vii) interest income, *minus* (viii) extraordinary gains (and any unusual gains arising in or outside of the ordinary course of business not included in extraordinary gains that have been included in the determination of Net Income).

"Entitled Land" means all Lots that are neither Lots under Development nor Finished Lots.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations and published interpretations thereof.

"Eurocurrency Reserve Requirement" means, for any Interest Period, the maximum aggregate reserve requirement (including all basic, supplemental, marginal and other reserves) which is imposed under Regulation D on "Eurocurrency liabilities" (as such term is used in Regulation D) but without benefit or credit of proration, exemptions, or offsets that might otherwise be available from time to time under Regulation D. Without limiting the effect of the foregoing, the Eurocurrency Reserve Requirement shall reflect any other reserves required to be maintained against (1) any category of liabilities that includes deposits by reference to which the LIBOR Interest Rate for LIBOR Loans is to be determined; or (2) any category of extension of credit or other assets that include LIBOR Loans.

"Event of Default" means any of the events specified in Section 8.01, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

"Existing Letters of Credit" means those Letters of Credit issued for the account of the Borrower by Bank One, PNC or SunTrust prior to the date hereof and listed on Schedule II hereto.

"Extension Request" has the meaning assigned to that term in Section 2.19(a).

"Facility Letter of Credit" means (a) each Existing Letter of Credit and (b) any Letter of Credit issued by an Issuing Bank for the account of the Borrower in accordance with Article XIII.

"Facility Letter of Credit Fee" means a fee, payable with respect to each Facility Letter of Credit issued by an Issuing Bank, in an amount per annum equal to the product of (i) the Applicable Letter of Credit Rate (determined as of the date on which the quarterly installment of such fee is due) and (ii) the face amount of such Facility Letter of Credit, which fee shall be calculated in the manner provided in Section 13.06.

"Facility Letter of Credit Obligations" means, at any date, the sum of (i) the aggregate undrawn face amount of all outstanding Facility Letters of Credit, and (ii) the aggregate amount paid by an

Issuing Bank on any Facility Letters of Credit to the extent (if any) not reimbursed by the Borrower or by the Banks under Section 13.04.

"Federal Funds Rate" means, for each day, a fluctuating interest rate per annum equal to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 A.M. Chicago time on such day on such transactions received by the Agent from three Federal Funds brokers of recognized standing selected by the Agent in its sole discretion.

"Finished Lots" means Lots in respect of which a building permit, from the applicable local governmental authority, has been or could be obtained; *provided, however,* that the term "Finished Lots" shall not include any Land upon which the construction of a Housing Unit has commenced.

"Fitch" means Fitch, Inc.

"GAAP" means generally accepted accounting principles in the United States in effect from time to time (subject to the provisions of Section 1.02).

"Guarantor" means an Original Guarantor and any Person that, pursuant to Section 5.15, guarantees the Obligations.

"Guaranty" means the guaranty of the Obligations by each Guarantor under the provisions of Article IX contained herein or under a guaranty of the Obligations delivered under Section 5.15.

"Housing Unit" means a single-family dwelling, including the Land on which such dwelling is located, whether such dwelling is detached or attached (including condominiums but excluding mobile homes), which dwelling is either under construction or completed and is (or, upon completion of construction thereof, will be) available for sale; the term "Housing Unit" includes a Speculative Housing Unit.

"Housing Unit Closing" means a closing of the sale of a Housing Unit by the Borrower or a Subsidiary (including any company or other entity acquired in an Acquisition by the Borrower or a Subsidiary) to a *bona fide* purchaser for value that is not an Affiliate.

"Housing Unit Under Contract" means a Housing Unit owned by the Borrower or a Subsidiary as to which the Borrower or such Subsidiary has a *bona fide* contract of sale, in a form customarily employed by the Borrower or such Subsidiary and reasonably satisfactory to the Agent, entered into not more than 15 months prior to the date of determination with a Person who is not an Affiliate, under which contract no defaults then exist and not less than \$1,000.00 toward the purchase price has been paid; *provided, however*, that in the case of any Housing Unit the purchase of which is to be financed in whole or in part by a loan insured by the Federal Housing Administration or guaranteed by the Veterans Administration, the required minimum downpayment shall be the amount (if any) required under the rules of the relevant agency.

"Incur" means to, directly or indirectly, create, incur, assume, guarantee, extend the maturity of or otherwise become liable with respect to any Debt; provided, however, that neither the accrual of interest (whether such interest is payable in cash or kind) nor the accretion of original issue discount shall be considered an Incurrence of Debt.

"Intangible Assets" means, at any time, the amount (to the extent reflected in determining consolidated stockholders equity of the Borrower and its Subsidiaries) of (i) Investments in any Subsidiaries that are not Guarantors and (ii) all unamortized debt discount and expense, unamortized deferred charges, good will, patents, trademarks, service marks, trade names, copyrights and all other

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items which would be treated as intangibles on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP.

"Interest Coverage Ratio" means, for any period, the ratio of (a) EBITDA to (b) the sum (on a consolidated basis for the Borrower and its Subsidiaries) of all interest incurred, including capitalized interest.

"Interest Deficit" has the meaning assigned to that term in Section 2.08(b) hereof.

"Interest Expense" means, for any period, the total interest expense of the Borrower and its Subsidiaries, whether paid directly or amortized through cost of sales (including the interest component of Capital Leases).

"Interest Period" means, with respect to any LIBOR Loan, the period commencing on the date such Loan is made, converted or renewed, and ending, as the Borrower may select pursuant to Section 2.03, on the numerically corresponding day in the first, second, third or sixth calendar month thereafter, except that each such Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(a) No Interest Period may extend beyond the Termination Date or, until a Rejecting Bank is replaced as provided in Section 2.20 or paid in full, such Rejecting Bank's Termination Date; and

(b) If an Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended to the next Business Day unless such Business Day would fall in the next calendar month, in which event such Interest Period shall end on the immediately preceding Business Day.

"Internal Reorganization" means any reorganization between or among the Borrower and any Subsidiary or Subsidiaries or between or among any Subsidiary and one or more other Subsidiaries or any combination thereof by way of liquidations, mergers, consolidations, conveyances, assignments, sales, transfers and other dispositions of all or substantially all of the assets of a Subsidiary (whether in one transaction or in a series of transactions); *provided that* (a) the Borrower shall preserve and maintain its status as a validly existing corporation and (b) all assets, liabilities, obligations and guarantees of any Subsidiary party to such reorganization will continue to be held by such Subsidiary or be assumed by the Borrower or a Wholly-Owned Subsidiary of the Borrower.

"Inventory" means all Housing Units, Lots, goods, merchandise and other personal property wherever located to be used for or incorporated into any Housing Unit.

"Inventory Valuation Date" means (a) the last day of the most recent fiscal quarter of the Borrower with respect to which the Borrower is required to have delivered a Borrowing Base Certificate pursuant to Section 5.08(6) hereof or (b) if the Borrower elects pursuant to Section 2.01(d) or is required pursuant to Section 2.01(e) to deliver a Borrowing Base Certificate with respect to a calendar month subsequent to such most recent fiscal quarter, the last day of such subsequent calendar month.

"Investment" has the meaning provided therefor in Section 6.07. The amount of any Investment shall include (a) in the case of any loan or advance, the outstanding amount of such loan or advance and (b) in the case of any equity Investment, the amount of the "net equity investment" as determined in accordance with GAAP.

"Issuance Date" means the date on which a Facility Letter of Credit is issued, amended or extended.

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"Issuing Bank" means Bank One, PNC, SunTrust and any other Bank that may from time to time be designated as an Issuing Bank in accordance with the provisions of Section 13.10.

"Joint Venture" means any Person (other than a Subsidiary) in which the Borrower or a Subsidiary holds any stock, partnership interest, joint venture interest, limited liability company interest or other equity interest.

"Land" means land owned by the Borrower or a Subsidiary, which land is being developed or is held for future development or sale.

"Lending Office" means, with respect to any Bank, the Lending Office of such Bank (or of an affiliate of such Bank) heretofore designated in writing by such Bank to the Agent or such other office or branch of such Bank (or of an affiliate of such Bank) as that Bank may from time to time specify to the Borrower and the Agent as the office or branch at which its Loans (or Loans of a type designated in such notice) are to be made and maintained.

"Letter of Credit" of a Person means a letter of credit or similar instrument which is issued by a financial institution upon the application of such Person or upon which such Person is an account party or for which such Person is in any way liable.

"Level" means the level of a Pricing Factor, Applicable Margin or Applicable Commitment Rate (as applicable) as designated in the Table set forth in Section 2.05. The five Levels in such Table are identified as Levels I through V, and Level I shall constitute the lowest Level and Level V shall constitute the highest Level.

"LIBOR Interest Rate" means, for each LIBOR Loan for the relevant Interest Period, the rate per annum (rounded upward, if necessary, to the nearest one-sixteenth of 1%) determined by the Agent to be equal to the quotient of (a) the London Interbank Offered Rate for such LIBOR Loan for such Interest Period divided by (b) one minus the Eurocurrency Reserve Requirement for such Interest Period.

"LIBOR Loan" means any Loan when and to the extent that the interest rate therefor is determined by reference to the LIBOR Interest Rate.

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

"Loan(s)" means a loan made by a Bank pursuant to this Agreement, including (unless the context otherwise indicates) a Swing Line Loan. Each such Loan (other than a Swing Line Loan) shall be an ABR Loan or a LIBOR Loan.

"Loan Document(s)" means this Agreement, the Notes, the Reimbursement Agreements, and any and all documents delivered hereunder or pursuant hereto.

"London Interbank Offered Rate" means, with respect to a LIBOR Loan for the relevant Interest Period, the applicable London interbank offered rate for deposits in U.S. dollars appearing on Reuters Screen FRBD as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, and having a maturity equal to such Interest Period.

"Lots" means all Land owned by the Borrower and/or a Subsidiary which is zoned by the municipality in which such real property is located for residential building and use, and with respect to which the Borrower or such Subsidiary has obtained all necessary approvals for its subdivision for Housing Units; *provided, however*, that the term "Lots" shall not include any Land upon which the construction of a Housing Unit has commenced.

"Lots under Development" means Lots with respect to which construction of streets or other subdivision improvements has commenced but which are not Finished Lots.

"Majority Banks" means at any time the Banks holding at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the then aggregate unpaid principal amount of the Notes held by the Banks (including in such amount any participation held by such Bank as a result of its purchase thereof pursuant to Section 10.07) or, if no such principal amount is then outstanding, Banks having at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the Aggregate Commitments.

"Merged Banks" has the meaning assigned to that term in Section 12.03(c).

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a plan described in Section 4001(a)(3) of ERISA in respect of which the Borrower, a Subsidiary or a Commonly Controlled Entity is an "employer" as defined in Section 3(5) of ERISA.

"Net Income" means, for any period, the net earnings (or loss) after taxes of the Borrower and its Subsidiaries on a consolidated basis for such period.

"Note(s)" means the promissory notes described in Section 2.10 hereof.

"Notice of Assignment" has the meaning assigned to that term in Section 12.03(b) hereof.

"Obligations" means (a) the due and punctual payment of principal of and interest on the Loans and the Notes, (b) the due and punctual payment of the Facility Letter of Credit Obligations, and (c) the due and punctual payment of fees, expenses, reimbursements, indemnifications and other present and future monetary obligations of the Borrower and each Guarantor to the Banks or to any Bank, the Agent, the Issuing Bank or any indemnified party under the Loan Documents.

"Original Guarantors" has the meaning assigned to that term in the preamble to this Agreement.

"Participant" has the meaning assigned to that term in Section 12.02(a) hereof.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Performance Letter of Credit" means any Letter of Credit of the Borrower or a Guarantor that is issued for the benefit of a municipality, other governmental authority, utility, water or sewer authority, or other similar entity for the purpose of assuring such beneficiary of the Letter of Credit of the proper and timely completion of construction work.

"Permitted Acquisition" means any Acquisition (other than by means of a hostile takeover, hostile tender offer or other similar hostile transaction) of a business or entity engaged primarily in the business of home building; provided that, immediately before and after giving effect to such Acquisition, no Default or Event of

Default has occurred and is continuing.

"Permitted Senior Debt" means the sum of all Debt of the Borrower and its Subsidiaries on a consolidated basis, excluding (i) Secured Debt, (ii) Performance Letters of Credit, (iii) performance bonds and (iv) Debt of any Joint Venture.

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"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, limited liability company, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

"Plan" means any pension plan which is covered by Title IV of ERISA and in respect of which (a) the Borrower or a Subsidiary or a Commonly Controlled Entity is an "employer" as defined in Section 3(5) of ERISA and (b) the Borrower or a Subsidiary has any material liability; *provided, however*, that the term "Plan" shall not include any Multiemployer Plan.

"PNC" means PNC Bank, N.A.

"Pricing Factor" means either the Debt/Cap Ratio or the Senior Debt Rating.

"Prime Rate" means a rate per annum equal to the prime rate of interest announced from time to time by Bank One or its parent (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

"Principal Office" means, with respect to the Agent, the Principal Office of the Agent designated as such on the signature pages hereof or such other office of the Agent as the Agent may from time to time specify to the Borrower and the Banks as its Principal Office.

"Prior Credit Agreement" means that certain Second Amended and Restated Credit Agreement dated as of December 29, 1999 among Borrower, certain of the Original Guarantors, Bank One as agent and the other banks party thereto.

"Prohibited Transaction" means any transaction set forth in Section 406 of ERISA or Section 4975 of the Code that could subject the Borrower or any Subsidiary to any material liability.

"Purchaser" has the meaning assigned to that term in Section 12.03(a) hereof.

"Quarterly Payment Date" means October 1, 2001 and the first day of each January, April, July and October thereafter.

"Ratable Share" means, with respect to any Bank on any date, the ratio of (a) the amount of the Commitment of such Bank to (b) the Aggregate Commitments.

"Receivables" means the net proceeds payable to, but not yet received by, the Borrower or a Subsidiary following a Housing Unit Closing.

"Refinancing Debt" means Debt that refunds, refinances or extends any applicable Debt ("Refinanced Debt") but only to the extent that (i) the Refinancing Debt is subordinated to or *pari passu* with the Obligations to the same extent as such Refinanced Debt, if at all, (ii) the Refinancing Debt is scheduled to mature no earlier than the earlier of (A) the current maturity date of such Refinanced Debt or (B) a date three (3) years after the Termination Date (as determined at the time such Refinancing Debt is Incurred), (iii) such Refinancing Debt is in an aggregate amount that is equal to or less than the sum of (A) the aggregate amount then outstanding under the Refinanced Debt, *plus* (B) accrued and unpaid interest on such Refinanced Debt, *plus* (C) reasonable fees and expenses incurred in obtaining such Refinancing Debt, it being understood that this clause (iii) shall not preclude the Refinancing Debt from being a part of a Debt financing that includes other or additional Debt otherwise permitted herein, (iv) such Refinancing Debt is Incurred by the same Person that initially Incurred such Refinanced Debt or by another Person of which the Person that initially Incurred such Refinanced Debt is a Subsidiary, and (v) such Refinancing Debt is Incurred within 60 days after such Refinanced Debt is so refunded, refinanced or extended.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of

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said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

"Regulation X" means Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by foreign lenders for the purpose of purchasing or carrying margin stock (as defined therein).

"Reimbursement Agreement" means, with respect to a Facility Letter of Credit, such form of application therefor and form of reimbursement agreement therefor (whether in a single or several documents, taken together) as the applicable Issuing Bank may employ in the ordinary course of business for its own account, with the modifications thereto as may be agreed upon by such Issuing Bank and the Borrower and as are not materially adverse (in the reasonable judgment of such Issuing Bank and the Agent) to the interests of the Banks; *provided, however*, in the event of any conflict between the terms of any Reimbursement Agreement and this Agreement, the terms of this Agreement shall control.

"Rejecting Bank" has the meaning assigned to such term in Section 2.19(a).

"Rejecting Bank's Termination Date" has the meaning assigned to such term in Section 2.19(a).

"Replacement Bank" has the meaning assigned to such term in Section 2.20.

"Reportable Event" means any of the events set forth in Section 4043 of ERISA with respect to a Plan (excluding any such event with respect to which the PBGC has waived the 30-day notice requirement).

"S&P" means Standard & Poor's Rating Services.

"Secured Debt" means all Debt of the Borrower or any of its Subsidiaries (excluding Debt owing to the Borrower or any of its Subsidiaries) that is secured by a Lien on assets of the Borrower or any of its Subsidiaries.

"Senior Debt" means the Senior Notes or, if the Senior Notes are refinanced, the Refinancing Debt with respect thereto.

"Senior Debt Rating" means (i) at any time at which Moody's, S&P and Fitch all publicly announce ratings of the Borrower's unsecured long-term debt, the second highest of such three ratings; (ii) at any time at which Moody's and S&P publicly announce ratings of the Borrower's unsecured long-term debt but Fitch does not, the higher of such two ratings; and (iii) at any time at which Moody's or S&P (but not both) publicly announces a rating of the Borrower's unsecured long-term debt (and regardless of whether Fitch publicly announces a rating), the rating so publicly announced by Moody's or S&P. At any time at which neither Moody's nor S&P publicly announces ratings of the Borrower's unsecured long-term debt, no Senior Debt Rating shall be deemed to exist. The Senior Debt Rating shall change if and when such rating(s) change, and such change in the Senior Debt Rating shall have the effect provided for in Section 2.05 and elsewhere in this Agreement.

"Senior Indentures" means either of the Indentures identified in the definition of the term "Senior Notes" and any other Indenture hereafter entered into by the Borrower pursuant to which the Borrower Incurs any Refinancing Debt with respect to any of the Senior Notes.

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"Senior Notes" means (i) the 8⁵/₈% Senior Notes due 2001 of the Borrower issued in the original principal amount of \$200,000,000 pursuant to the Indenture dated May 21, 2001 and (ii) the 8⁷/₈ percent Senior Notes due 2008 of the Borrower issued in the original principal amount of \$100,000,000 pursuant to the Indenture dated March 25, 1998.

"Significant Guarantor" means, at any date of determination thereof, any Guarantor that (together with its Subsidiaries) accounts for five percent (5%) or more of the Consolidated Tangible Assets as of the last day of the most recent fiscal quarter then ended and of the net revenues for the twelve-month period ending on the last day of the most recent fiscal quarter then ended, in each case of the Borrower and its Subsidiaries taken as a whole. Such percentage shall be determined on the basis of financial reports that shall be available not later than 25 days (or, in the case of the last fiscal quarter of the fiscal year, 35 days) following the end of such fiscal quarter.

"Significant Subsidiary" means, at any date of determination thereof, any Subsidiary that (together with its Subsidiaries) accounts for five percent (5%) or more of the Consolidated Tangible Assets as of the last day of the most recent fiscal quarter then ended and of the net revenues for the twelve-month period ending on the last day of the most recent fiscal quarter then ended, in each case of the Borrower and its Subsidiaries taken as a whole. Such percentage shall be determined on the basis of financial reports that shall be available not later than 25 days (or, in the case of the last fiscal quarter of the fiscal year, 35 days) following the end of such fiscal quarter.

"Speculative Housing Unit" means any Housing Unit owned by the Borrower or a Subsidiary that is not a Housing Unit Under Contract.

"STIC" means Security Title Insurance Company, Inc., a Vermont corporation and Wholly Owned Subsidiary of the Borrower.

"Subsidiary" means, as to the Borrower or a Guarantor, in the case of a corporation, a corporation of which shares of stock having ordinary voting power (other than stock having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation are at the time owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by the Borrower or such Guarantor, as the case may be, or in the case of an entity which is not a corporation, the activities of which are controlled directly, or indirectly through one or more intermediaries, or both, by the Borrower or such Guarantor, as the case may be.

"SunTrust" means SunTrust Bank.

"Swing Line Bank" means Bank One or any Purchaser to which Bank One assigns the Swing Line Commitment in accordance with Section 12.03 hereof.

"Swing Line Commitment" means the commitment of the Swing Line Bank to make Swing Line Loans pursuant to Section 2.21(a) hereof. The Swing Line Commitment is in the amount of \$20,000,000.

"Swing Line Loan" has the meaning assigned to such term in Section 2.21(a).

"Term Loan Agreement" means that certain Term Loan Agreement dated as of December 19, 2000 among the Borrower, the Original Guarantors, Bank One as agent and the other banks party thereto, as the same may be amended, modified or replaced and in effect from time to time.

"Termination Date" means September 20, 2004, as such date may be extended from time to time pursuant to Section 2.19.

"Transferee" has the meaning assigned to that term in Section 12.04.

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"UHIC" means United Homes Insurance Corporation, a Vermont corporation and Wholly Owned Subsidiary of the Borrower.

"Unrestricted Cash" of a Person means the cash of such Person that would not be identified as "restricted" on a balance sheet of such Person prepared in accordance with GAAP.

"Wholly Owned Subsidiary" of any Person means (i) a Subsidiary, of which one hundred percent (100%) of the outstanding Common Equity (except for directors' qualifying shares or certain minority interests owned by other Persons solely due to local law requirements that there be more than one stockholder, but

which interest is not in excess of what is required for such purpose) is owned directly by such Person or through one or more other Wholly Owned Subsidiaries of such Person, or (ii) any entity other than a corporation in which such Person, directly or indirectly, owns all of the outstanding Common Equity of such entity.

Section 1.02 Accounting Terms. (a) All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with those applied in the preparation of the financial statements referred to in Section 4.04, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles.

(b) Notwithstanding anything to the contrary contained in this Agreement, in determining the Borrower's compliance with the provisions of Article VII hereof, GAAP shall not include modifications of generally accepted accounting principles that become effective after the date hereof.

ARTICLE II

AMOUNTS AND TERMS OF THE LOANS

Section 2.01 Revolving Credit. (a) Each Bank severally agrees, on the terms and conditions hereinafter set forth, to make Loans (other than Swing Line Loans) to the Borrower from time to time during the period from the date of this Agreement up to but not including the Termination Date, and to purchase undivided interests and participations in Facility Letters of Credit in accordance with Section 13.06, in an aggregate principal amount of Loans and of such Bank's Ratable Share of the Facility Letter of Credit Obligations not to exceed at any time outstanding the amount set forth in Schedule I hereto (such Bank's obligations to make Loans (other than Swing Line Loans) and to purchase undivided interests and participations in Facility Letters of Credit in accordance with Section 13.06 in such amounts, as reduced, increased or otherwise modified from time to time pursuant to the terms of this Agreement, being herein referred to as such Bank's "Commitment"), subject to the limitations set forth in Section 2.01(b) and Section 13.02.

(b) The aggregate amount of Permitted Senior Debt at any one time outstanding may not exceed the Borrowing Base as of the most recent Inventory Valuation Date, and no Loan (including a Swing Line Loan) shall be made that would have the effect of increasing the then outstanding amount of the Permitted Senior Debt to an amount exceeding such Borrowing Base, provided that a Loan shall not be deemed to have increased the amount of the Permitted Senior Debt to the extent that the proceeds of such Loan are immediately used to repay a Swing Line Loan theretofore included in the Permitted Senior Debt. No Loans shall be made at any time that any Swing Line Loan is outstanding, except for Loans that are used, on the day on which made, to repay in full the outstanding principal balance of the Swing Line Loans.

(c) Each Borrowing which shall not utilize the Commitment in full shall be in an amount not less than One Million Dollars (\$1,000,000) for a Borrowing consisting of LIBOR Loans and Five Hundred Thousand Dollars (\$500,000) in the case of a Borrowing consisting of ABR Loans and, in either case, if in excess of the specified amount, in integral multiples of One Hundred Thousand Dollars (\$100,000). Each Borrowing shall consist of a Loan made by each Bank in the proportion which that Bank's Commitment bears to the Aggregate Commitments. Within the limits of the Aggregate Commitments,

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the Borrower may borrow, repay pursuant to Section 2.11, and reborrow under this Section 2.01. On such terms and conditions, the Loans may be outstanding as ABR Loans or LIBOR Loans. Each type of Loan shall be made and maintained at such Bank's Lending Office for such type of Loan. The failure of any Bank to make any requested Loan to be made by it on the date specified for such Loan shall not relieve any other Bank of its obligation (if any) to make such Loan on such date, but no Bank shall be responsible for the failure of any other Bank to make such Loans to be made by such other Bank. The provisions of this Section 2.01(c) shall not apply to Swing Line Loans.

(d) The Borrower may elect to deliver to the Agent a Borrowing Base Certificate setting forth the Borrowing Base as of the last day of a calendar month subsequent to the most recent fiscal quarter with respect to which a Borrowing Base Certificate was required to be delivered under Section 5.08(6) of the Agreement.

(e) The Agent or the Majority Lenders may, upon notice to the Borrower from the Agent, require the Borrower to deliver a Borrowing Base Certificate determined as of the last day of a calendar month (as designated in such notice) subsequent to the fiscal quarter with respect to which a Borrowing Base Certificate was required to be delivered under Section 5.08(6) of the Agreement, provided that the Borrowing Base Certificate under this Section 2.01(e) shall only be required to be delivered on the later to occur of (i) the tenth (10th) day following the Agent's notice to the Borrower under this Section 2.01(e) or (ii) the twenty-fifth (25th) day after the last day of the applicable calendar month (as designated in such notice).

(f) The Borrower may elect to include in a Borrowing Base Certificate delivered in anticipation of a Permitted Acquisition all assets that would have been included in the Borrowing Base had the Permitted Acquisition been consummated as of the last day of the most recent fiscal quarter or (if applicable under Section 2.01(d) or (e)) calendar month, provided, however, that such Borrowing Base Certificate shall expressly state that it is delivered in anticipation of, and shall only be effective hereunder for purposes of Borrowings made on or after, the consummation of such Permitted Acquisition (it being understood that, until the consummation of such Permitted Acquisition, the previously delivered Borrowing Base Certificate shall remain in effect).

Section 2.02 Reduction of Aggregate Commitments. The Borrower shall have the right, upon at least three (3) Business Days' prior notice to the Agent, to terminate in whole or reduce in part the unused portion of the Aggregate Commitments, provided that each partial reduction shall be in the amount of at least Five Million Dollars (\$5,000,000), and provided further that no reduction shall be permitted if, after giving effect thereto, and to any prepayment made therewith, the sum of (i) the outstanding and unpaid principal amount of the Loans and (ii) the Facility Letter of Credit Obligations shall exceed the Aggregate Commitments. Each reduction in part of the unused portion of each Bank's Commitment shall be made in the proportion that such Bank's Commitment bears to the total amount of the Aggregate Commitments. Any Commitment, once reduced or terminated, may not be reinstated.

Section 2.03 Notice and Manner of Borrowing. The Borrower shall give the Agent notice of any Loans under this Agreement, on the Business Day of each ABR Loan, and at least three (3) Business Days before each LIBOR Loan, specifying: (1) the date of such Loan; (2) the amount of such Loan; (3) the type of Loan (whether an ABR Loan or a LIBOR Loan); and (4) in the case of a LIBOR Loan, the duration of the Interest Period applicable thereto. All notices given by the Borrower under this Section 2.03 shall be irrevocable and shall be given not later than 10:00 A.M. Chicago time on the day specified above for such notice. The Agent shall notify each Bank of each such notice not later than 11:00 A.M. Chicago time on the date it receives such notice from the Borrower if such notice is received by the Agent at or before 10:00 A.M. Chicago time. In the event such notice from the Borrower is received after 10:00 A.M. Chicago time, it shall be treated as if received on the next succeeding Business Day, and the Agent shall notify each Bank of such notice as soon as practicable but not later than 11:00 A.M. Chicago time on the next succeeding Business Day. Not later than

1:00 P.M. Chicago time on the date of such Loans, each Bank will make available to the Agent in immediately available funds, such Bank's Ratable Share of such Loans. After the Agent's receipt of such funds, on the date of such Loans and upon fulfillment of the applicable conditions set forth in Article III, the Agent will make such Loans available to the Borrower in immediately available funds by crediting the amount thereof to the Borrower's account with the Agent. The provisions of this Section 2.03 shall not apply to Swing Line Loans.

Section 2.04 Non-Receipt of Funds by Agent. (a) Unless the Agent shall have received notice from a Bank prior to the date (in the case of a LIBOR Loan), or by 12:00 noon Chicago time on the date (in the case of an ABR Loan), on which such Bank is to provide funds to the Agent for a Loan to be made by such Bank that such Bank will not make available to the Agent such funds, the Agent may assume that such Bank has made such funds available to the Agent on the date of such Loan in accordance with Section 2.03 and the Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent such Bank shall not have given the notice provided for above and shall not have made such funds available to the Agent, such Bank agrees to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at the Federal Funds Rate for three Business Days and thereafter at the Alternate Base Rate. If such Bank shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Bank's Loan for purposes of this Agreement. If such Bank does not pay such corresponding amount forthwith upon Agent's demand therefor, the Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Agent with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at the rate of interest applicable at the time to such proposed Loan. Nothing set forth in this Section shall affect the rights of the Borrower with respect to any Bank that defaults in the performance of its obligation to make a Loan hereunder.

(b) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Banks hereunder that the Borrower will not make such payment in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date and the Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, cause to be distributed to each Bank on such due date an amount equal to the amount then due such Bank. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Bank shall repay to the Agent forthwith on demand such amount distributed to such Bank together with interest thereon, for each day from the date such amount is distributed to such Bank until the date such Bank repays such amount to the Agent, at the Federal Funds Rate for three Business Days and thereafter at the Alternate Base Rate.

(c) The provisions of this Section 2.04 shall not apply to Swing Line Loans.

Section 2.05 Determination of Applicable Margins and Applicable Commitment Rate. (a) The Applicable Margins and the Applicable Commitment Rate shall be determined by reference to the

Senior Debt Rating and the Debt/Cap Ratio in accordance with the following table and the provisions of this Section 2.05:

| Level | Senior Debt Rating | Debt/Cap Ratio | Applicable LIBOR Margin | Applicable ABR Margin | Applicable Commitment Rate | |
|-------|--------------------|---|-------------------------|-----------------------|----------------------------|------------|
| | | | | | Usage>=50% | Usage<=50% |
| V | BBB-/Baa3 | less than 30% | 1.25% | -0- | 0.225% | 0.25% |
| IV | BB+/Ba1 | Equal to or more than 30% and less than 35% | 1.50% | - -0- | 0.275% | 0.30% |
| III | BB-/Ba2 | Equal to or more than 35% and less than 40% | 1.625% | 0.125% | 0.30% | 0.375% |
| II | BB-/Ba3 | Equal to or more than 40% and less than 55% | 1.75 | 0.25 | 0.375% | 0.45% |
| I | B+/B1 & Below | 55% or more | 2.00% | 0.50% | 0.50% | 0.60% |

The Applicable Margins and Applicable Commitment Rate shall be determined on the basis of the Levels of the Pricing Factors in accordance with the following provisions:

- (i) At any time at which the Pricing Factors are at the same Level, the Applicable Margins and Applicable Commitment Rate shall be at that Level;
- (ii) At any time at which the Pricing Factors are at different Levels, the Applicable Margins and the Applicable Commitment Rate shall be at the Level that corresponds to (A) the Level of the higher of the two Pricing Factors (i.e. the lower pricing) whenever the Pricing Factors differ by one Level and (B) the Level that is one Level lower than the higher of the two Pricing Factors whenever the Pricing Factors differ by more than one Level;
- (iii) At any time at which there is or is deemed to be no Senior Debt Rating, the Applicable Margins and the Applicable Commitment Rate shall be at the Level that is one Level lower than the Level of the Debt/Cap Ratio; and
- (iv) At any time at which (A) Fitch does not publicly announce a rating of the Borrower's unsecured long-term debt, and (B) Moody's or S&P (but not both) publicly announces a rating of the Borrower's unsecured long-term debt, the Applicable Margin and Applicable Commitment Rate shall be determined in accordance with subsections (i) and (ii) above (as applicable), except that (A) the Applicable LIBOR Margin set forth in the Table above shall be increased by 0.075% and (B) the Applicable Commitment Rate set forth in the Table shall be increased by 0.025%.

(b) The Applicable Margin and the Applicable Commitment Rate shall be adjusted, from time to time, effective (as applicable) on the first Business Day after any change in the Senior Debt Ratings that results in any change in the Applicable Margins or Applicable Commitment Rate or the fifth (5th) Business Day after the Agent's receipt of the Borrower's quarterly or annual financial statements evidencing a change in the Debt/Cap Ratio that results in any change in the

Applicable Margins or Applicable Commitment Rates, provided, however, that any change in the Applicable LIBOR Margin shall only apply to LIBOR Loans for Interest Periods commencing after such change in the Applicable LIBOR Margin is effective.

(c) As of the date hereof, by Applicable Margins and Applicable Commitment Rate are at Level II.

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Section 2.06 Conversions and Renewals. The Borrower may elect from time to time to convert all or a part of one type of Loan into another type of Loan or to renew all or part of a Loan by giving the Agent notice at least one (1) Business Day before conversion into an ABR Loan, and at least three (3) Business Days before the conversion into or renewal of a LIBOR Loan, specifying: (1) the renewal or conversion date; (2) the amount of the Loan to be converted or renewed; (3) in the case of conversions, the type of Loan to be converted into; and (4) in the case of renewals of or a conversion into a LIBOR Loan, the duration of the Interest Period applicable thereto; *provided* that (a) the minimum principal amount of each Loan of each Bank outstanding after a renewal or conversion shall be One Million Dollars (\$1,000,000) in the case of a LIBOR Loan, and Two Hundred Fifty Thousand Dollars (\$250,000) in the case of an ABR Loan; and (b) LIBOR Loans may be converted on a Business Day that is not the last day of the Interest Period for such Loan only if the Borrower pays on the date of conversion all amounts due pursuant to Section 2.17 hereof; and (c) the Borrower may not renew a LIBOR Loan or convert an ABR Loan into a LIBOR Loan at any time that a Default has occurred that is continuing. Each such notice shall be accompanied by a Borrowing Base Certificate dated as at the date of such notice. All conversions and renewals shall be made in the proportion of the Bank's respective Ratable Shares. All notices given by the Borrower under this Section 2.06 shall be irrevocable and shall be given not later than 10:00 A.M. Chicago time on the day which is not less than the number of Business Days specified above for such notice. The Agent shall notify each Bank of each such notice not later than 11:00 A.M. Chicago time on the date it receives such notice from the Borrower if such notice is received by the Agent at or before 10:00 A.M. Chicago time. In the event such notice from the Borrower is received after 10:00 A.M. Chicago time, it shall be treated as if received on the next succeeding Business Day, and the Agent shall notify each Bank of such notice as soon as practicable but not later than 11:00 A.M. Chicago time on the next succeeding Business Day. Notwithstanding the foregoing, if the Borrower shall fail to give the Agent the notice as specified above for the renewal or conversion of a LIBOR Loan prior to the end of the Interest Period with respect thereto, such LIBOR Loan shall automatically be converted into an ABR Loan on the last day of the Interest Period for such Loan. The provisions of this Section 2.06 shall not apply to Swing Line Loans.

Section 2.07 Interest. (a) The Borrower shall pay interest to the Agent for the account of each Bank on the outstanding and unpaid principal amount of the Loans at the following rates:

(i) If an ABR Loan or Swing Line Loan, then at a rate per annum equal to the sum of (A) the Applicable ABR Margin in effect from time to time as interest accrues and (B) the Alternate Base Rate in effect from time to time as interest accrues; and

(ii) if a LIBOR Loan, then at a rate per annum for the Interest Period applicable to such LIBOR Loan equal to the sum of (A) the Applicable LIBOR Margin in effect on the first day of such Interest Period and (B) the LIBOR Interest Rate determined for such Interest Period.

(b) Any change in the interest rate based on the Alternate Base Rate resulting from a change in the Alternate Base Rate shall be effective (without notice) as of the opening of business on the day on which such change in the Alternate Base Rate becomes effective. Interest on each LIBOR Loan shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. Interest on each ABR Loan and Swing Line Loan shall be calculated on the basis of a year of 365 days for the actual number of days elapsed.

(c) Interest on the Loans shall be paid (in an amount set forth in a statement delivered by the Agent to the Borrower, *provided, however*, that the failure of the Agent to deliver such statement shall not limit or otherwise affect the obligations of the Borrower hereunder) in immediately available funds to the Agent at its Principal Office for the account of the applicable Lending Office of each Bank as follows:

(1) For each ABR Loan and Swing Line Loan on the first day of each calendar month commencing on the first such date after such Loan;

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(2) For each LIBOR Loan, on the last day of the Interest Period with respect thereto, except that, if such Interest Period is longer than three months, interest shall also be paid on the last day of the third month of such Interest Period; and

(3) If not sooner paid, then on the Termination Date or such earlier date as the Loans may be due or declared due hereunder.

(d) Any principal amount of any Loan not paid when due (at maturity, by acceleration, or otherwise) shall bear interest thereafter until paid in full, payable on demand, at a rate per annum equal to the Alternate Base Rate or the applicable LIBOR Interest Rate, as the case may be, for such Loan in effect from time to time as interest accrues, plus the Applicable Margin in effect from time to time as interest accrues, plus two percent (2%) per annum.

Section 2.08 Interest Rate Determination. (a) The Agent shall determine each London Interbank Offered Rate, as applicable. The Agent shall give prompt notice to the Borrower and the Banks of the applicable interest rate determined by the Agent pursuant to the terms of this Agreement.

(b) If the provisions of this Agreement or any Note would at any time require payment by the Borrower to a Bank of any amount of interest in excess of the maximum amount then permitted by the law applicable to any Loan, the interest payments to such Bank shall be reduced to the extent necessary so that such Bank shall not receive interest in excess of such maximum amount. If, as a result of the foregoing a Bank shall receive interest payments hereunder or under a Note in an amount less than the amount otherwise provided hereunder, such deficit (hereinafter called "Interest Deficit") will cumulate and will be carried forward (without interest) until the termination of this Agreement. Interest otherwise payable to a Bank hereunder and under a Note for any subsequent period shall be increased by the maximum amount of the Interest Deficit that may be so added without causing such Bank to receive interest in excess of the maximum amount then permitted by the law applicable to the Loans. The amount of the Interest Deficit relating to the Loans shall be treated as a prepayment premium (to the extent permitted by law) and paid in full at the time of any optional prepayment by the Borrower to the Banks of all the Loans at that time outstanding pursuant to Section 2.11 hereof. The amount of the Interest Deficit relating to the Loans at the time of any complete payment of the Loans at that time outstanding (other than an optional prepayment thereof pursuant to Section 2.11 hereof) shall be canceled and not paid.

Section 2.09 Fees. (a) The Borrower shall pay to BOCM upon the execution of this Agreement a one time, nonrefundable fee in the amount provided for in the Agent's Fee Letter. The Agent shall deliver to each Bank its applicable fee (as set forth in the invitation letter dated August 16, 2001 from BOCM to such Banks) promptly upon the Agent's receipt thereof.

(b) The Borrower agrees to pay to the Agent for the account of each Bank (subject to adjustment in the case of the Swing Line Bank as hereinafter provided) a commitment fee on the average daily unused portion of such Bank's Commitment (in an amount set forth in a statement delivered by the Agent to the Borrower, *provided, however*, that the failure of the Agent to deliver such statement shall not limit or otherwise affect the obligations of the Borrower hereunder) from the date of this Agreement until the Termination Date at the Applicable Commitment Rate, payable in arrears on each Quarterly Payment Date during the term of such Bank's Commitment, commencing October 1, 2001, and ending on the Termination Date or, in the case of a Rejecting Bank, on such Rejecting Bank's Termination Date. The commitment fees shall be calculated on the basis of a year of 365 days for the actual number of days elapsed. Upon receipt of any commitment fees, the Agent will promptly thereafter cause to be distributed such payments to the Banks in the proportion that each Bank's unused Commitment bears to the unused Aggregate Commitments (subject to adjustment in the case of the Swing Line Bank as hereinafter provided). For purposes of determining the commitment fee payable to the Swing Line Bank, the unused portion of such Bank's Commitment shall be reduced dollar-for-dollar by the amount of any Swing Line Loans then outstanding.

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(c) The Borrower shall pay to the Agent and BOCM such additional fees as are specified in the Agent's Fee Letter.

Section 2.10 Notes. All Loans made by each Bank under this Agreement shall be evidenced by, and repaid with interest in accordance with, a single promissory note of the Borrower in substantially the form of *Exhibit A* hereto, in each case duly completed, dated the date of this Agreement, and payable to such Bank for the account of its applicable Lending Office, such Note to represent the obligation of the Borrower to repay the Loans made by such Bank. Each Bank is hereby authorized by the Borrower to endorse on the schedule attached to the Note held by it the amount and type of each Loan and each renewal, conversion, and payment of principal amount received by such Bank for the account of its applicable Lending Office on account of its Loans, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Loans made by such Bank; *provided, however*, that the failure to make such notation with respect to any Loan or renewal, conversion, or payment shall not limit or otherwise affect the obligations of the Borrower under this Agreement or the Note held by such Bank. All Loans shall be repaid on the Termination Date.

Section 2.11 Prepayments. (a) The Borrower may, upon notice to the Agent not later than 11:00 A.M. (Chicago time) on the date of prepayment in the case of ABR Loans and at least three (3) Business Days' prior notice to the Agent in the case of LIBOR Loans, prepay (including, without limitation, all amounts payable pursuant to the terms of Section 2.17 hereof) the Notes in whole or in part with accrued interest to the date of such prepayment on the amount prepaid, *provided* that (1) each partial payment shall be in a principal amount of not less than One Million Dollars (\$1,000,000) in the case of a LIBOR Loan and Two Hundred Fifty Thousand Dollars (\$250,000) in the case of an ABR Loan; and (2) LIBOR Loans may be prepaid only on the last day of the Interest Period for such Loans; *provided, however*, that such prepayment of LIBOR Loans may be made on any other Business Day if the Borrower pays at the time of such prepayment all amounts due pursuant to Section 2.17 hereof. Upon receipt of any such prepayments, the Agent will promptly thereafter cause to be distributed the applicable Ratable Share of such prepayment to each Bank for the account of its applicable Lending Office, except that prepayments of Swing Line Loans shall be made solely to the Swing Line Bank.

(b) The Borrower shall immediately upon a Change in Control prepay the Notes in full and all accrued interest to the date of such prepayment, and in the case of LIBOR Loans all amounts due pursuant to Section 2.17 hereof.

Section 2.12 Method of Payment. The Borrower shall make each payment under this Agreement and under the Notes not later than 11:00 A.M. Chicago time on the date when due in lawful money of the United States to the Agent for the account of the applicable Lending Office of each Bank (or, in the case of Swing Line Loans, for the account of the Swing Line Bank) in immediately available funds. The Agent will promptly thereafter cause to be distributed (1) the applicable Ratable Share of such payments of principal and interest with respect to Loans (other than Swing Line Loans) in like funds to each Bank for the account of its applicable Lending Office, (2) such payments of principal and interest with respect to Swing Line Loans solely to the Swing Line Bank and (3) other fees payable to any Bank to be applied in accordance with the terms of this Agreement. If any such payment is not received by a Bank on the Business Day on which the Agent received such payment (or the following Business Day if the Agent's receipt thereof occurs after 2:00 P.M. (Chicago time)), such Bank shall be entitled to receive from the Agent interest on such payment at the Federal Funds Rate for three Business Days and thereafter at the Alternate Base Rate (which interest payment shall not be an obligation for the Borrower's account, including under Section 11.04 or Section 11.06). The Borrower hereby authorizes each Bank, if and to the extent payment is not made when due under this Agreement or under the Notes, to charge from time to time against any account of the Borrower with such Bank any amount as due. Whenever any payment to be made under this Agreement or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on

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the next succeeding Business Day, and such extension of time shall be included in the computation of the payment of interest and the commitment fee, as the case may be, except, in the case of a LIBOR Loan, if the result of such extension would be to extend such payment into another calendar month, such payment shall be made on the immediately preceding Business Day.

Section 2.13 Use of Proceeds. The proceeds of the Loans hereunder shall be used by the Borrower for working capital and general corporate purposes of the Borrower and the Guarantors to the extent permitted in this Agreement and to repay Swing Line Loans. The Borrower will not, directly or indirectly, use any part of such proceeds for the purpose of repaying the Senior Notes or for purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or to extend credit to any Person for the purpose of purchasing or carrying any such margin stock, or for any purpose which violates, or is inconsistent with, Regulation X of such Board of Governors.

Section 2.14 Yield Protection. If any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, or the compliance of any Bank therewith,

(i) subjects any Bank or any applicable Lending Office to any tax, duty, charge or withholding on or from payments due from the Borrower (excluding federal taxation of the overall net income of any Bank or applicable Lending Office), or changes the basis of taxation of payments to any Bank in respect of its Loans or other amounts due it hereunder, or

(ii) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Bank or any applicable Lending Office (other than reserves and assessments taken into account in determining the interest rate applicable to LIBOR Loans), or

(iii) imposes any other condition the result of which is to increase the cost to any Bank or any applicable Lending Office of making, funding or maintaining loans or reduces any amount receivable by any Bank or any applicable Lending Office in connection with loans, or requires any Bank or any applicable Lending Office to make any payment calculated by reference to the amount of loans held or interest received by it, by an amount deemed material by such Bank,

then, within fifteen (15) days of demand by such Bank, the Borrower shall pay such Bank that portion of such increased expense incurred or reduction in an amount received which such Bank reasonably determines is attributable to making, funding and maintaining its Loans and its Commitment.

Section 2.15 Changes in Capital Adequacy Regulations. If a Bank determines the amount of capital required or expected to be maintained by such Bank, any Lending Office of such Bank or any corporation controlling such Bank is increased as a result of a Change, then, within 10 days of demand by such Bank, the Borrower shall pay such Bank the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which such Bank determines is attributable to this Agreement, its Loans or its obligation to make Loans hereunder (after taking into account such Bank's policies as to capital adequacy); *provided, however*, that a Bank shall impose such cost upon the Borrower only if such Bank is generally imposing such cost on its other borrowers having similar credit arrangements. "Change" means (i) any change after the date of this Agreement in the Risk-Based Capital Guidelines or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of this Agreement which affects the amount of capital required or expected to be maintained by any Bank or any Lending Office or any corporation controlling any Bank. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States implementing the

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July 1988 report of the Basle Committee on Banking Regulation and Supervisory Practices Entitled "International Convergence of Capital Measurements and Capital Standards," including transition rules, and any amendments to such regulations adopted prior to the date of this Agreement.

Section 2.16 Availability of LIBOR Loans. If any Bank determines that maintenance of its LIBOR Loans at the Lending Office selected by the Bank would violate any applicable law, rule, regulation, or directive, whether or not having the force of law (and it is not reasonably possible for the Bank to designate an alternate Lending Office without being adversely affected thereby), or if the Majority Banks determine that (i) deposits of a type and maturity appropriate to match fund LIBOR Loans are not available or (ii) the interest rate applicable to LIBOR Loans does not accurately reflect the cost of making or maintaining such LIBOR Loans, then the Agent shall suspend the availability of LIBOR Loans and require any LIBOR Loans to be repaid.

Section 2.17 Funding Indemnification. If any payment of a LIBOR Loan occurs on a date which is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise, or a LIBOR Loan is not made on the date specified by the Borrower for any reason other than default by the Banks, the Borrower will indemnify each Bank for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost in liquidating or employing deposits required to fund or maintain the LIBOR Loan.

Section 2.18 Bank Statements; Survival of Indemnity. To the extent reasonably possible, each Bank shall designate an alternate Lending Office with respect to its LIBOR Loans to reduce any liability of the Borrower to such Bank under Sections 2.14 and 2.15 or to avoid the unavailability of LIBOR Loans. Each Bank shall deliver a written statement of such Bank as to the amount due, if any, under Sections 2.14, 2.15 or 2.17. Such written statement shall set forth in reasonable detail the calculations upon which such Bank determined such amount and shall be final, conclusive and binding on the Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a LIBOR Loan shall be calculated as though each Bank funded its LIBOR Loan through the purchase of a deposit of the type and maturity corresponding to the deposit used as a reference in determining the LIBOR Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement shall be payable on demand after receipt by the Borrower of the written statement. The obligations of the Borrower under Sections 2.14, 2.15 and 2.17 shall survive payment of the Obligations and termination of this Agreement.

Section 2.19 Extension of Termination Date. (a) Not more than once in any fiscal year of the Borrower, the Borrower may request an extension of the Termination Date to the first or second anniversary of the then scheduled Termination Date (but in no event later than the third anniversary of the date of such request) by submitting a request for an extension to the Agent not less than 180 days prior to the then scheduled Termination Date. At the time of or prior to the delivery of such request, the Borrower shall propose to the Agent the amount of the fees that the Borrower would agree to pay with respect to such extension if approved by the Banks. Promptly upon (but not later than five Business Days after) the Agent's receipt and approval of the extension request and fee proposal (as so approved, the "Extension Request"), the Agent shall deliver to each Bank a copy of, and shall request each Bank to approve, the Extension Request. Each Bank approving the Extension Request shall deliver its written approval no later than 60 days after such Bank's receipt of the Extension Request. If the written approval of the Extension Request by the Majority Banks is received by the Agent within such 60-day period, the Termination Date shall be extended to the first or second anniversary of the then scheduled Termination Date (as specified in the Extension Request) but only with respect to the Banks that have given such written approval. Except to the extent that a Bank that did not give its written approval to such Extension Request ("Rejecting Bank") is replaced as provided in Section 2.20, the Loans and all interest, fees and other amounts owed to such Rejecting Bank shall be paid in full on

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the Termination Date as determined prior to such Extension Request (the "Rejecting Bank's Termination Date").

(b) Within ten days of the Agent's notice to the Borrower that the Majority Banks have approved an Extension Request, the Borrower shall pay to the Agent for the account of each Bank that has approved the Extension Request the applicable extension fees specified in the Extension Request.

(c) If the Majority Banks approve the Extension Request, the Borrower may, upon notice to the Agent and any Rejecting Bank, and subject to the provisions of the last sentence of this Section 2.19(c), terminate the Commitment of such Rejecting Bank (or such portion of the Commitment as is not assigned to a Replacement Bank in accordance with Section 2.20), which termination shall occur as of a date set forth in such Borrower's notice but in no event more than thirty (30) days following such notice (subject to the provisions of Section 2.20(b)). Upon the effective date of such termination, the Borrower shall pay to the Rejecting Bank all amounts due and owing to it hereunder or under any other Loan Document, including, without limitation, the aggregate outstanding principal

amount of the Loans owed to such Rejecting Bank, together with accrued interest thereon through the date of such termination, amounts payable under Sections 2.14 and 2.15 with respect to such Rejecting Bank and the fees payable to such Rejecting Bank under Section 2.09(b). Upon request by the Borrower or the Agent, the Rejecting Bank will deliver to the Borrower and the Agent a letter setting forth the amounts payable to the Rejecting Bank as set forth above. Upon the termination of such Rejecting Bank's Commitment and payment of the amounts provided for in the immediately preceding sentence, the Borrower shall have no further obligations to such Rejecting Bank under this Agreement and such Rejecting Bank shall cease to be a party hereto, *provided, however*, that such Rejecting Bank shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.17, 11.04 and 11.06, as well as to any fees accrued for its account hereunder not yet paid, and shall continue to be obligated under Section 10.05 with respect to obligations and liabilities accruing prior to the termination of such Rejecting Bank's Commitment. If, as a result of the termination of the Rejecting Bank's Commitment, any payment of a LIBOR Loan occurs on a day which is not the last day of the applicable Interest Period, the Borrower shall pay to the Agent for the benefit of the Banks (including any Rejecting Bank) any loss or cost incurred by the Banks (including any Rejecting Bank) resulting therefrom in accordance with Section 2.17. Upon the effective date of the termination of the Rejecting Bank's Commitment, the Aggregate Commitments shall be reduced by the amount of the terminated Commitment of the Rejecting Bank, and each other Bank shall be deemed to have irrevocably and unconditionally purchased and received (subject to the provisions of the last sentence of this Section 2.19(c)), without recourse or warranty, from the Rejecting Bank, an undivided interest and participation in any Facility Letter of Credit then outstanding, ratably, such that each Bank (excluding the Rejecting Bank but including any Replacement Bank that acquires an interest hereunder from such Rejecting Bank) holds a participation interest in each Facility Letter of Credit in proportion to the ratio that such Bank's Commitment (upon the effective date of such termination of the Rejecting Bank's Commitment) bears to the Aggregate Commitments (as reduced by the termination of such Rejecting Bank's Commitment or a part thereof). Notwithstanding the foregoing, if, upon the termination of the Commitment of such Rejecting Bank, the sum of the outstanding principal balance of the Loans and the Facility Letter of Credit Obligations would exceed the Aggregate Commitments (as reduced), the Borrower may not terminate such Rejecting Bank's Commitment unless the Borrower, on or prior to the effective date of such termination, prepays, in accordance with the provisions of this Agreement, outstanding Loans or causes to be canceled, released and returned to the applicable Issuing Bank outstanding Facility Letters of Credit in sufficient amounts such that, on the effective date of such termination, the sum of the outstanding principal balance of the Loans and the Facility Letter of Credit Obligations does not exceed the Aggregate Commitments (as reduced).

Section 2.20 Replacement of Certain Banks. (a) In the event a Bank ("Affected Bank"): (i) shall have requested compensation from the Borrower under Sections 2.14 or 2.15 to recover additional costs

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incurred by such Bank that are not being incurred generally by the other Banks, (ii) shall have delivered a notice pursuant to Section 2.16 claiming that such Bank is unable to extend LIBOR Loans to the Borrower for reasons not generally applicable to the other Banks, (iii) shall have invoked Section 11.13 or (iv) is a Rejecting Bank pursuant to Section 2.19, then, in any such case, the Borrower or the Agent may make written demand on such Affected Bank (with a copy to the Agent in the case of a demand by the Borrower and a copy to the Borrower in the case of a demand by the Agent) for the Affected Bank to assign, and, if a Replacement Bank (as hereinafter defined) notifies the Affected Bank of its willingness to purchase the Affected Bank's interest and the Agent and the Borrower consent thereto in writing, then such Affected Bank shall assign pursuant to one or more duly executed assignment and acceptance agreements in substantially and in all material respects in the form and substance of *Exhibit I* five (5) Business Days after the date of such demand, to one or more financial institutions that comply with the provisions of Section 12.03(a) that the Borrower or the Agent, as the case may be, shall have engaged for such purpose ("Replacement Bank"), all (or, to the extent permitted under Section 2.20(b), a part) of such Affected Bank's rights and obligations (from and after the date of such assignment) under this Agreement and the other Loan Documents (including, without limitation, its Commitment and all Loans owing to it) in accordance with Section 12.03. The Agent agrees, upon the occurrence of such events with respect to an Affected Bank and upon the written request of the Borrower, to use its reasonable efforts to obtain the commitments from one or more financial institutions to act as a Replacement Bank. As a condition to any such assignment, the Affected Bank shall have concurrently received, in cash, all amounts due and owing to the Affected Bank hereunder or under any other Loan Document, including, without limitation, the aggregate outstanding principal amount of the Loans owed to such Bank, together with accrued interest thereon through the date of such assignment, amounts payable under Sections 2.14 and 2.15 with respect to such Affected Bank and the fees payable to such Affected Bank under Section 2.09(b); *provided* that upon such Affected Bank's replacement, such Affected Bank shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.17, 11.04 and 11.06, as well as to any fees accrued for its account hereunder and not yet paid, and shall continue to be obligated under Section 10.05 with respect to obligations and liabilities accruing prior to the replacement of such Affected Bank.

(b) In the event that the Affected Bank is a Rejecting Bank, the Borrower may elect to have a part of the Rejecting Bank's rights and obligations under this Agreement and the other Loan Documents assigned pursuant to this Section 2.20, *provided* that the Borrower also elects, pursuant to Section 2.19(c), to terminate the entire amount of the Rejecting Bank's Commitment not so assigned, which termination shall be effective on the date on which such assignment of the Rejecting Bank's rights and obligations is consummated under this Section 2.20.

Section 2.21 Swing Line. (a) The Swing Line Bank agrees, on the terms and conditions hereinafter set forth, to make loans ("Swing Line Loans") to the Borrower from time to time during the period from the date of this Agreement, up to but not including the Termination Date, in an aggregate principal amount not to exceed at any time outstanding the lesser of (i) the Swing Line Commitment or (ii) the amount by which the Swing Line Bank's Commitment under Section 2.01 exceeds the outstanding principal amount of the Loans made by the Swing Line Bank pursuant to Section 2.01, subject to the limitations set forth in Section 2.01(b).

(b) Each Swing Line Loan which shall not utilize the Swing Line Commitment in full shall be in an amount not less than One Million Dollars (\$1,000,000) and, if in excess thereof, in integral multiples of One Million Dollars (\$1,000,000). Within the limits of the Swing Line Commitment, the Borrower may borrow, repay and reborrow under this Section 2.21.

(c) The Borrower shall give the Swing Line Bank notice of any request for a Swing Line Loan not later than 2:00 p.m. Chicago time on the Business Day of such Swing Line Loan, specifying the amount of such requested Swing Line Loan. Each such notice shall be accompanied by a Borrowing Base

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Certificate dated as of the date of such notice (and by the notice provided for in Section 2.21(d)). All notices given by the Borrower under this Section 2.21(c) shall be irrevocable. Upon fulfillment of the applicable conditions set forth in Article III, the Swing Line Bank will make the Swing Line Loan available to the Borrower in immediately available funds by crediting the amount thereof to the Borrower's account with the Swing Line Bank.

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(c) The Borrower shall give the Swing Line Bank notice of any request for a Swing Line Loan not later than 2:00 p.m. Chicago time on the Business Day of such Swing Line Loan, specifying the amount of such requested Swing Line Loan. Each such notice shall be accompanied by a Borrowing Base Certificate dated as of the date of such notice (and by the notice provided for in Section 2.21(d)). All notices given by the Borrower under this Section 2.21(c) shall be irrevocable. Upon fulfillment of the applicable conditions set forth in Article III, the Swing Line Bank will make the Swing Line Loan available to the Borrower in immediately available funds by crediting the amount thereof to the Borrower's account with the Swing Line Bank.

(d) On the first Business Day following the making of a Swing Line Loan, such Swing Line Loan shall be paid in full from the proceeds of a Loan made pursuant to Section 2.01. Each notice given by the Borrower under Section 2.21(c) shall include, or, if it does not include, shall be deemed to include an irrevocable notice under Section 2.03 requesting the Banks to make an ABR Loan on the next succeeding Business Day in the full amount of such Swing Line Loan.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.01 Conditions Precedent to Initial Loans. The Banks shall not be required to make the initial Loans hereunder or to issue or participate in any Facility Letters of Credit hereunder, unless and until (a) the Borrower has paid to the Agent the applicable fees referred to in Sections 2.09(a) and (c), (b) the Prior Credit Agreement has been terminated and all principal, interest, fees and other amounts payable thereunder have been paid in full (which payment may be made in whole or in part from the proceeds of the initial Loans hereunder), and (c) and the Agent shall have received each of the following, in form and substance satisfactory to the Agent:

(1) **Notes.** A Note payable to each Bank duly executed by the Borrower;

(2) **Evidence of all corporate action by the Borrower.** Certified copies of all corporate action taken by the Borrower, including resolutions of its Board of Directors, authorizing the execution, delivery and performance of the Loan Documents to which it is a party and each other document to be delivered pursuant to this Agreement;

(3) **Incumbency and signature certificate of Borrower.** A certificate of the Secretary or Assistant Secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign the Loan Documents to which it is a party and the other documents to be delivered by the Borrower under this Agreement;

(4) **Articles of Incorporation of Borrower.** Copies of the articles of incorporation of the Borrower, together with all amendments, and a certificate of good standing, all certified by the appropriate governmental officer in its jurisdiction of incorporation;

(5) **Opinions of counsel for Borrower.** A favorable opinion of Paul, Hastings, Janofsky & Walker LLP, counsel for the Borrower and for the Guarantors that are Delaware or Georgia Persons, in substantially the form of *Exhibit B* and as to such other matters as the Agent may reasonably request and of the Borrower's Illinois counsel (as approved by the Agent), in substantially the form of *Exhibit C* and as to such other matters as the Agent may reasonably request;

(6) **Opinion of counsel for Agent.** A favorable opinion of Sidley Austin Brown & Wood, counsel for the Agent, in substantially the form of *Exhibit D* hereto;

(7) **Evidence of all corporate, partnership or limited liability company action by Guarantors.** With respect to each corporate Guarantor, certified (as of the date of this Agreement) copies of all corporate action taken by such Guarantor, including resolutions of its Board of Directors,

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authorizing the execution, delivery, and performance of the applicable Guaranty, and with respect to each limited partnership Guarantor and limited liability company Guarantor, partnership action or limited liability company action (as applicable) taken by such Guarantor, including any and all necessary partnership consents or limited liability company consents (as applicable) authorizing the execution, delivery, and performance of the applicable Guaranty;

(8) **Articles of Incorporation of Guarantors.** Copies of the articles of incorporation of each corporate Guarantor, together with all amendments, and a certificate of good standing, all certified by the appropriate governmental officer in its jurisdiction of incorporation; *provided, however*, that, if a certificate of good standing is not currently available, the Guarantor shall deliver other reasonably satisfactory evidence of its good standing and, within thirty (30) days, shall deliver a certificate of good standing;

(9) **Incumbency and signature certificate of Guarantors.** A certificate (dated as of the date of this Agreement) of the Secretary or Assistant Secretary of each corporate Guarantor or the general partner of each partnership Guarantor or managing member of each limited liability company certifying the names and true signatures of the officers of each such corporate Guarantor and the representative or officer of each partnership Guarantor or limited liability company Guarantor authorized to sign the Guaranty;

(10) **Opinion of counsel for Certain Guarantors.** With respect to Beazer Homes Corp., a Tennessee corporation, Beazer Homes Texas, L.P., a Texas limited partnership, Texas Lone Star Title, L.P., a Texas limited partnership, and April Corporation, a Colorado corporation, a favorable opinion of counsel to each such Guarantor in the state in which it is formed or organized to do business (as approved by the Agent), in substantially the form of *Exhibit E* hereto, and as to such other matters as the Agent may reasonably request;

(11) **Partnership agreement.** A true and complete copy of the limited partnership agreement of each limited partnership Guarantor, including without limitation any and all amendments and modifications thereto, and any and all filed partnership certificates; and

(12) **Limited Liability Company Documents.** A true and complete copy of the limited liability company agreement or operating agreement of each limited liability company Guarantor, including without limitation any and all amendments and modifications thereto, and a certified copy of such Guarantor's certificate of formation.

(13) **Other Documents.** Such other and further documents as any Bank or its counsel may have reasonably requested.

Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Agent, at its election, may waive, with respect to the Original Guarantors, the requirement for delivery of articles of incorporation (under item (8) above) and the partnership agreement and partnership certificates (under item (11) above) provided and to the extent that the Borrower delivers or causes the applicable Original Guarantors to deliver to the Agent a certificate that such documents, as delivered pursuant to the Prior Credit Agreement, have not been modified or amended and remain in full force and effect.

Section 3.02 Conditions Precedent to All Loans. The obligation of each Bank to make each Loan (including, in the case of the Swing Line Bank, any Swing Line Loan) shall be subject to the further conditions precedent that (except as hereinafter provided) on the date of such Loan:

- (1) The following statements shall be true and the Agent shall have received a certificate, substantially in the form of the certificate attached hereto as *Exhibit F*, signed by a duly authorized officer of the Borrower dated the date of such Loan, stating that:
 - (a) The representations and warranties contained in Article IV of this Agreement, are correct on and as of the date of such Loan as though made on and as of such date except to the extent that any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty is correct as of such earlier date;
 - (b) No Default or Event of Default has occurred and is continuing, or would result from such Loan; and
 - (c) Upon the making of the requested Loans, the aggregate outstanding amount of Permitted Senior Debt shall not exceed the Borrowing Base as of the most recent Inventory Valuation Date; and
- (2) The Agent shall have received such other approvals, opinions, or documents as any Bank through the Agent may reasonably request; and
- (3) Such other and further documents as any Bank or its counsel may have reasonably requested. All matters incident to the making of such Loan shall be reasonably satisfactory to the Banks and their counsel.

Notwithstanding the foregoing, in the case of a Loan (provided for in Section 2.21(d)) made to repay a Swing Line Loan, the satisfaction of the foregoing conditions with respect to such Swing Line Loan shall constitute satisfaction of such conditions with respect to the Loan made on the next succeeding Business Day to repay such Swing Line Loan.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The Borrower and each of the Guarantors, jointly and severally, represent and warrant that:

Section 4.01 Incorporation, Formation, Good Standing, and Due Qualification. The Borrower, each Subsidiary, and each of the Guarantors is (in the case of a corporation) a corporation duly incorporated or (in the case of a limited partnership) a limited partnership duly formed or (in the case of a limited liability company) a limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation; has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged in; and is duly qualified and in good standing under the laws of each other jurisdiction in which such qualification is required.

Section 4.02 Power and Authority. The execution, delivery and performance by the Borrower and the Guarantors of the Loan Documents to which each is a party have been duly authorized by all necessary corporate, partnership or limited liability company action, as the case may be, and do not and will not (1) require any consent or approval of the stockholders of such corporation, partners of such partnership or members of such limited liability company (except such consents as have been obtained as of the date hereof); (2) contravene such corporation's charter or bylaws, such partnership's partnership agreement or such limited liability company's articles or certificate of formation or operating agreement; (3) violate, in any material respect, any provision of any law, rule, regulation (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to such corporation, partnership or limited liability company; (4) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other material agreement, lease, or instrument to which such corporation, partnership or limited liability company is a party or by which it or its properties may be bound or affected; (5) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by such corporation, partnership or limited liability company; and (6) cause such corporation, partnership or limited liability company to be in default, in any material respect, under any such law, rule, regulation,

Section 4.03 Legally Enforceable Agreement. This Agreement is, and each of the other Loan Documents when delivered under this Agreement will be legal, valid, and binding obligations of the Borrower or each Guarantor, as the case may be, enforceable against the Borrower or each Guarantor, as the case may be, in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally.

Section 4.04 Financial Statements. The consolidated balance sheet of the Borrower and its Subsidiaries as at June 30, 2001, and the consolidated statements of operations, cash flow and changes to stockholders' equity of the Borrower and its Subsidiaries for the period of three fiscal quarters ended June 30, 2001, are complete and correct and fairly present as at such date the financial condition of the Borrower and its Subsidiaries and the results of their operations for the periods covered by such statements, all in accordance with GAAP consistently applied (subject to year-end adjustments), and since June 30, 2001, there has been no material adverse change in the condition (financial or otherwise), business, or operations of the Borrower and its Subsidiaries. There are no liabilities of the Borrower or any Subsidiary, fixed or contingent, which are material but are not reflected in the financial statements or in the notes thereto, other than liabilities arising in the ordinary course of business since June 30, 2001. No information, exhibit, or report furnished by the Borrower to any Bank in connection with the negotiation of this Agreement taken together, contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not materially misleading.

Section 4.05 Labor Disputes and Acts of God. Neither the business nor the properties of the Borrower or any Subsidiary or any Guarantor are affected by any fire, explosion, accident, strike, lockout, or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), materially and adversely affecting such business or properties or the operation of the Borrower or such Subsidiary or such Guarantor.

Section 4.06 Other Agreements. Neither the Borrower nor any Significant Subsidiary nor any Significant Guarantor is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument or subject to any charter, corporate or other restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower or any Significant Subsidiary or any Significant Guarantor, or the ability of the Borrower or any Significant Guarantor to carry out its obligations under the Loan Documents to which it is a party. Neither the Borrower nor any Significant Subsidiary nor any Significant Guarantor is in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

Section 4.07 Litigation. Except as reflected in or reserved for in the financial statements referred to in Section 4.04, there is no pending or, to the knowledge of the Borrower or any Guarantor, threatened action or proceeding against or affecting the Borrower or any Significant Subsidiary or any Significant Guarantor before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligation under the Loan Documents to which it is a party.

Section 4.08 No Defaults on Outstanding Judgments or Orders. Except for judgments with respect to which the liability of the Borrower, each Significant Subsidiary and each Significant Guarantor does not exceed \$1,000,000 in the aggregate for all such judgments, (a) the Borrower, each Significant

Subsidiary and each Significant Guarantor have satisfied all judgments, and (b) neither the Borrower nor any Significant Subsidiary nor any Significant Guarantor is in default with respect to any judgment, writ, injunction, decree, rule, or regulation of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign.

Section 4.09 Ownership and Liens. The Borrower and each Subsidiary and each Guarantor have title to, or valid leasehold interests in, all of their respective properties and assets, real and personal, including the properties and assets and leasehold interests reflected in the financial statements referred to in Section 4.04 (other than any properties or assets disposed of in the ordinary course of business), and none of the properties and assets owned by the Borrower or any Subsidiary or any Guarantor and none of their leasehold interests is subject to any Lien, except such as may be permitted pursuant to Section 6.01 of this Agreement.

Section 4.10 Subsidiaries and Ownership of Stock. Set forth in *Exhibit G* hereto is a complete and accurate list of the Subsidiaries of the Borrower, showing the jurisdiction of incorporation or formation of each and showing the percentage of the Borrower's ownership of the outstanding stock or partnership interest of each Subsidiary. All of the outstanding capital stock of each such corporate Subsidiary has been validly issued, is fully paid and nonassessable, and is owned by the Borrower free and clear of all Liens. The limited partnership agreement of each such limited partnership Subsidiary is in full force and effect and has not been amended or modified, except for such amendments or modifications as are delivered to the Agent under Section 3.01(11). Each of the Guarantors is a Wholly Owned Subsidiary of the Borrower.

Section 4.11 ERISA. The Borrower and each Subsidiary and each Guarantor are in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred and is continuing with respect to any Plan; no notice of intent to terminate a Plan has been filed, nor has any Plan been terminated; no circumstances exist which constitute grounds entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings; neither the Borrower nor any Commonly Controlled Entity has completely or partially withdrawn from a Multiemployer Plan under circumstances that could subject the Borrower or any Subsidiary to material withdrawal liability; the Borrower and each Commonly Controlled Entity have met their minimum funding requirements under ERISA with respect to all of their Plans and the present value of all vested benefits under each Plan does not materially exceed the fair market value of all Plan assets allocable to such benefits, as determined on the most recent valuation date of the Plan and in accordance with the provisions of ERISA; and neither the Borrower nor any Commonly Controlled Entity has incurred any material liability to the PBGC under ERISA.

Section 4.12 Operation of Business. The Borrower, each Subsidiary and each Guarantor possess all licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, to conduct their respective businesses substantially as now conducted and as presently proposed to be conducted and the Borrower and each of its Subsidiaries and each Guarantor are not in violation of any valid rights of others with respect to any of the foregoing where the failure to possess such licenses, permits, franchises, patents, copyrights, trademarks, trade names or rights thereto or the violation of the valid rights of others with respect thereto may, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligation under the Loan Documents to which it is a party.

Section 4.13 Taxes. All income tax liabilities or income tax obligations of the Borrower, each Subsidiary and each Guarantor have been paid or have been accrued by or reserved for by the Borrower. The Borrower constitutes the parent of an affiliated group of corporations for purposes of filing a consolidated United

Section 4.14 Laws; Environment. The Borrower, each Subsidiary and each Guarantor have duly complied, and their businesses, operations, assets, equipment, property, leaseholds, or other facilities are in compliance, in all material respects, with the provisions of all federal, state, and local statutes, laws, codes, and ordinances and all rules and regulations promulgated thereunder (including without limitation those relating to the environment, health and safety). The Borrower, each Subsidiary and each Guarantor have been issued and will maintain all required federal, state, and local permits, licenses, certificates, and approvals relating to (1) air emissions; (2) discharges to surface water or groundwater; (3) noise emissions; (4) solid or liquid waste disposal; (5) the use, generation, storage, transportation, or disposal of toxic or hazardous substances or hazardous wastes (intended hereby and hereafter to include any and all such materials listed in any federal, state, or local law, code, or ordinance and all rules and regulations promulgated thereunder as hazardous); or (6) to the extent that failure to maintain the same may, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligations under the Loan Documents to which it is a party, other environmental, health or safety matters. Neither the Borrower nor any Subsidiary nor any Guarantor has received notice of, or has actual knowledge of any violations of any federal, state, or local environmental, health, or safety laws, codes or ordinances or any rules or regulations promulgated thereunder with respect to its businesses, operations, assets, equipment, property, leaseholds, or other facilities, which violation may, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligations under the Loan Documents to which it is a party. Except in accordance with a valid governmental permit, license, certificate or approval, there has been no material emission, spill, release, or discharge into or upon (1) the air; (2) soils, or any improvements located thereon; (3) surface water or groundwater; or (4) the sewer, septic system or waste treatment, storage or disposal system servicing the premises, of any toxic or hazardous substances or hazardous wastes at or from the premises; and accordingly the premises of the Borrower, each Subsidiary and each Guarantor have not been adversely affected, in any material respect, by any toxic or hazardous substances or wastes. There has been no complaint, order, directive, claim, citation, or notice by any governmental authority or any person or entity with respect to violations of law or damages by reason of Borrower's or any Subsidiary's (1) air emissions; (2) spills, releases, or discharges to soils or improvements located thereon, surface water, groundwater or the sewer, septic system or waste treatment, storage or disposal systems servicing the premises; (3) noise emissions; (4) solid or liquid waste disposal; (5) use, generation, storage, transportation, or disposal of toxic or hazardous substances or hazardous waste; or (6) other environmental, health or safety matters affecting the Borrower, any Subsidiary or any Guarantor or its business, operations, assets, equipment, property, leaseholds, or other facilities. Neither the Borrower nor any Subsidiary nor any Guarantor has any material indebtedness, obligation, or liability, absolute or contingent, matured or not matured, with respect to the storage, treatment, cleanup, or disposal of any solid wastes, hazardous wastes, or other toxic or hazardous substances (including without limitation any such indebtedness, obligation, or liability with respect to any current regulation, law, or statute regarding such storage, treatment, cleanup, or disposal).

Section 4.15 Investment Company Act. Neither the Borrower nor any Subsidiary thereof is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

Section 4.16 Public Utility Holding Company Act. Neither the Borrower nor any Subsidiary is a "holding company" or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, as amended.

ARTICLE V

AFFIRMATIVE COVENANTS

So long as any Note shall remain unpaid or any Bank shall have any Commitment under this Agreement, the Borrower and each Guarantor will (unless otherwise agreed to by the Majority Banks in writing):

Section 5.01 Maintenance of Existence. Preserve and maintain, and cause each Subsidiary to preserve and maintain (except for a Subsidiary that ceases to maintain its existence solely as a result of an Internal Reorganization), its corporate, limited partnership or limited liability company existence and good standing in the jurisdiction of its incorporation or formation and qualify and remain qualified to transact business in each jurisdiction in which such qualification is required.

Section 5.02 Maintenance of Records. Keep and cause each Subsidiary to keep, adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all financial transactions of the Borrower and its Subsidiaries.

Section 5.03 Maintenance of Properties. Maintain, keep, and preserve, and cause each Subsidiary to maintain, keep, and preserve, all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.04 Conduct of Business. Continue, and cause each Subsidiary to continue (except in the case of a Subsidiary that ceases to engage in business solely as a result of an Internal Reorganization), to engage in a business of the same general type and in the same manner as conducted by it on the date of this Agreement.

Section 5.05 Maintenance of Insurance. Maintain, and cause each Subsidiary to maintain, insurance with financially sound reputable insurance companies or associations (or, in the case of insurance for construction warranties and builder default protection for buyers of Housing Units from the Borrower or any of its Subsidiaries, UHIC) in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof.

Section 5.06 Compliance with Laws. Comply, and cause each Subsidiary to comply, in all material respects with all applicable laws, rules, regulations, and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property, other than any such taxes, assessments and charges being contested by the Borrower in good faith which will not have a material adverse effect on the financial condition of the Borrower.

Section 5.07 Right of Inspection. At any reasonable time and from time to time, permit any Bank or any agent or representative thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any Subsidiary, and to discuss the affairs, finances, and accounts of the Borrower and any Subsidiary with any of their respective officers and directors and the Borrower's independent accountants.

Section 5.08 Reporting Requirements. Furnish to the Agent for delivery to each of the Banks:

(1) **Quarterly financial statements.** As soon as available and in any event within sixty (60) days after the end of each of the first three quarters of each fiscal year of the Borrower, an unaudited condensed consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such quarter, unaudited condensed consolidated statements of operations and cash flow of the Borrower and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, and unaudited condensed consolidated statements of changes in stockholders' equity of the Borrower and its Subsidiaries for the portion of the fiscal year ended

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with the last day of such quarter, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the previous fiscal year and all prepared in accordance with GAAP consistently applied and certified by the chief financial officer of the Borrower (subject to year-end adjustments); statements in the form of the Borrower's quarterly 10-Q report to the Securities and Exchange Commission that are consistent with the foregoing requirements shall satisfy such requirements;

(2) **Annual financial statements.** As soon as available and in any event within one hundred (100) days after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year, consolidated statements of operations and cash flow of the Borrower and its Subsidiaries for such fiscal year, and consolidated statements of changes in stockholders' equity of the Borrower and its Subsidiaries for such fiscal year, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior fiscal year and all prepared in accordance with GAAP consistently applied and accompanied by an opinion thereon acceptable to the Agent by Deloitte & Touche or other independent accountants selected by the Borrower and acceptable to the Agent; statements in the form of the Borrower's annual 10-K report to the Securities and Exchange Commission that are consistent with the foregoing requirements shall satisfy such requirements;

(3) **Financial projections.** On August 15, 2002 and each anniversary thereof, two-year financial projections (including a consolidated income statement, balance sheet and statement of cash flows for the Borrower and its Subsidiaries) broken down by quarters, and as soon as available (but not later than June 15 of each year), a mid-year update of the financial projections for the current year;

(4) **Variance analysis.** (a) Within sixty (60) days of the end of each of the first three fiscal quarters of each fiscal year of the Borrower, a quarterly variance analysis comparing actual quarterly results versus the most recently projected quarterly results for the fiscal quarter most recently ended (including consolidated income statements of the Borrower and its Subsidiaries, an analysis of revenues, closings and operating profits of the Borrower and each Subsidiary on a state by state basis, and such other items as are requested by any of the Banks), together with a written explanation of material variances.

(b) Within one hundred (100) days after the end of each fiscal year of the Borrower, a quarterly variance analysis comparing actual quarterly results versus the most recently projected quarterly results for the fiscal year most recently ended (including consolidated income statements of the Borrower and its Subsidiaries accompanied by an opinion thereon acceptable to the Agent by Deloitte & Touche or other independent accountants selected by the Borrower and acceptable to the Agent, an analysis of revenues, closings and operating profits of the Borrower and each Subsidiary on a state by state basis, and such other items as are requested by any of the Banks), together with a written explanation of material variances.

(5) **Management letters.** Promptly upon receipt thereof, copies of any reports submitted to the Borrower or any Subsidiary by independent certified public accountants in connection with examination of the financial statements of the Borrower or any Subsidiary made by such accountants.

(6) **Borrowing Base Certificate.** Within thirty-five (35) days after the end of each fiscal quarter, a Borrowing Base Certificate, with respect to the Inventory Valuation Date occurring on the last day of such fiscal quarter.

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(7) **Compliance certificate.** Within sixty (60) days after the end of each of the first three quarters, and within one hundred (100) days after the end of each fourth quarter, of each fiscal year of the Borrower, a certificate of the President or chief financial officer of the Borrower certifying (a) the Borrower's compliance with all financial covenants including, without limitation, those set forth in Sections 6.10 and 6.11 and Article VII hereof, which certificate shall set forth in reasonable detail the computation thereof and (b) certifying that to the best of his knowledge no Default or Event of Default has occurred and is continuing, or if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto;

(8) **Production Monitor Summary.** Upon request by the Agent, within sixty (60) days after the end of each of the first three quarters, and within one hundred (100) days after the end of each fourth quarter, of each fiscal year of the Borrower, a certificate of the President or Chief Operating Officer of the Borrower certifying the Inventory as at such date which lists by state of location each item of Inventory, in the following categories: (a) pre-foundation, (b) foundation, (c) framed, (d) being finished, and (e) model homes; such summary shall include a delineation of sold or unsold items in each category;

(9) **Land Bank Inventory.** Within sixty (60) days after the end of each of the first three quarters, and within one hundred (100) days after the end of each fourth quarter, of each fiscal year of the Borrower, a certificate of the President or Chief Operating Officer of the Borrower certifying the Land as at such date, which lists by state of location all Land, delineating Finished Lots, Lots under Development, Entitled Land and estimated undeveloped Lots.

(10) **Accountant's report.** Simultaneously with the delivery of the annual financial statements referred to in Section 5.08(2), a certificate of the independent public accountants who audited such statements to the effect that, in making the examination necessary for the audit of such statements, they have obtained no knowledge of any condition or event which constitutes a Default or Event of Default, or if such accountants shall have obtained knowledge of any such condition or event, specifying in such certificate each such condition or event of which they have knowledge and the nature and status thereof;

(11) **Notice of litigation.** Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the Borrower or any Subsidiary which, if determined adversely to the Borrower or such Subsidiary, would reasonably be expected to result in a judgment against the Borrower or such Subsidiary in excess of \$1,000,000 or would reasonably be expected to have a material adverse effect on the financial condition, properties, or operations of the Borrower or such Subsidiary;

(12) **Notice of Defaults and Events of Default.** As soon as possible and in any event within ten (10) days after the occurrence of each Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower with respect thereto;

(13) **ERISA reports.** As soon as possible, and in any event within thirty (30) days after the Borrower knows or has reason to know that any circumstances exist that constitute grounds entitling the PBGC to institute proceedings to terminate a Plan subject to ERISA with respect to the Borrower or any Commonly Controlled Entity, and promptly but in any event within two (2) Business Days of receipt by the Borrower or any Commonly Controlled Entity of notice that the PBGC intends to terminate a Plan or appoint a trustee to administer the same, and promptly but in any event within five (5) Business Days of the receipt of notice concerning the imposition of withdrawal liability in excess of \$50,000 with respect to the Borrower or any Commonly Controlled Entity, the Borrower will deliver to each Bank a certificate of the chief financial officer of the

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Borrower setting forth all relevant details and the action which the Borrower proposes to take with respect thereto;

(14) **Reports to other creditors.** Promptly after the furnishing thereof, copies of any statement, report, document, notice, certificate, and correspondence furnished to any other party pursuant to the terms of any indenture, loan, credit, or similar agreement and not otherwise required to be furnished to the Bank pursuant to any other clause of this Section 5.08;

(15) **Proxy statements, etc.** Promptly after the sending or filing thereof, copies of all proxy statements, financial statements, and reports which the Borrower or any Subsidiary sends to its stockholders, and copies of all regular, periodic, and special reports, and all registration statements which the Borrower or any Subsidiary files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national securities exchange; and

(16) **General information.** Such other information respecting the condition or operations, financial or otherwise, of the Borrower or any Subsidiary as any Bank may from time to time reasonably request.

Section 5.09 Subsidiary Reporting Requirements. In the event any of the following statements are prepared with respect to any Subsidiary, then upon written request from any Bank, furnish to the Agent for delivery to each of the Banks the following with respect to any Subsidiary:

(1) **Quarterly financial statements.** An unaudited balance sheet of such Subsidiary as of the end of most recently completed fiscal quarter, statements of operations and cash flow of such Subsidiary for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, and statements of changes in stockholders' equity of such Subsidiary for the portion of the fiscal year ended with the last day of such quarter, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the previous fiscal year and all prepared in accordance with GAAP consistently applied and certified by the chief financial officer of such Subsidiary (subject to year-end adjustments);

(2) **Annual financial statements.** A balance sheet of such Subsidiary as of the end of such fiscal year, statements of operations and cash flow of such Subsidiary for such fiscal year, and statements of changes in stockholders' equity of such Subsidiary for such fiscal year, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior fiscal year and all prepared in accordance with GAAP consistently applied and as to the consolidated statements accompanied by an opinion thereon acceptable to the Agent by Deloitte & Touche or other independent accountants selected by the Borrower and acceptable to the Agent.

Section 5.10 Environment. Be and remain, and cause each Subsidiary to be and remain, in compliance with the provisions of all federal, state, and local environmental, health, and safety laws, codes and ordinances, and all rules and regulations issued thereunder; notify the Agent promptly of any notice of a hazardous discharge or environmental complaint received from any governmental agency or any other party (and the Agent shall notify the Banks promptly following its receipt of any such notice from the Borrower); notify the Agent promptly of any hazardous discharge from or affecting its premises (and the Agent shall notify the Banks promptly following its receipt of any such notice from the Borrower); promptly contain and remove the same, in compliance with all applicable laws; promptly pay any fine or penalty assessed in connection therewith; permit any Bank to inspect the premises, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto; and at such Bank's request, and at the Borrower's expense, provide a report of a qualified environmental engineer, satisfactory in scope, form, and content to the Majority Banks, and such other and further assurances reasonably satisfactory to the Majority Banks that the condition has been corrected.

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Section 5.11 Use of Proceeds. Use the proceeds of the Loans solely as provided in Section 2.13 hereof.

Section 5.12 Ranking of Obligations. Ensure that at all times its Obligations under the Loan Documents shall be and constitute unconditional general obligations of the Borrower ranking at least *pari passu* with all its other unsecured Debt.

Section 5.13 Taxes. Pay and cause each Subsidiary to pay when due all taxes, assessments and governmental charges and levies upon it or its income, profits or property, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside.

Section 5.14 Wholly Owned Status. Ensure that at all times each of the Guarantors is a Wholly Owned Subsidiary of the Borrower.

Section 5.15 New Subsidiaries. Within thirty (30) days after the end of any fiscal quarter of the Borrower during which any Person shall have become a Subsidiary, cause such Subsidiary to execute and deliver to the Agent, for the benefit of the Banks, a Guaranty of the Obligations in the form of Article IX and an opinion of counsel, certified copies of resolutions, articles of incorporation, incumbency certificates and other documents with respect to such Subsidiary and its Guaranty substantially similar to the documents delivered pursuant to Section 3.01 with respect to the Guarantors, all of which shall be reasonably satisfactory to

the Majority Banks in form and substance. Neither STIC nor UHIC shall be required to deliver a Guaranty. Provided that Borrower shall make no further Investments in its Subsidiary, Seabrook Homes Company, a Florida corporation and shall cause Seabrook Homes Corporation to be merged into Borrower or a Guarantor, or dissolved, on or before March 31, 2002, Seabrook Homes Company shall not be required to be a Guarantor.

ARTICLE VI

NEGATIVE COVENANTS

So long as any Note shall remain unpaid or any Bank shall have any Commitment under this Agreement, the Borrower and each Guarantor will not (unless otherwise agreed to by the Majority Banks in writing):

Section 6.01 Liens. Create, incur, assume, or suffer to exist, or permit any Subsidiary to create, incur, assume, or suffer to exist, any Lien, upon or with respect to any of its properties, now owned or hereafter acquired, except the following:

- (1) Liens for taxes or assessments or other government charges or levies if not yet due and payable or, if due and payable, if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;
- (2) Liens imposed by law, such as mechanics', materialmen's, landlords', warehousemen's, and carriers' Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which are not past due for more than ninety (90) days or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;
- (3) Liens under workers' compensation, unemployment insurance, Social Security, or similar legislation;
- (4) Liens, deposits, or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), Capital Leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance, or other similar bonds, or other similar obligations arising in the ordinary course of business;

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(5) Judgment and other similar Liens arising in connection with any court proceeding, provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(6) Easements, rights-of-way, restrictions, and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use, and enjoyment by the Borrower or any Subsidiary of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto;

(7) Liens securing Secured Debt permitted under Section 6.02.

Section 6.02 Secured Debt. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Secured Debt, except for Secured Debt in an aggregate amount outstanding at any one time not exceeding \$50,000,000.

Section 6.03 Mergers, Etc. Wind up, liquidate or dissolve itself, reorganize, merge or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to any Person, or acquire all or substantially all the assets or the business of any Person, or permit any Subsidiary to do so, except (1) for any Permitted Acquisition, (2) that any Subsidiary (other than STIC and UHIC) may merge into or transfer assets to the Borrower as a result of an Internal Reorganization or otherwise and (3) that any Subsidiary (other than STIC and UHIC) may merge into or consolidate with or transfer assets to any other Subsidiary (other than STIC and UHIC) as a result of an Internal Reorganization or otherwise.

Section 6.04 Leases. Create, incur, assume, or suffer to exist, or permit any Subsidiary to create, incur, assume, or suffer to exist, any obligation as lessee for the rental or hire of any real or personal property, except (1) Capital Leases not otherwise prohibited by the terms of this Agreement; (2) leases existing on the date of this Agreement and any extension or renewals thereof; (3) leases between the Borrower and any Subsidiary or between any Subsidiaries; (4) operating leases entered into in the ordinary course of business; and (5) any lease of property having a value of \$500,000 or less.

Section 6.05 Sale and Leaseback. Sell, transfer or otherwise dispose of, or permit any Subsidiary to sell, transfer, or otherwise dispose of, any real or personal property to any Person and thereafter directly or indirectly lease back the same or similar property, except for the sale and leaseback of model homes.

Section 6.06 Sale of Assets. Sell, lease, assign, transfer, or otherwise dispose of, or permit any Subsidiary to sell, lease, assign, transfer, or otherwise dispose of, any of its now owned or hereafter acquired assets (including, without limitation, shares of stock and indebtedness of subsidiaries, receivables, and leasehold interests), except: (1) Inventory disposed of in the ordinary course of business; (2) the sale or other disposition of assets no longer used or useful in the conduct of its business; (3) the sale and leaseback of model homes, or (4) that any Subsidiary (other than STIC and UHIC) may sell, lease, assign, or otherwise transfer its assets to the Borrower or any Wholly Owned Subsidiary (other than STIC and UHIC) in connection with an Internal Reorganization or otherwise.

Section 6.07 Investments. Make, or permit any Subsidiary to make, any loan or advance to any Person, or purchase or otherwise acquire, or permit any Subsidiary to purchase or otherwise acquire, any capital stock, assets (other than assets acquired in the ordinary course of business), obligation, or other securities of, make any capital contribution to, or otherwise invest in or acquire any interest in any Person including, without limitation, any hostile takeover, hostile tender offer or similar hostile transaction (collectively, "Investments"), except: (1) a direct obligation of the United States or any agency thereof with maturities of one year or less from the date of acquisition; (2) commercial paper rated at least "A-1" by Standard & Poor's Corporation or "P-1" by Moody's Investors Service, Inc.; (3) certificates of deposit with maturities of one year or less from the date of acquisition issued by any

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commercial bank or federal savings bank having capital and surplus in excess of \$250,000,000; (4) a direct obligation of any state or municipality within the United States with maturities of one year or less from the date of acquisition and which, at the time of such acquisition, is accorded one of the two highest debt

ratings for obligations of such type by Standard & Poor's or Moody's; (5) mutual funds investing in assets of the type described in items (1), (2), (3) or (4) above which in any case would be classified as a current asset in accordance with GAAP which are managed by a fund manager of recognized standing in the United States and having capital and surplus of at least \$100,000,000 or having at least \$250,000,000 under management; (6) stock, obligation, or securities received in settlement of debts (created in the ordinary course of business) owing to the Borrower or any Subsidiary provided such issuance is approved by the board of directors of the issuer thereof; (7) a loan or advance from the Borrower to a Subsidiary, or from a Subsidiary to a Subsidiary, or from a Subsidiary to the Borrower (subject, however, to the limitations set forth below in the case of Investments in STIC and UHIC); (8) any Permitted Acquisition for which the total consideration payable for such Permitted Acquisition does not exceed, or have a value exceeding, \$100,000,000; (9) an Investment in a Wholly Owned Subsidiary, which Investment is, or constitutes a part of, an Internal Reorganization (subject, however, to the limitations set forth below in the case of Investments in STIC and UHIC); (10) Investments in STIC, UHIC and any Joint Venture (subject, however, to the limitations set forth below); or (11) any other Investment of \$5,000,000 or less (subject, however, to the limitations set forth below); provided that the aggregate amount of all Investments by the Borrower and its Subsidiaries permitted under clauses (10) and (11) above does not at any time exceed fifteen percent (15%) of Consolidated Tangible Net Worth.

Section 6.08 Guaranties, Etc. Assume, guarantee, endorse, or otherwise be or become directly or contingently responsible or liable, or permit any Subsidiary to assume, guarantee, endorse, or otherwise be or become directly or contingently responsible or liable (including, but not limited to, an agreement to purchase any obligation, stock, assets, goods, or services, or to supply or advance any funds, assets, goods, or services, or an agreement to maintain or cause such Person to maintain a minimum working capital or net worth or otherwise to assure the creditors of any Person against loss), for obligations of any Person, except: (1) guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; (2) guaranties of performance obligations in the ordinary course of business; (3) guaranties of any obligation of \$500,000 or less, *provided, however*, that neither the Borrower nor any Subsidiary shall guarantee an obligation of STIC or UHIC; and (4) that the Borrower or any Subsidiary or any Guarantor may, whether as a result of an Internal Reorganization or otherwise, guarantee the Debt of any other Subsidiary (other than STIC and UHIC) or Guarantor or the Borrower permitted under this Agreement.

Section 6.09 Transactions With Affiliates. Enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate, or permit any Subsidiary to enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Borrower's or such Guarantor's or any Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Guarantor or any Subsidiary than would obtain in a comparable arm's-length transaction with a Person not an Affiliate (which exception shall include the payment of insurance premiums to UHIC for the purchase of construction warranties and builder default protection for buyers of Housing Units from the Borrower or any of its Subsidiaries and to STIC for title insurance); *provided, however*, that the following transactions shall not be prohibited by this Section 6.09: (i) transactions involving the purchase, sale or exchange of property having a value of \$500,000 or less; and (ii) transactions otherwise permitted by this Agreement.

Section 6.10 Land Inventory. Permit the ratio, determined as at the end of any fiscal quarter, of (i) the sum of the number of Finished Lots and the reasonably estimated number of Finished Lots that

will be developed on other Land, all determined as at the end of such fiscal quarter, to (ii) the number of Housing Unit Closings for the period of four (4) full fiscal quarters ending with such fiscal quarter, to exceed 2.5 to 1.0.

Section 6.11 Housing Inventory. Permit the number of Speculative Housing Units, as at the end of any fiscal quarter, to exceed the greater of (a) the number of Housing Unit Closings occurring during the period of twelve (12) months ending on the last day of such fiscal quarter, multiplied by thirty percent (30%) or (b) the number of Housing Unit Closings occurring during the period of six (6) months ending on the last day of such fiscal quarter, multiplied by seventy percent (70%).

Section 6.12 Senior Debt. Prepay, repurchase or redeem in whole or in part the principal of the Senior Debt, except for refinancings thereof from the proceeds of Refinancing Debt with respect thereto.

Section 6.13 Amendment or Modification of Senior Indentures. Amend or modify, or permit any amendment or modification of, either of the Senior Indentures (other than those provided for in clauses (i), (ii), (iii), (v) or (vi) of Section 10.01(a) of such Senior Indentures).

Section 6.14 STIC and UHIC. Permit UHIC to engage in any business other than the issuance of construction warranties and builder default protection for buyers of Housing Units from the Borrower or any of its Subsidiaries or permit STIC to engage in any business other than title insurance.

Section 6.15 Negative Pledges. Directly or indirectly enter into any agreement (other than this Agreement and the Senior Indentures) with any Person that prohibits or restricts or limits the ability of the Borrower or any Guarantor to create, incur, pledge or suffer to exist any Lien upon any assets of the Borrower or any Guarantor (except that agreements creating or securing Secured Debt permitted under Section 6.02 may prohibit, restrict or limit other Liens on those assets encumbered by the Liens securing such Secured Debt).

ARTICLE VII

FINANCIAL COVENANTS

So long as any Note shall remain unpaid or any Bank shall have any Commitment under this Agreement:

Section 7.01 Minimum Consolidated Tangible Net Worth. The Borrower will maintain at all times a Consolidated Tangible Net Worth of not less than the sum of (i) \$195,000,000 (subject to adjustment of such amount as hereinafter provided), (ii) an amount equal to fifty percent (50%) of the cumulative Net Income of the Borrower earned after March 31, 2000 (excluding any quarter in which there is a loss), and (iii) one hundred percent (100%) of the net proceeds received after March 31, 2000 by the Borrower or any Subsidiary from the sale or issuance of any of its Common Equity.

Section 7.02 Leverage Ratio. The Borrower will not permit the ratio of Consolidated Debt to Consolidated Tangible Net Worth to exceed (a) 2.25 to 1.00 at any time that the Borrower maintains an Interest Coverage Ratio of at least 2.5 to 1.0 or (b) 2.0 to 1.0 at any other time. For purposes of this Section 7.02, Consolidated Tangible Net Worth shall exclude the Borrower's and Guarantors' Investments in Joint Ventures and in Subsidiaries that are not Guarantors.

Section 7.03 Permitted Senior Debt. The Borrower will not permit the outstanding amount of the Permitted Senior Debt to exceed the Borrowing Base.

Section 7.04 Interest Coverage Ratio. The Borrower shall maintain an Interest Coverage Ratio of not less than 2.0 to 1.0, which ratio shall be determined as of the last day of each fiscal quarter for the four-quarter period ending on such day.

Section 7.05 Land Inventory. The Borrower shall not permit the ratio of (i) Adjusted Land Value to (ii) the sum of (a) Consolidated Tangible Net Worth plus (b) fifty percent (50%) of Consolidated Subordinated Debt to exceed 1.0 to 1.0.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.01 Events of Default. If any of the following events shall occur:

(1) The Borrower shall fail to pay (a) the principal of any Note, or any amount of a commitment or other fee, as and when due and payable or (b) interest on any Note or any amount of any commitment fee or other fee within five (5) Business Days after the same is due and payable;

(2) Any representation or warranty made or deemed made by the Borrower or by any Guarantor in any Loan Document or which is contained in any certificate, document, opinion, or financial or other statement furnished at any time under or in connection with this Agreement shall prove to have been incorrect, incomplete, or misleading in any material respect on or as of the date made or deemed made;

(3) The Borrower or any Guarantor shall fail to perform or observe any term, covenant, or agreement contained in Articles V, VI or VII hereof, and such failure shall continue for a period of thirty (30) consecutive days;

(4) The Borrower or any Significant Subsidiary or any Significant Guarantor shall (a) fail to pay (within the applicable cure period, if any) any amount in respect of indebtedness for borrowed money (including without limitation indebtedness arising under the Term Loan Agreement) equal to or in excess of \$5,000,000 in the aggregate (other than the Notes) of the Borrower or such Significant Subsidiary or such Significant Guarantor, as the case may be, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise); or (b) fail to perform or observe any term, covenant, or condition on its part to be performed or observed (within the applicable cure period, if any) under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate, or permit the acceleration of after the giving of notice or passage of time, or both, the maturity of such indebtedness, whether or not such failure to perform or observe shall be waived by the holder of such indebtedness, or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), repurchased or redeemed prior to the stated maturity thereof;

(5) The Borrower or any Significant Subsidiary or any Significant Guarantor (a) shall generally not pay, or shall be unable to pay, or shall admit in writing its inability to pay its debts as such debts become due; or (b) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (c) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (d) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made and which remains undismissed for a period of forty (40) days or more; or (e) shall take any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; or (f) shall suffer any such custodianship, receivership, or trusteeship to continue undischarged for a period of forty (40) days or more;

(6) One or more judgments, decrees, or orders for the payment of money in excess of \$10,000,000 in the aggregate shall be rendered against the Borrower and/or any Subsidiary and/or any Guarantor, and such judgments, decrees, or orders shall continue unsatisfied and in effect for a period of twenty (20) consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal;

(7) Any Guaranty hereunder shall at any time after its execution and delivery and for any reason cease to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by the Guarantor or the Guarantor shall deny it has any further liability or obligation under, or shall fail to perform its obligations under, the Guaranty (except to the extent that the foregoing occurs solely by reason of the liquidation or dissolution of a Guarantor as a result of an Internal Reorganization);

(8) Any Change of Control of the Borrower or any Subsidiary or any Guarantor shall occur;

(9) Any of the following events shall occur or exist with respect to the Borrower, any Subsidiary or any Commonly Controlled Entity under ERISA: any Reportable Event shall occur; complete or partial withdrawal from any Multiemployer Plan shall take place; any Prohibited Transaction shall occur; a notice of intent to terminate a Plan shall be filed, or a Plan shall be terminated; or circumstances shall exist which constitute grounds entitling the PBGC to institute proceedings to terminate a Plan, or the PBGC shall institute such proceedings; and in each case above, such event or condition, together with all other events or conditions described in this Section 8.01(9), if any, could subject the Borrower or any Significant Guarantor or Significant Subsidiary to any tax, penalty, or other liability which in the aggregate may exceed \$500,000; or

(10) If any federal, state, or local agency asserts a material claim against the Borrower or any Significant Guarantor or Significant Subsidiary and/or its assets, equipment, property, leaseholds, or other facilities for damages or cleanup costs relating to a hazardous discharge or an environmental complaint; *provided, however*, that such claim shall not constitute a default if, within fifteen (15) days of the occurrence giving rise to the claim, (a) the Borrower can prove to the reasonable satisfaction of the Majority Banks that the Borrower has commenced and is diligently pursuing either: (i) a cure or correction of the event which constitutes the basis for the claim, and continues diligently to pursue such cure or correction or (ii) proceedings for an injunction, a restraining order or other appropriate emergent relief preventing such agency or agencies from asserting such claim, which relief is granted within thirty (30) days of the occurrence giving rise to the claim and the injunction, order, or emergent relief is not thereafter resolved or reversed on appeal or (iii) the defense against the claim through action in a court or agency exercising jurisdiction over the claim; and (b) in any of the foregoing events, the Borrower

has posted a bond, letter of credit, or other security satisfactory in form, substance, and amount to the Majority Banks and the agency or entity asserting the claim to secure the correction of the event which constitutes the basis for the claim in accordance with applicable laws;

then, and in any such event, the Agent shall at the request of, or may, with the consent of, the Majority Banks, by notice to the Borrower, (1) declare the Banks' obligation to make Loans (including, in the case of the Swing Line Bank, Swing Line Loans) to be terminated, whereupon the same shall forthwith terminate; and (2) declare the outstanding Notes, all interest thereon, and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Notes, all such interest, and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Borrower; *provided, however*, in the case of an event described in Section 8.01(5) hereof the obligations of the Banks to make Loans (including, in the case of the Swing Line Bank, Swing Line Loans) hereunder shall automatically terminate and the Obligations

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shall immediately become due and payable without any election or action on the part of the Agent or any Bank.

Section 8.02 Set Off. Upon the occurrence and during the continuance of any Event of Default, each Bank is hereby authorized at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Bank to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or the Bank's Note or any other Loan Document, irrespective of whether or not the Agent or such Bank shall have made any demand under this Agreement or such Bank's Note or such other Loan Document and although such obligations may be unmaturing. Each Bank agrees promptly to notify the Borrower (with a copy to the Agent) after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Bank under this Section 8.02 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which each Bank may have.

ARTICLE IX

GUARANTY

Section 9.01 Guaranty. (a) Each of the Guarantors unconditionally and irrevocably guarantees the due and punctual payment and performance of the Obligations. Each of the Guarantors further agrees that the Obligations may be increased, extended or renewed, in whole or in part, without notice or further assent from it, and it will remain bound upon this Guaranty notwithstanding any increase, extension or renewal of any Obligation.

(b) Each of the Guarantors waives presentation to, demand for payment from and protest to the Borrower or any other Guarantor of any of the Obligations, and also waives notice of protest for nonpayment. The Obligations of the Guarantors hereunder shall not be affected by (i) the failure of the Agent or any Bank to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Guarantor under the provisions of this Agreement or any other agreement or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any Loan Document or any other agreement; (iv) the release, exchange, waiver or foreclosure of any security held by the Agent or any Bank for the Obligations or any of them; (v) the failure of the Agent or any Bank to exercise any right or remedy against any other guarantor of the Obligations; or (vi) the release or substitution of any Guarantor.

(c) Each of the Guarantors further agrees that this Guaranty constitutes a guaranty of performance and of payment when due and not just of collection, and waives any right to require that any resort be had by the Agent or any Bank to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of a Bank in favor of the Borrower or any other Guarantor, or to any other Person.

(d) Each of the Guarantors hereby expressly assumes all responsibilities to remain informed of the financial condition of the Borrower and each other Guarantor and any circumstances affecting the ability of the Borrower to perform under this Agreement. Each Guarantor acknowledges that it will receive direct and indirect benefits from the Loans contemplated by this Agreement and that the Banks required as a condition to entering into this Agreement, and in order to secure the prompt and complete payment, observance and performance of the Obligations, that each Guarantor shall make this Guaranty.

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(e) Each of the Guarantors' guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations, the Notes or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Guaranty. The Agent makes no representation or warranty in respect of any such circumstances and has no duty or responsibility whatsoever to the Guarantors in respect of the management and maintenance of the Obligations or any such collateral.

Section 9.02 No Impairment of Guaranty. The Obligations of the Guarantors hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the Obligations of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any Bank to assert any claim or demand or to enforce any remedy under this Agreement or any other agreement, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantors or would otherwise operate as a discharge of the Guarantors as a matter of law, unless and until the Obligations are paid in full and the Commitments have been terminated.

Section 9.03 Continuation and Reinstatements etc. (a) Each of the Guarantors further agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal or of interest on any Obligation is rescinded or must otherwise be restored by the Agent or any Bank upon the bankruptcy or reorganization of the Borrower or a Guarantor, or otherwise. In furtherance of the provisions of this Article IX, and not in limitation of any other right which the Agent or any Bank may have at law or in equity against the Borrower or the Guarantors by virtue hereof, upon failure of the Borrower to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice or otherwise, each of the Guarantors hereby promises to and will, upon receipt of written demand by the Agent on behalf of the Banks, forthwith pay or cause to be paid to the Agent on

behalf of the Banks in cash an amount equal to the unpaid amount of all the Obligations, and thereupon the Banks shall assign such Obligation, together with all security interests, if any, then held by the Agent in respect of such Obligation, to the Guarantor or Guarantors making such payment.

(b) Upon payment by any Guarantor of any sums to the Agent on behalf of the Banks hereunder, all rights of such Guarantor against the Borrower, arising as a result thereof by way of right of subrogation or otherwise, shall in all respects be subordinate and junior in right of payment to the prior final and indefeasible payment in full of all the Obligations to the Agent on behalf of the Banks. If any amount shall be paid to such Guarantor for the account of the Borrower, such amount shall be held in trust for the benefit of the Banks and shall forthwith be paid to the Agent on behalf of the Banks to be credited and applied to the Obligations, whether matured or unmatured.

Section 9.04 Limitation on Guaranteed Amount. Notwithstanding any other provision of this Article IX, the amount guaranteed by any Guarantor hereunder shall be limited to the extent, if any, required so that its obligations under this Article IX shall not be subject to avoidance under Section 548 of the Bankruptcy Code or to being set aside or annulled under any applicable state law relating to fraud on creditors. In determining the limitations, if any, on the amount of such Guarantor's obligations hereunder pursuant to the preceding sentence, any rights of subrogation or contribution which such Guarantor may have under this Article IX or applicable law shall be taken into account.

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ARTICLE X

AGENCY PROVISIONS

Section 10.01 Authorization and Action. Each Bank hereby irrevocably appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent by the terms hereof, together with such powers as are reasonably incidental thereto. The duties of the Agent shall be mechanical and administrative in nature and the Agent shall not by reason of this Agreement be a trustee or fiduciary for any Bank. The Agent shall have no duties or responsibilities except those expressly set forth herein. As to any matters not expressly provided for by this Agreement (including, without limitation, enforcement or collection of the Notes), the Agent shall not be required to act or to refrain from acting except upon the instructions of the Majority Banks or, to the extent required under Section 11.01, all Banks (and shall be fully protected in so acting or so refraining from acting), and such instructions shall be binding upon all Banks and all holders of Notes; *provided, however*, that the Agent shall not be required to take any action which exposes the Agent to personal liability or which is contrary to this Agreement or applicable law. The Agent shall administer the Loan in the same manner that it would administer a comparable loan held 100% for its own account.

Section 10.02 Liability of Agent. Neither the Agent nor any of its directors, officers, agents, or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement in the absence of its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Agent (1) may treat the payee of any Note as the holder thereof until the Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to the Agent; (2) may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants, or experts; (3) makes no warranty or representation to any Bank and shall not be responsible to any Bank for any statements, warranties, or representations made in or in connection with this Agreement; (4) shall not have any duty to ascertain or to inquire as to the performance or observance of any terms, covenants, or conditions of this Agreement on the part of the Borrower (other than the payment of principal, interest and fees due hereunder), or to inspect the property (including the books and records) of the Borrower; (5) shall not be responsible to any Bank for the due execution, legality, validity, enforceability, genuineness, perfection, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; and (6) shall incur no liability under or in respect of this Agreement by acting upon any notice, consent, certificate or other instrument or writing (which may be sent by telegram, telefax, or facsimile transmission) reasonably believed by it to be genuine and signed or sent by the proper party or parties.

Section 10.03 Rights of Agent as a Bank. With respect to its Commitment, the Loans made by it and the Note issued to it, the Agent shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though it were not the Agent; and the term "Bank" or "Banks" shall, unless otherwise expressly indicated, include the Agent in its individual capacity. The Agent, each Bank and each of their respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, the Borrower, any of its Subsidiaries and any Person who may do business with or own securities of the Borrower or any Subsidiary, all as if the Agent were not the Agent and without any duty to account therefor to the other Banks.

Section 10.04 Independent Credit Decisions. Each Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Bank also acknowledges that it will, independently and without reliance upon the Agent or any

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other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. The Agent shall promptly provide the Banks with copies of all notices of default and other formal notices sent or received in accordance with Section 11.02 of this Agreement, any written notice relating to changes in the Borrower's debt ratings that affect the Senior Debt Rating received from the Borrower or a ratings agency, any documents received by the Agent pursuant to Section 5.08 (except to the extent that the Borrower has furnished the same directly to the Banks) and any other documents or notices received by the Agent with respect to this Agreement and requested in writing by any Bank. Except for notices, reports and other documents and information expressly required to be furnished to the Banks by the Agent hereunder, the Agent shall have no duty or responsibility to provide any Bank with any credit or other information concerning the affairs, financial condition or business of the Borrower or any of its Subsidiaries (or any of their Affiliates) which may come into possession of the Agent or any of its Affiliates.

Section 10.05 Indemnification. The Banks severally agree to indemnify the Agent in its capacity as Agent and not as a Bank (to the extent not reimbursed by the Borrower), in the proportion of their Ratable Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent under this Agreement, provided that no Bank shall be liable for any portion of any of the foregoing (i) resulting from the Agent's gross negligence or willful misconduct, (ii) on account of a strictly internal or regulatory matter relating to the Agent (such as relating to legal lending limit violation by the Agent), or (iii) in connection with a breach of an agreement made by the Agent to a Bank under this Agreement. Without limitation of the foregoing, each Bank severally agrees to reimburse the Agent (to the extent not reimbursed by the Borrower) promptly upon

demand for its Ratable Share of any reasonable out-of-pocket expenses (including counsel fees) incurred by the Agent in connection with the preparation, administration, or enforcement of, or legal advice in respect of rights or responsibilities under, this Agreement; provided, however, that no Bank shall be required to reimburse the Agent for any such expenses incurred (i) resulting from the Agent's gross negligence or willful misconduct, (ii) on account of a strictly internal or regulatory matter relating to the Agent (such as relating to legal lending limit violation by the Agent), or (iii) in connection with a breach of an agreement made by the Agent to a Bank under this Agreement.

Section 10.06 Successor Agent. (a) The Agent may resign at any time by giving at least sixty (60) days' prior written notice thereof to the Banks and the Borrower and may be removed at any time with or without cause by the Majority Banks. Upon any such resignation or removal, the Majority Banks shall have the right to appoint a successor Agent, subject to Section 10.06(b). If no successor Agent shall have been so appointed by the Majority Banks, and shall have accepted such appointment, within thirty (30) days after the retiring Agent's giving of notice of resignation or the Majority Banks' removal of the retiring Agent, then the retiring Agent may, on behalf of the Banks, appoint a successor Agent, which shall be a commercial bank or federal savings bank organized under the laws of the United States of America or of any State thereof, subject to Section 10.06(b). Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

(b) The appointment of any successor Agent that is not a Bank shall, as long as no Event of Default shall have occurred and be continuing, be subject to the prior written approval of the Borrower, which approval shall not be unreasonably withheld.

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Section 10.07 Sharing of Payments, Etc. If any Bank shall obtain any payments (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Note held by it in excess of its Ratable Share of payments on account of the Notes obtained by all the Banks, such Bank shall purchase from the other Banks such participations in the Notes held by them as shall be necessary to cause such purchasing Bank to share the excess payment ratably with each of the other Banks, *provided, however*, that if all or any portion of such excess payment is thereafter recovered from such purchasing Bank, such purchase from each Bank shall be rescinded and each Bank shall repay to the purchasing Bank the purchase price to the extent of such recovery together with an amount equal to such Bank's ratable share (according to the proportion of (1) the amount of such Bank's required repayment to (2) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. The Borrower agrees that any Bank so purchasing a participation from another Bank pursuant to this Section 10.07 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Bank were the direct creditor of the Borrower in the amount of such participation.

Section 10.08 Withholding Tax Matters. Each Bank which is a Non-United States Person agrees to execute and deliver to the Agent for delivery to the Borrower, before the first scheduled payment date in each year, two duly completed copies of United States Internal Revenue Service Forms W-8BEN or W-8ECI, or any successor forms, as appropriate, properly completed and certifying that such Bank is entitled to receive payments under this Agreement without withholding or deduction of United States federal taxes. Each Bank which is a Non-United States Person represents and warrants to the Borrower and to the Agent that, at the date of this Agreement, (i) its Lending Offices are entitled to receive payments of principal, interest, and fees hereunder without deduction or withholding for or on account of any taxes imposed by the United States or any political subdivision thereof and (ii) it is permitted to take the actions described in the preceding sentence under the laws and any applicable double taxation treaties of the jurisdictions specified in the preceding sentence. Each Bank which is a Non-United States Person further agrees that, to the extent any form claiming complete or partial exemption from withholding and deduction of United States federal taxes delivered under this Section 10.08 is found to be incomplete or incorrect in any material respect, such Bank shall execute and deliver to the Agent a complete and correct replacement form.

Section 10.09 Documentation Agents or Co-Agents. None of the Banks identified in this Agreement as a "Documentation Agent" or "Co-Agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Banks as such. Without limiting the foregoing, none of such Banks shall have or be deemed to have a fiduciary relationship with any Bank. Each Bank hereby makes the same acknowledgements with respect to such Banks as it makes with respect to the Agent in Section 10.04.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Amendments, Etc. No amendment, modification, termination, or waiver of any provision of any Loan Document to which the Borrower is a party, nor consent to any departure by the Borrower from any Loan Document to which it is a party, shall in any event be effective unless the same shall be in writing and signed by the Majority Banks and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no amendment, waiver or consent shall, unless in writing and signed by all the Banks and the Borrower, do, or have the effect of doing, any of the following: (1) increase the Commitments of the Banks or the Swing Loan Commitment of the Swing Line Bank or subject the Banks to any additional obligations; (2) reduce the principal of, or interest on, the Notes or any fees (other than the Agent's fees) hereunder; (3) postpone any date fixed for any payment of principal of,

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or interest on, the Notes or any fees (other than the Agent's fees) hereunder; (4) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Notes or the number of Banks which shall be required for the Banks or any of them to take action hereunder (including, without limitation, any change in the number of Banks required to extend the Termination Date under the provisions of Section 2.19); (5) release any Significant Guarantor; or (6) amend, modify or waive any provision of Article X, this Section 11.01 or clause (i) of Section 12.01; and, *provided further*, that no amendment, waiver, or consent shall, unless in writing and signed by the Agent or the Swing Line Bank (as applicable) in addition to the Banks required above to take such action, affect the rights or duties of the Agent or the Swing Line Bank (as applicable) under any of the Loan Documents; and, *provided, further*, that no amendment, waiver or consent shall, unless in writing and signed by the Issuing Bank in addition to the Banks required above to take such action, affect the rights or duties of the Issuing Bank under any of the Loan Documents.

Section 11.02 Notices, Etc. All notices and other communications provided for under this Agreement and under the other Loan Documents to which the Borrower is a party shall be in writing (including telegraphic, telex, and facsimile transmissions) and mailed or transmitted or hand delivered, if to the Borrower, a

Guarantor, a Bank or the Agent at its respective address set forth on the signature pages hereof; or, as to each party, at such other address as shall be designated by such party in a written notice to all other parties complying as to delivery with the terms of this Section 11.02. Except as is otherwise provided in this Agreement, all such notices and communications shall be effective when deposited in the mails or delivered to the telegraph company, or transmitted, answerback received, or hand delivered, respectively, addressed as aforesaid, except that notices to the Agent pursuant to the provisions of Article II shall not be effective until received by the Agent or, in the case of Section 2.21, the Swing Line Bank.

Section 11.03 No Waiver. No failure or delay on the part of any Bank or the Agent or the Issuing Bank in exercising any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. The making of a Loan or issuance, amendment or extension of a Facility Letter of Credit notwithstanding the existence of a Default or Event of Default shall not constitute any waiver or acquiescence of such Default or Event of Default, and the making of any Loan or issuance, amendment or extension of a Facility Letter of Credit notwithstanding any failure or inability to satisfy the conditions precedent to such Loan or issuance, amendment or extension of a Facility Letter of Credit shall not constitute any waiver or acquiescence with respect to such conditions precedent with respect to any subsequent Loans or subsequent issuance, amendment or extension of a Facility Letter of Credit. The rights and remedies provided herein are cumulative, and are not exclusive of any other rights, powers, privileges, or remedies, now or hereafter existing, at law, in equity or otherwise.

Section 11.04 Costs, Expenses, and Taxes. The Borrower agrees to reimburse the Agent for any reasonable costs, internal charges and out-of-pocket expenses (including reasonable fees and time charges of attorneys for the Agent, which attorneys may be employees of the Agent) paid or incurred by the Agent in connection with the preparation, negotiation, execution, delivery, review, amendment, modification and administration of the Loan Documents and the collection of the Loans and enforcement of the Loan Documents. In addition, the Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of any of the Loan Documents and the other documents to be delivered under any such Loan Documents, and agrees to hold the Agent and each of the Banks harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failing to pay such taxes and fees. This provision shall survive termination of this Agreement.

Section 11.05 Integration. This Agreement (including the Borrower's obligation to pay the fees as provided in Section 2.09(c) and the Fee Letter referred to therein) and the Loan Documents contain

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the entire agreement between the parties relating to the subject matter hereof and supersede all oral statements and prior writings with respect thereto.

Section 11.06 Indemnity. The Borrower hereby agrees to defend, indemnify, and hold each Bank harmless from and against all claims, damages, judgments, penalties, costs, and expenses (including attorney fees and court costs now or hereafter arising from the aforesaid enforcement of this clause) arising directly or indirectly from the activities of the Borrower and its Subsidiaries, its predecessors in interest, or third parties with whom it has a contractual relationship, or arising directly or indirectly from the violation of any environmental protection, health, or safety law, whether such claims are asserted by any governmental agency or any other person. This indemnity shall survive termination of this Agreement.

Section 11.07 Governing Law. This Agreement and the Notes shall be governed by, and construed in accordance with, the internal laws (including §735ILCS 105/5-1 *et seq.*, but otherwise without regard to principles of conflict of law) of the State of Illinois but giving effect to federal laws applicable to national banks.

Section 11.08 Severability of Provisions. Any provision of any Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 11.09 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties to this Agreement in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

Section 11.10 Headings. Article and Section headings in the Loan Documents are included in such Loan Documents for the convenience of reference only and shall not constitute a part of the applicable Loan Documents for any other purpose.

Section 11.11 Submission to Jurisdiction. The Borrower, each Subsidiary, and each Guarantor hereby submits to the nonexclusive jurisdiction of the United States District Court for the Northern District of Illinois and of any Illinois State court sitting in The City of Chicago for purposes of all legal proceedings which may arise hereunder or under the Notes. The Borrower, each Subsidiary, and each Guarantor irrevocably waives to the fullest extent permitted by law, any objection which it may have or hereafter have to the laying of the venue of any such proceeding brought in such a court, and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. The Borrower, each Subsidiary, and each Guarantor hereby consents to process being served in any such proceeding by the mailing of a copy thereof by registered or certified mail, postage prepaid, to its address specified in Section 11.02 hereof or in any other manner permitted by law.

Section 11.12 Jury Trial Waiver. THE BORROWER, EACH SUBSIDIARY, EACH GUARANTOR, THE AGENT, AND EACH BANK HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE LOAN DOCUMENTS. NO OFFICER OF ANY BANK OR OF THE AGENT HAS AUTHORITY TO WAIVE, CONDITION, OR MODIFY THIS PROVISION.

Section 11.13 Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, no Bank shall be obligated to extend credit to the Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

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Section 11.14 No Fiduciary Duty. The relationship between the Borrower and the Banks and the Agent shall be solely that of borrower and lender. Neither the Agent nor any Bank shall have any fiduciary responsibilities to the Borrower. Neither the Agent nor any Bank undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations.

Section 11.15 Confidentiality. Each Bank agrees to hold any confidential information which it may receive from the Borrower pursuant to this Agreement in confidence, except for disclosure (i) to other Banks and their respective affiliates, (ii) to legal counsel, accountants, and other professional advisors to that Bank or

to a Transferee, (iii) to regulatory officials, (iv) to any Person as requested pursuant to or as required by law, regulation, or legal process, (v) to any Person in connection with any legal proceeding to which that Bank is a party, and (vi) permitted by Section 12.04.

ARTICLE XII

BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

Section 12.01 Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrower and the Agent and the Banks and their respective successors and assigns, except that (i) the Borrower shall not have the right to assign its rights or obligations under the Loan Documents without the consent of all Banks and (ii) any assignment by any Bank must be made in compliance with Section 12.03. Notwithstanding clause (ii) of this Section, any Bank may at any time, without the consent of the Borrower or the Agent, pledge all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank as security for an obligation of such pledgor or of an affiliated entity to such Federal Reserve Bank; *provided, however*, that no such pledge shall release the pledgor Bank from its obligations hereunder. The Agent may treat the payee of any Note as the owner thereof for all purposes hereof unless and until such payee complies with Section 12.03 in the case of an assignment thereof. Any assignee or transferee of a Note agrees by acceptance thereof to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the holder of any Note, shall be conclusive and binding on any subsequent holder, transferee or assignee of such Note or of any Note or Notes issued in exchange thereof.

Section 12.02 Participations. (a) **Permitted Participants; Effect.** Any Bank may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more banks or other entities ("Participants") participating interests in any Loan owing to such Bank, any Note held by such Bank, any Commitment of such Bank (which may include, in the case of the Swing Line Bank, the Swing Line Commitment) or any other interest of such Bank under the Loan Documents in an amount not less than Five Million Dollars (\$5,000,000). In the event of any such sale by a Bank of participating interests to a Participant, such Bank's obligations under the Loan Documents shall remain unchanged, such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations, such Bank shall remain the holder of any such Note for all purposes under the Loan Documents, all amounts payable by the Borrower under this Agreement shall be determined as if such Bank had not sold participating interests, and the Borrower and the Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under the Loan Documents.

(b) **Voting rights.** Each Bank shall with respect to its Participants, if any, retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than any amendment, modification or waiver with respect to any Loan or Commitment (or Swing Line Commitment, if applicable) in which such Participant has an interest which forgives principal, interest or fees (other than Agent's fees) or reduces the interest rate or fees (other than Agent's fees) payable with respect to any such Loan or Commitment (or Swing

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Line Commitment, if applicable), postpones any date fixed for any regularly scheduled payment of principal of, or interest or fees (other than Agent's fees) on, any such Loan or Commitment (or Swing Line Commitment, if applicable) or releases any Significant Guarantor.

(c) **Benefit of set-off.** The Borrower agrees that each Participant shall be deemed to have the rights of set-off provided in Sections 2.12 and 8.02 in respect of its participating interest in amounts owing under the Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Bank under the Loan Documents, provided that each Bank shall retain the right of set-off provided in Sections 2.12 and 8.02 with respect to the amount of participating interests sold to each Participant. The Banks agree to share with each Participant, and each Participant, by exercising the right of set-off provided in Section 2.12 or 8.02, agrees to share with each Bank, any amount received pursuant to the exercise of its right of set-off, such amounts to be shared in accordance with Section 10.07 as if each Participant were a Bank.

Section 12.03 Assignments. (a) **Permitted assignments.** Any Bank may, in the ordinary course of its business and in accordance with applicable law, at any time assign to one or more banks or other entities ("Purchasers") all, or any part (but in an amount not less than Five Million Dollars (\$5,000,000) of its Commitment and Loans, which may include, in the case of a Purchaser of an interest from the Swing Line Bank, the Swing Line Commitment and Swing Line Loans), of its rights and obligations under the Loan Documents, *provided, however*, that, based upon facts and circumstances existing at the time of any such assignment, such assignment does not result in an event described in Sections 2.14, 2.15, or 2.16 hereof. Such assignment shall be substantially in the form of *Exhibit H* hereto or in such other form as may be agreed to by the parties thereto. The consent of the Borrower and the Agent (which consents shall not be unreasonably withheld) shall be required prior to an assignment becoming effective with respect to a Purchaser which is not a Bank or an Affiliate thereof; *provided, however*, that if an Event of Default has occurred and is continuing or if the assignment is in connection with the physical settlement of credit derivative transactions, the consent of the Borrower shall not be required.

(b) **Effect; Effective date.** Upon (i) delivery to the Agent of a notice of assignment, substantially in the form attached as Exhibit 1 to *Exhibit H* hereto (a "Notice of Assignment"), together with any consents required by Section 12.03; and (ii) payment (by either the assignor or the assignee) of a \$4,000.00 fee (or, in the case of an assignment to the assignor's Affiliate or by reason of the provisions of Section 2.19, a \$2,000 fee) to the Agent for processing such assignment, such assignment shall become effective on the effective date specified in such Notice of Assignment. The Notice of Assignment shall contain a representation by the Purchaser to the effect that none of the consideration used to make the purchase of the Commitment and Loans under the applicable assignment agreement are "plan assets" as defined under ERISA and that the rights and interests of the Purchaser in and under the Loan Documents will not be "plan assets" under ERISA. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Bank party to this Agreement and shall have all the rights and obligations of a Bank under the Loan Documents, to the same extent as if it were an original party hereto, and no further consent or action by the Borrower, the Banks or the Agent shall be required to release the transferor Bank with respect to the percentage of the Aggregate Commitments and Loans (and, if applicable, Swing Line Commitments and Swing Line Loans) assigned to such Purchaser. Upon the consummation of any assignment to a Purchaser pursuant to this Section 12.03(b), the transferor Bank, the Agent and the Borrower shall make appropriate arrangements so that replacement Notes are issued to such transferor Bank and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their Commitment, as adjusted pursuant to such assignment.

(c) **Bank Acquisitions and Mergers.** If, as a result of acquisitions or mergers by Banks (or by entities of which a Bank or Banks are subsidiaries), a Bank or two or more Banks that are, directly or indirectly, subsidiaries of a common parent (collectively, "Merged Banks") hold a Commitment or

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Commitments in an aggregate amount exceeding the amount of the Commitment held by the Bank that is the Agent hereunder, the Bank that is the Agent may, at its election, but without any obligation to do so, acquire from such Merged Banks a portion of their Commitments and rights and obligations hereunder in an amount necessary to reduce the aggregate amount of the Commitments of the Merged Banks, and to increase the Commitment of the Bank that is Agent, to equal amounts. Such election shall be exercisable by notice from the Agent to the Merged Banks and shall be effected, on a date designated in such notice, by Assignment substantially in the form of *Exhibit H* hereto or such other form as may be agreed to by the parties. On the date of delivery of such Assignment the assignor shall pay to the assignee an amount equal to the principal balance of the Loans outstanding with respect to the interest so assigned.

Section 12.04 Dissemination of Information. The Borrower authorizes each Bank to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a "Transferee") and any prospective Transferee any and all information in such Bank's possession concerning the creditworthiness of the Borrower, each Subsidiary, or each Guarantor, provided that such Transferee or prospective Transferee agrees to be subject to Section 11.15 to the same effect as if it were a Bank.

Section 12.05 Tax Treatment. If any interest in any Loan Document is transferred to any Transferee which is organized under the laws of any jurisdiction other than the United States or any State thereof, the transferor Bank shall cause such Transferee, concurrently with the effectiveness of such transfer to comply with the provisions of Section 10.08.

ARTICLE XIII

THE LETTER OF CREDIT FACILITY

Section 13.01 Facility Letters of Credit. (a) Each Issuing Bank agrees, on the terms and conditions set forth in this Agreement, to issue from time to time for the account of the Borrower, through such offices or branches as it and the Borrower may jointly agree, one or more Facility Letters of Credit in accordance with this Article XIII, during the period commencing on the date hereof and ending on the sixtieth (60th) day prior to the Termination Date.

(b) The Borrower shall not request, and no Issuing Bank shall issue, a Facility Letter of Credit for any purpose other than for purposes for which Loan proceeds may be used.

Section 13.02 Limitations. An Issuing Bank shall not issue, amend or extend, at any time, any Facility Letter of Credit:

(i) if the aggregate maximum amount then available for drawing under Letters of Credit issued by such Issuing Bank, after giving effect to the Facility Letter of Credit or amendment or extension thereof requested hereunder, shall exceed any limit imposed by law or regulation upon such Issuing Bank;

(ii) if, after giving effect to the issuance, amendment or extension of the Facility Letter of Credit requested hereunder, the aggregate principal amount of the Facility Letter of Credit Obligations would exceed \$60,000,000;

(iii) if, after giving effect to the issuance, amendment or extension of the Facility Letter of Credit requested hereunder, Permitted Senior Debt would exceed the Borrowing Base as of the most recent Inventory Valuation Date;

(iv) if, after giving effect to the issuance, amendment or extension of the Facility Letter of Credit requested hereunder, the sum of (A) the outstanding and unpaid principal amount of the Loans and (B) the Facility Letter of Credit Obligations would exceed the Aggregate Commitments;

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(v) if such Issuing Bank receives written notice from the Agent at or before 11:00 A.M. (Chicago time) on the proposed Issuance Date of such Facility Letter of Credit that one or more of the conditions precedent contained in Section 13.03 would not on such Issuance Date be satisfied, unless such conditions are thereafter satisfied or waived and written notice of such satisfaction is given to such Issuing Bank by the Agent;

(vi) that has an expiration date (taking into account any automatic renewal provisions thereof) later than thirty (30) days prior to the scheduled Termination Date; or

(vii) that is in a currency other than U.S. Dollars.

Section 13.03 Conditions. The issuance, amendment or extension of any Facility Letter of Credit is subject to the satisfaction in full of the following conditions on the Issuance Date:

(i) the Borrower shall have delivered to the Issuing Bank at such times and in such manner as the Issuing Bank may reasonably prescribe a Reimbursement Agreement and such other documents and materials as may be reasonably required pursuant to the terms thereof, and the proposed Facility Letter of Credit shall be reasonably satisfactory to such Issuing Bank in form and content;

(ii) as of the Issuance Date no order, judgment or decree of any court, arbitrator or governmental authority shall enjoin or restrain such Issuing Bank from issuing the Facility Letter of Credit and no law, rule or regulation applicable to the Issuing Bank and no directive from any governmental authority with jurisdiction over the Issuing Bank shall prohibit such Issuing Bank from issuing Letters of Credit generally or from issuing that Facility Letter or Credit;

(iii) The following statements shall be true, and the Agent and such Issuing Bank shall have received a certificate, substantially in the form of the certificate attached hereto as *Exhibit F*, signed by a duly authorized officer of the Borrower dated the Issuance Date stating that:

(a)

The representations and warranties contained in Article IV of this Agreement are correct on and as of such Issuance Date as though made on and as of such Issuance Date except to the extent that any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty is correct as of such earlier date;

(b)

No Default or Event of Default has occurred and is continuing or would result from the issuance, amendment or extension of such Facility Letter of Credit; and

(c)

Upon the issuance, amendment or extension of the requested Facility Letter of Credit on such Issuance Date, the aggregate outstanding amount of Permitted Senior Debt shall not exceed the Borrowing Base as of the most recent Inventory Valuation Date; and

(iv) The Issuing Bank and the Agent shall have received such other approvals, opinions, or documents as either may reasonably request.

Section 13.04 Procedure for Issuance of Facility Letters of Credit. (a) The Borrower shall give the applicable Issuing Bank and the Agent not less than two (2) Business Days' prior written notice of any requested issuance of a Facility Letter of Credit under this Agreement (except that, in lieu of such written notice, the Borrower may give the Issuing Bank and the Agent telephonic notice of such request if confirmed in writing by delivery to such Issuing Bank and the Agent (i) immediately (A) of a teletype of the written notice required hereunder which has been signed by an authorized officer of the Borrower or (B) of a telex containing all information required to be contained in such written notice and (ii) promptly (but in no event later than the requested Issuance Date) of the written notice required hereunder containing the original signature of an authorized officer of the Borrower). Such notice shall specify (i) the stated amount of the Facility Letter of Credit requested, which amount shall

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be in compliance with the requirements of Section 13.02, (ii) the requested Issuance Date, which shall be a Business Day, (iii) the date on which such requested Facility Letter of Credit is to expire, which date shall be in compliance with the requirements of Section 13.02(vi), (iv) the purpose for which such Facility Letter of Credit is to be issued, which purpose shall be in compliance with the requirements of Section 13.01(b), and (v) the Person for whose benefit the requested Facility Letter of Credit is to be issued. At the time such request is made, the Borrower shall also provide the Agent with a copy of the form of the Facility Letter of Credit it is requesting be issued. Such notice, to be effective, must be received by the Issuing Bank and the Agent not later than 2:00 p.m. (Chicago time) on the last Business Day on which notice can be given under this Section 13.04(a).

(b) Promptly following receipt of a request for issuance of a Facility Letter of Credit in accordance with Section 13.04(a), such Issuing Bank shall approve or disapprove, in its reasonable discretion, the issuance of such requested Facility Letter of Credit, but the issuance of such approved Facility Letter of Credit shall continue to be subject to the provisions of this Article XIII.

(c) Subject to the terms and conditions of this Article XIII (including, without limitation, Sections 13.02 and 13.03), the applicable Issuing Bank shall, on the Issuance Date, issue the requested Facility Letter of Credit in accordance with such Issuing Bank's usual and customary business practices unless such Issuing Bank has actually received written or telephonic notice from the Borrower specifically revoking the request to issue such Facility Letter of Credit. The Issuing Bank shall give the Agent written notice, or telephonic notice confirmed promptly thereafter in writing, of the issuance of a Facility Letter of Credit, and the Agent shall promptly thereafter so notify all Banks.

(d) No Issuing Bank shall extend or amend any Facility Letter of Credit unless the requirements of this Section 13.04 are met as though a new Facility Letter of Credit were being requested and issued.

(e) Any Bank may, but shall not be obligated to, issue to the Borrower or any of its Subsidiaries Letters of Credit (that are not Facility Letters of Credit) for its own account, and at its own risk. None of the provisions of this Article XIII shall apply to any Letter of Credit that is not a Facility Letter of Credit.

Section 13.05 Duties of Issuing Bank. Any action taken or omitted to be taken by an Issuing Bank under or in connection with any Facility Letter of Credit, if taken or omitted in the absence of willful misconduct or gross negligence, shall not put such Issuing Bank under any resulting liability to any Bank or, assuming that such Issuing Bank has complied in all material respects with the procedures specified in Section 13.04, relieve any Bank of its obligations hereunder to such Issuing Bank. In determining whether to pay under any Facility Letter of Credit, such Issuing Bank shall have no obligation to the Banks other than to confirm that any documents required to be delivered under such Facility Letter of Credit appear to have been delivered in compliance and that they appear to comply on their face with the requirements of such Facility Letter of Credit.

Section 13.06 Participation. (a) Immediately upon the date hereof (in the case of the Existing Letters of Credit), and immediately upon issuance after the date hereof by an Issuing Bank of any Facility Letter of Credit in accordance with Section 13.04, each Bank shall be deemed to have irrevocably and unconditionally purchased and received from such Issuing Bank, without recourse or warranty, an undivided interest and participation ratably (in the proportion of such Bank's Commitment to the Aggregate Commitments) in such Facility Letter of Credit (including, without limitation, all obligations of the Borrower with respect thereto other than amounts owing to such Issuing Bank under Section 2.15).

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(b) In the event that an Issuing Bank makes any payment under any Facility Letter of Credit and the Borrower shall not have repaid such amount to such Issuing Bank on or before the date of such payment by such Issuing Bank, such Issuing Bank shall promptly so notify the Agent, which shall promptly so notify each Bank. Upon receipt of such notice, each Bank shall promptly and unconditionally pay to the Agent for the account of such Issuing Bank the amount of such Bank's ratable share (in the proportion of such Bank's Commitment to the Aggregate Commitments) of such payment in same day funds, and the Agent shall promptly pay such amount, and any other amounts received by the Agent for such Issuing Bank's account pursuant to this Section 13.06(b), to such Issuing Bank. If the Agent so notifies such Bank prior to 11:00 A.M. (Chicago time) on any Business Day, such Bank shall make available to the Agent for the account of such Issuing Bank such Bank's ratable share of the amount of such payment on such Business Day in same day funds. If and to the extent such Bank shall not have so made its ratable share of the amount of such payment available to the Agent for the account of the Issuing Bank, such Bank agrees to pay to the Agent for the account of the Issuing Bank forthwith on demand such amount, together with interest thereon, for each day from the date such payment was first due until the date such amount is paid to the Agent for the account of the Issuing Bank, at the Federal Funds Rate. The failure of any Bank to make available to the Agent for the account of an Issuing Bank such Bank's ratable share of any such payment shall not relieve any other Bank of its obligation hereunder to make available to the Agent for the account of such Issuing Bank its ratable share of any payment on the date such payment is to be made.

(c) The payments made by the Banks to an Issuing Bank in reimbursement of amounts paid by it under a Facility Letter of Credit shall constitute, and the Borrower hereby expressly acknowledges and agrees that such payments shall constitute, Loans hereunder (notwithstanding that the amounts thereof may not comply with the provisions of Section 2.01(c)). Such Loans shall be ABR Loans, subject to the Borrower's rights under Article II hereof.

(d) Upon the request of the Agent or any Bank, each Issuing Bank shall furnish to the requesting Agent or Bank copies of any Facility Letter of Credit or Reimbursement Agreement to which such Issuing Bank is party.

(e) The obligations of the Banks to make payments to the Agent for the account of an Issuing Bank with respect to a Facility Letter of Credit shall be irrevocable, not subject to any qualification or exception whatsoever and shall be made in accordance with, but not subject to, the terms and conditions of this Agreement under all circumstances, including, without limitation, the following:

(i) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(ii) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against a beneficiary named in a Facility Letter of Credit or any transferee of any Facility Letter of Credit (or any Person for whom any such transferee may be acting), the Issuing Bank, the Agent, any Bank, or any other Person, whether in connection with this Agreement, any Facility Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between the Borrower or any Subsidiary and the beneficiary named in any Facility Letter of Credit);

(iii) any draft, certificate or any other document presented under the Facility Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect of any statement therein being untrue or inaccurate in any respect;

(iv) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents;

(v) any failure by the Agent or an Issuing Bank to make any reports required pursuant to Section 13.08; or

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(vi) the occurrence of any Default or Event of Default.

(f) For purposes of determining the unused portion of the Aggregate Commitments and the unused portion of a Bank's Commitment under Sections 2.02 and 2.09(b), the Aggregate Commitments shall be deemed used to the extent of the aggregate undrawn face amount of the outstanding Facility Letters of Credit and the Bank's Commitment shall be deemed used to the extent of such Bank's Ratable Share of the aggregate undrawn face amount of the outstanding Facility Letters of Credit.

Section 13.07 Compensation for Facility Letters of Credit. (a) The Borrower agrees to pay to the Agent, in the case of each Facility Letter of Credit, the Facility Letter of Credit Fee therefor, payable in arrears on each Quarterly Payment Date following any calendar quarter during all or any part of which such Facility Letter of Credit was outstanding (which payment shall be a pro rata portion of the annual Facility Letter of Credit Fee for such preceding calendar quarter) and on the Termination Date (which payment shall be in the amount of all accrued and unpaid Facility Letter of Credit Fees). Facility Letter of Credit Fees shall be calculated, on a pro rata basis for the period to which such payment applies, for actual days on which such Facility Letter of Credit was outstanding during such period, on the basis of a 360-day year. The Agent shall promptly remit such Facility Letter of Credit Fees, when paid, as follows: (i) to each Issuing Bank, solely for its own account, with respect to each Facility Letter of Credit issued by such Issuing Bank, an amount per annum equal to the product of (A) 0.125% per annum and (B) the face amount of such Facility Letter of Credit and (ii) to all Banks, ratably, the balance of such Facility Letter of Credit Fees. Facility Letters of Credit Fees shall be payable hereunder with respect to the Existing Letters of Credit from and after the date hereof.

(b) An Issuing Bank shall also have the right to receive, solely for its own account, its out-of-pocket costs of issuing and servicing Facility Letters of Credit, as the Borrower may agree in writing.

Section 13.08 Issuing Bank Reporting Requirements. Each Issuing Bank shall, no later than the tenth day following the last day of each month, provide to the Agent a schedule of the Facility Letters of Credit issued by it showing the Issuance Date, account party, original face amount, amount (if any) paid thereunder, expiration date and the reference number of each Facility Letter of Credit outstanding at any time during such month and the aggregate amount (if any) payable by the Borrower to such Issuing Bank during the month pursuant to Section 2.15. Copies of such reports shall be provided promptly to each Bank by the Agent.

Section 13.09 Indemnification; Nature of Issuing Bank's Duties. (a) In addition to amounts payable as elsewhere provided in this Article XIII, the Borrower hereby agrees to protect, indemnify, pay and save the Agent, each Issuing Bank and each Bank harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) arising from the claims of third parties against the Agent, any Issuing Bank or any Bank as a consequence, direct or indirect, of (i) the issuance of any Facility Letter of Credit other than, in the case of an Issuing Bank, as a result of its willful misconduct or gross negligence, or (ii) the failure of an Issuing Bank to honor a drawing under a Facility Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any government, court or other governmental agency or authority.

(b) As among the Borrower, the Banks, the Agent and each Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of Facility Letters of Credit by, the respective beneficiaries of such Facility Letters of Credit. In furtherance and not in limitation of the foregoing, neither an Issuing Bank nor the Agent nor any Bank shall be responsible: (i) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of the Facility Letters of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Facility

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Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) for failure of the beneficiary of a Facility Letter of Credit to comply fully with conditions required in order to draw upon such Facility Letter of Credit; (iv) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, facsimile transmission or otherwise; (v) for errors in interpretation of technical terms; (vi) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Facility Letter of Credit or of the proceeds thereof; (vii) for the misapplication by the beneficiary of a Facility Letter of Credit of the proceeds of any drawing under such Facility Letter of Credit; or (viii) for any consequences arising from causes beyond the control of the Agent, such Issuing Bank and the Banks including, without limitation, any act or omission, whether rightful or wrongful, of any government, court or other governmental agency or authority. None of the above shall affect, impair, or prevent the vesting of any of such Issuing Bank's rights or powers under this Section 13.09.

(c) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by an Issuing Bank under or in connection with the Facility Letters of Credit or any related certificates, if taken or omitted in good faith, shall not put such Issuing Bank, the Agent or any Bank under any resulting liability to the Borrower or relieve the Borrower of any of its obligations hereunder to any such Person, but the foregoing shall not relieve such Issuing Bank of its obligation to confirm that any documents required to be delivered under a Facility Letter of Credit appear to have been delivered in compliance and that they appear to comply on their face with the requirements of such Facility Letter of Credit.

(d) Notwithstanding anything to the contrary contained in this Section 13.09, the Borrower shall have no obligation to indemnify an Issuing Bank under this Section 13.09 in respect of any liability incurred by an Issuing Bank arising primarily out of the willful misconduct or gross negligence of such Issuing Bank, as determined by a court of competent jurisdiction, or out of the wrongful dishonor by such Issuing Bank of a proper demand for payment made under the Facility Letters of Credit issued by such Issuing Bank, unless such dishonor was made at the request of the Borrower.

Section 13.10 Designation or Resignation of Issuing Bank. (a) Upon request by the Borrower and approval by the Agent, a Bank may at any time agree to be designated as an Issuing Bank hereunder, which designation shall be set forth in a written instrument or instruments delivered by the Borrower, the Agent and such Bank. The Agent shall promptly deliver to the other Banks a copy of such instrument or instruments. From and after such designation and unless and until such Bank resigns as an Issuing Bank in accordance with Section 13.10(b), such Bank shall have all of the rights and obligations of an Issuing Bank hereunder.

(b) An Issuing Bank shall continue to be the Issuing Bank unless and until (i) it shall have given the Borrower and the Agent notice that it has elected to resign as Issuing Bank and (ii) unless there is, at the time of such notice, at least one other Issuing Bank, another Bank shall have agreed to be the replacement Issuing Bank and shall have been approved in writing by the Agent and the Borrower. A resigning Issuing Bank shall continue to have the rights and obligations of the Issuing Bank hereunder solely with respect to Facility Letters of Credit theretofore issued by it notwithstanding the designation of a replacement Issuing Bank hereunder, but upon its notice of resignation (or, if at the time of such notice, there is not at least one other Issuing Bank, then upon such designation of a replacement Issuing Bank), the resigning Issuing Bank shall not thereafter issue any Facility Letters of Credit (unless it shall again thereafter be designated as an Issuing Bank in accordance with the provisions of this Section 13.10). The assignment of, or grant of a participation interest in, all or any part of its Commitment or Loans by a Bank that is also the Issuing Bank shall not constitute an assignment or transfer of any of its rights or obligations as an Issuing Bank.

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Section 13.11 Termination of Issuing Bank's Obligation. In the event that the Banks' obligations to make Loans terminate or are terminated as provided in Section 8.01, each Issuing Bank's obligation to issue Facility Letters of Credit shall also terminate.

Section 13.12 Obligations of Issuing Bank and Other Banks. Except to the extent that a Bank shall have agreed to be designated as an Issuing Bank, no Bank shall have any obligation to accept or approve any request for, or to issue, amend or extend, any Letter of Credit, and the obligations of an Issuing Bank to issue, amend or extend any Facility Letter of Credit are expressly limited by and subject to the provisions of this Article XIII.

Section 13.13 Issuing Bank's Rights. All of the representations, warranties, covenants and agreements of the Borrower to the Banks under this Agreement and of the Borrower under any other Loan Document shall inure to the benefit of each Issuing Bank (unless the context otherwise indicates). Without limitation of the foregoing, (a) the provisions of Section 2.15 (relating to capital adequacy) shall apply with respect to each Issuing Bank and its issuance of, or obligation to issue, Facility Letters of Credit and to each Bank's obligation to participate in Facility Letters of Credit; (b) the provisions of Section 2.18 (relating to statements of amounts payable and the survival of obligations) shall apply to each Issuing Bank; and (c) the provisions of Section 11.04 (relating to the Borrower's payment of costs, expenses, taxes, fees and other amounts) shall apply to such costs, expenses, taxes, fees and other amounts relating to the Facility Letters of Credit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written.

BEAZER HOMES USA, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

Address for Notices

5775 Peachtree Dunwoody Road
Suite B-200
Atlanta, Georgia 30342
Attention: President
Tel: (404) 250-3420
Fax: (404) 250-3428

BEAZER MORTGAGE CORPORATION

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER HOMES CORP.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

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BEAZER HOMES SALES ARIZONA, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER REALTY CORP.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER/SQUIRES REALTY, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER HOMES HOLDINGS CORP.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER HOMES TEXAS HOLDINGS, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER HOMES TEXAS, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC., its general partner

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER REALTY, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

HOMEBUILDERS TITLE SERVICES, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

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TEXAS LONE STAR TITLE, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC., its general partner

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

HOMEBUILDERS TITLE SERVICES OF VIRGINIA, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

UNIVERSAL SOLUTIONS INSURANCE AGENCY, INC.

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

APRIL CORPORATION

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

BEAZER SPE, LLC

By: BEAZER HOMES HOLDING CORP., its sole member

By: /s/ DAVID S. WEISS

David S. Weiss
Executive Vice President

Address for Notices to all Guarantors

c/o Beazer Homes USA, Inc.
5775 Peachtree Dunwoody Road
Suite B-200
Atlanta, Georgia 30342
Attention: President
Tel: (404) 250-3420
Fax: (404) 250-3428

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BANK ONE, NA

By: /s/ MARK KRAMER

Name: Mark Kramer

Title: Director

Addresses for Notices

Bank One, NA
1 Bank One Plaza
Mail Suite 0151
Chicago, Illinois 60670
Attn: Mr. Patt Schiewitz
Telephone: (312) 732-1148
Telecopy: (312) 732-5939

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COMERICA BANK

By: /s/ SCOTT M. HELMER

Scott M. Helmer
Vice President

Address for Notices

Comerica Bank
500 Woodward Avenue, MC: 3256
Detroit, MI 48226
Attn: Mr. Scott M. Helmer

GUARANTY BANK

By: /s/ RANDALL S. REID

Name: Randall S. Reid

Title: Vice President

Address for Notices

Guaranty Federal Bank, F.S.B.
8333 Douglas Avenue
Dallas, TX 75225
Attn: Mr. Randy Reid
Telephone: (214)360-2733
Telecopy: (214)360-1661

SUNTRUST BANK

By: /s/ DONALD L. GAUDETTE

Donald L. Gaudette
Director

Address for Notices

SunTrust Bank
303 Peachtree Street, N.E.
10th Fl.
Atlanta, GA 30308
Attn: Mr. Donald L. Gaudette
Telephone: (404) 658-4925
Telecopy: (404) 588-8505

WACHOVIA BANK, N.A.

By: /s/ JEFFREY S. HOZA

Name: Jeffrey S. Hoza

Title: Vice President

Address for Notices

Wachovia Bank, N.A.
106 West Maple Street
Cumming, GA 30040
Attn: Mr. Jeffrey S. Hoza
Telephone: (770) 781-6430
Telecopy: (770) 781-6461

AMSOUTH BANK

By: /s/ RONNY HUDSPETH

Name: Ronny Hudspeth

Title: Sr Vice President

By: _____
Name: _____
Title _____

Address for Notices

AmSouth Bank
AmSouth/Sonat Tower
AST-10th Floor
1900 5th Avenue North
Birmingham, AL 35203
Attn: Mr. Ronny Hudspeth
Telephone: (205) 307-4227
Telecopy: (205) 801-0138

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PNC BANK, N.A.

By: _____ /s/ DOUGLAS G. PAUL

Douglas G. Paul
Senior Vice President

Address for Notices

PNC Bank, N.A.
Two Tower Center
Real Estate Banking Group-18th Fl.
Suite J3-JTTC-18-6
East Brunswick, New Jersey 08816
Attn: Mr. Douglas G. Paul
Telephone: (732) 220-3566
Telecopy: (732) 220-3744

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WASHINGTON MUTUAL BANK, FA

By: _____ /s/ KRIS W. KLINGER

Name: Kris W. Klinger

Title: Vice President

Address for Notices

Washington Mutual Bank, FA
5950 LaPlace Court
Suite 250
Carlsbad, CA 92008
Attn: Mr. Kris Klinger
Telephone: (760) 804-8598
Telecopy: (760) 804-8590

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COMPASS BANK

By: _____ /s/ PHILIP R. WEBB

Name: Philip R. Webb

Title: Vice President

Address for Notices

Compass Bank
10060 Skinner Lake Drive
Jacksonville, FL 32246
Attn: Mr. Philip Webb
Telephone: (904) 564-8812
Telecopy: (904) 564-8827

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KEYBANK NATIONAL ASSOCIATION

By: /s/ KEVIN A. DELOZIER

Name: Kevin A. Delozier

Title: Vice President

Address for Notices

KeyBank National Association
Mail Code TX-07-14-0600
14643 Dallas Parkway, Suite 230, LB #4
Dallas, TX 75240
Attn: Mr. Kevin Delozier
Telephone: (972) 716-9307 (ext. 21)
Telecopy: (972) 716-9321

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BANKUNITED, FSB

By: /s/ CLAY WILSON

Name: Clay Wilson

Title: Senior Vice President

Address for Notices

BankUnited, FSB
255 Alhambra Circle, 2nd Fl.
Coral Gables, FL 33134
Attn: Mr. Clay Wilson
Telephone: (305) 569-4250
Telecopy: (305) 569-3456

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BNP PARIBAS

By: /s/ DUANE P. HELKOWSKI

Name: Duane P. Helkowski

Title: Director

By: /s/ STEPHANIE ROGERS

Name: Stephanie Rogers

Title: Vice President

Address for Notices

BNP Paribas
787 Seventh Avenue
New York, NY 10019

Schedule I

COMMITMENT SCHEDULE

| Bank | Commitment |
|------------------------------|-----------------------|
| Bank One, NA | \$ 28,000,000 |
| Comerica Bank | \$ 28,000,000 |
| Guaranty Bank | \$ 28,000,000 |
| SunTrust Bank | \$ 28,000,000 |
| Wachovia Bank, N.A. | \$ 28,000,000 |
| AmSouth Bank | \$ 22,500,000 |
| PNC Bank, N.A. | \$ 22,500,000 |
| Washington Mutual Bank, FA | \$ 15,000,000 |
| KeyBank National Association | \$ 15,000,000 |
| Compass Bank | \$ 15,000,000 |
| BankUnited, FSB | \$ 10,000,000 |
| BNP Paribas | \$ 10,000,000 |
| Total | \$ 250,000,000 |

Schedule II

EXISTING LETTERS OF CREDIT

(Attached)

Exhibit A

NOTE

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FOR VALUE RECEIVED, the undersigned, BEAZER HOMES USA, INC., a Delaware corporation (the "Borrower") HEREBY PROMISES TO PAY to the order of (the "Bank") to BANK ONE, NA, as Agent, at the Agent's Office located at 1 Bank One Plaza, Chicago, IL, for the account of the applicable Lending Office of the Bank, in lawful money of the United States and in immediately available funds, the principal amount of Dollars (\$) or the aggregate unpaid principal amount of all Loans made to the Borrower by the Bank pursuant to the Credit Agreement and outstanding on the Termination Date, whichever is less, and to pay interest from the date of this Note, in like money, at said office for the account of the applicable Lending Office, at the time and at a rate per annum as provided in the Credit Agreement. The Bank is hereby authorized by the Borrower to endorse on the schedule attached to this Note held by it the amount and type of each Loan and each renewal, conversion, and payment of principal amount received by the Bank for the account of the applicable Lending Office on account of its Loans, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Loans made by the Bank; *provided, however*, that the failure to make such notation with respect to any Loan or renewal, conversion, or payment shall not limit or otherwise affect the obligations of the Borrower hereunder.

This Note is one of the Notes referred to in, and is entitled to the benefits of, the Credit Agreement, dated as of September 21, 2001, between the Borrower, the Guarantors, the Bank and certain other banks parties thereto (which, as it may be amended, modified, renewed or extended from time to time, is herein called the "Credit Agreement"). Terms used herein which are defined in the Credit Agreement shall have their defined meanings when used herein. The Credit Agreement, among other things, contains provisions for acceleration of the maturity of this Note upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity of this Note upon the terms and conditions specified in the Credit Agreement.

The Borrower hereby agrees to pay all reasonable costs and expenses (including reasonable attorney's fees and expenses) paid or incurred by the holder of this Note in the collection of any principal or interest payable under this Note or the enforcement of this Note or any other Loan Documents.

This Note shall be governed by the laws of the State of Illinois.

BEAZER HOMES USA, INC.

By:

Name:

SCHEDULE TO NOTE

| Date Made or Paid | Type of Loan | Amount of Principal Paid | Unpaid Principal Balance of Note | Name of Person Making Notation |
|-------------------|--------------|--------------------------|----------------------------------|--------------------------------|
|-------------------|--------------|--------------------------|----------------------------------|--------------------------------|

Exhibit B

The opinion of Paul, Hastings, Janofsky & Walker LLP, to be rendered pursuant to Section 3.01(5) of the Credit Agreement to which this Exhibit is attached (the "Credit Agreement"; any capitalized term used herein and not otherwise defined herein shall have the meaning assigned to such term in the Credit Agreement) among Beazer Homes USA, Inc., the Original Guarantors parties thereto, the banks whose names appear on the signature pages thereof and Bank One, NA, as Agent, shall be substantially to the following effect:

(a) The Borrower and each of Beazer Mortgage Corporation, a Delaware corporation, Beazer Homes Corp., a Tennessee corporation, Beazer Homes Sales Arizona Inc., a Delaware corporation, Beazer Realty Corp., a Georgia corporation, Beazer Homes Holding Corp., a Delaware corporation, Beazer Homes Texas Holdings, Inc., a Delaware corporation, Beazer Homes Texas, L.P., a Delaware limited partnership, Homebuilders Title Services, Inc., a Delaware corporation, Texas Lone Star Title, L.P., a Texas limited partnership, Universal Solutions Insurance Agency, Inc., a Delaware corporation, April Corporation, a Colorado corporation, and Beazer SPE, LLC, a Georgia limited liability company (collectively the "Guarantors") is a corporation duly incorporated, or, in the case of Beazer Homes Texas, L.P., and Texas Lone Star Title, L.P., a partnership duly formed or, in the case of Beazer SPE, LLC, a Georgia limited liability company, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation and has all requisite power and authority, corporate or otherwise, to conduct its business, to own its properties and to execute and deliver, and to perform all of its obligations under the Loan Documents.

(b) The Loan Documents have been duly executed and delivered by Borrower and the Guarantors. The execution and delivery by the Borrower and each Guarantor of the Loan Documents and the performance of their respective obligations thereunder have been duly authorized by all necessary corporate or other action and do not and will not (i) require any consent or approval of its stockholders, (ii) violate any provision of any law, rule or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System), or, to our knowledge, any order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it which violation would (x) impair its ability to perform its obligations under the Loan Documents or (y) have a material adverse effect on its financial condition, properties, or operations, or on its charter or by-laws, (iii) to our knowledge, result in a breach of or constitute a default under any indenture or lease or loan or credit agreement or any other material agreement or instrument to which it is a party or by which it or its properties may be bound or affected, or (iv) to our knowledge, result in, or require, the creation or imposition of any Lien upon any of the properties now owned or hereafter acquired by it.

(c) No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary for the valid execution, delivery or performance by the Borrower and each Guarantor of the Loan Documents.

(d) Except as have been disclosed to the Agent and the Banks in writing, there are to our knowledge no actions, suits or proceedings pending or threatened against the Borrower or any Subsidiary or their properties before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, the probable outcome of which would have a material adverse effect on the consolidated financial condition, properties, or operations of the Borrower and its Subsidiaries taken as a whole.

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In rendering the foregoing opinion with respect to Beazer Homes Corp., we have relied upon the opinion of _____ as to matters of Tennessee law. In rendering the foregoing opinion with respect to Texas Lone Star Title, L.P., we have relied upon the opinion of _____ as to matters of Texas law. In rendering the foregoing opinion with respect to April Corporation, we have relied upon the opinion of _____ as to matters of Colorado law.

In rendering the foregoing opinion we express no opinion as to the effect (if any) of any laws of any jurisdiction, except those of the General Corporation Law and Revised Uniform Limited Partnership Act of the State of Delaware, the laws of the State of Georgia, the Federal laws of the United States and, to the extent provided for in the preceding paragraph, the laws of Tennessee.

We express no opinion with respect to Beazer/Squires Realty, Inc., a North Carolina corporation, Homebuilders Title Services of Virginia, Inc., a Virginia corporation, or Beazer Realty, Inc., a New Jersey corporation.

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Exhibit C

The opinion of Illinois counsel to be rendered pursuant to Section 3.01(5) of the Credit Agreement to which this Exhibit is attached (the "Credit Agreement"; any capitalized term used herein and not otherwise defined herein shall have the meaning assigned to such term in the Credit Agreement) among Beazer Homes USA, Inc., the Guarantors parties thereto, the banks whose names appear on the signature page thereof and Bank One, NA, as Agent, shall be substantially to the following effect:

The Loan Documents, when executed and delivered by the parties thereto, will constitute the legal, valid and binding obligations of the Borrower and each Guarantor enforceable against it in accordance with their respective terms, except as enforcement of such terms may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium, fraudulent transfer or similar laws affecting creditors' rights generally or by general equitable principles.

Counsel is a member of the Bar of the State of Illinois.

In rendering the foregoing opinion we express no opinion as to the effect (if any) of any laws of any jurisdiction, except those of the State of Illinois and the Federal laws of the United States.

Exhibit D

Bank One, NA,
as Agent
1 Bank One Plaza
Chicago, Illinois 60670

Re: Credit Agreement dated as of September 21, 2001 (the "Credit Agreement") among Beazer Homes USA, Inc., the Guarantors parties thereto, and each of the banks ("Banks") parties thereto

Ladies and Gentlemen:

We have acted as your special counsel in connection with the Credit Agreement. Terms used in the Credit Agreement are used herein as defined therein.

We have examined the opinions (the "Opinions") and other documents delivered by the Borrower and the Guarantors pursuant to Article III of the Credit Agreement. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and the due authority of all persons executing the same. We have relied as to factual matters on the documents which we have reviewed, and as to matters of law covered by the Opinions on such Opinions. We are qualified to practice law in the State of Illinois and we do not purport to be experts on, or to express any opinion herein concerning, the laws of any other jurisdiction.

Subject to the exceptions expressed in the preceding paragraph and while we have not independently considered the matters covered by the Opinions to the extent necessary to enable us to express the conclusions therein stated, we are of the opinion that the Opinions and other documents delivered pursuant to Article III of the Credit Agreement are substantially responsive to the requirements of said Section. In that regard, we note that such Section does not require the Opinions to address matters relating to Beazer/Squires Realty, Inc., a North Carolina corporation, Beazer Realty, Inc., a New Jersey corporation, or Homebuilders Title Services of Virginia, Inc., a Virginia corporation.

This opinion may be relied upon by each Bank that is a party to the Credit Agreement.

Very truly yours,

Exhibit E

The opinion of local counsel to be rendered pursuant to Section 3.01(10) of the Credit Agreement to which this Exhibit is attached ("Credit Agreement;" any capitalized term used herein and not otherwise defined herein shall have the meaning assigned to such term in the Credit Agreement) among Beazer Homes USA, Inc., the Guarantors parties thereto, the banks whose names appear on the signature page thereof and Bank One, NA, as Agent, shall be substantially to the following effect:

(a) The Guarantor is a corporation duly incorporated validly existing, and in good standing under the laws of the jurisdiction of its incorporation, and has all requisite power and authority, corporate or otherwise, to conduct its business, to own its properties and to execute and deliver, and to perform all of its obligations under the Loan Documents.

(b) The execution and delivery by the Guarantor of the Credit Agreement and the performance of its obligations thereunder have been duly authorized by all necessary corporate or other action and do not and will not (i) require any consent or approval of its stockholders, or (ii) violate any provision of any law, rule or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System), or, to our knowledge, any order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it which violation would (x) impair its ability to perform its obligations under the Loan Documents (y) have a material adverse effect on its financial condition, properties, or operations, or on its charter or by-laws.

(c) No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary for the valid execution, delivery or performance by the Guarantor of the Credit Agreement.

(d) Except as have been disclosed to the Agent and the Banks in writing, there are to our knowledge no actions, suits or proceedings pending or threatened against the Guarantor or its properties before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, the probable outcome of which would have a material adverse effect on the consolidated financial condition, properties, or operations of the Guarantor.

Counsel is a member of the Bar of the State of

CERTIFICATE

This Certificate is delivered pursuant to the Credit Agreement dated as of September 21, 2001 among Beazer Homes USA, Inc., Bank One, NA as Agent, the Banks party thereto and the Guarantors party thereto (the "Credit Agreement"). Capitalized terms used herein and not defined herein shall have the meanings provided therefor in the Credit Agreement. This Certification is delivered in connection with [a notice requesting a Borrowing under Section 2.03 OR a notice requesting issuance, amendment or extension of a Facility Letter of Credit under Section 13.04]*.

The undersigned hereby certifies as follows:

1. The representations and warranties contained in Article IV of the Credit Agreement are correct on and as of the [date of such Borrowing OR Issuance Date]* as though made on and as of such date except to the extent that any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty is correct as of such earlier date.
2. No Default or Event of Default has occurred and is continuing and would result from [such Borrowing OR the issuance, amendment or extension of such Facility Letter of Credit]*.
3. Upon [such Borrowing OR the issuance, amendment or extension of such Facility Letter of Credit]*, the Permitted Senior Debt shall not exceed the Borrowing Base as set forth in the Borrowing Base Certificate delivered by the Borrower to the Agent as of the most recent Inventory Valuation Date, which Borrowing Base Certificate is true and correct as of such Inventory Valuation Date.

Date:

David S. Weiss

Executive Vice President and
Chief Financial Officer
Beazer Homes USA, Inc.

*Include appropriate portion of bracketed provision

Subsidiaries of Borrower

| Subsidiary | State of Incorporation/Formation | Borrower's % Ownership |
|---|-------------------------------------|---------------------------|
| Beazer Mortgage Corporation | Delaware | 100% |
| Beazer Homes Corp. | Tennessee | 100% |
| Beazer Home Sales Arizona Inc. | Delaware | 100% |
| Beazer Realty Corp. | Georgia | 100% |
| Beazer/Squires Realty, Inc. | North Carolina | 100% |
| Beazer Homes Holdings Corp. | Delaware | 100% |
| Beazer Homes Texas Holdings, Inc. | Delaware | 100% |
| Beazer Homes Texas, L.P. | Delaware | 99%(1) |
| Beazer Realty, Inc. | New Jersey | 100% |
| Homebuilders Title Services, Inc. | Delaware | 100% |
| Texas Lone Star Title, L.P. | Texas | 99%(2) |
| Homebuilders Title Services of Virginia, Inc. | Virginia | 100% |
| Universal Solutions Insurance Agency, Inc. | Delaware | 100% |
| Security Title Insurance Company, Inc. | Vermont | 100% |
| United Home Insurance Corporation | Vermont | 100% |
| April Corporation | Colorado | 100% |
| Beazer SPE, LLC | Georgia | 100%(3) |

(1) The 99% interest is held by Beazer Homes Corp., and the remaining 1% is held by Beazer Homes Texas Holdings, Inc.

(2) The 99% interest is held by Beazer Home Sales Arizona Inc., and the remaining 1% is held by Beazer Homes Texas Holdings, Inc.

(3) The entire 100% interest is held by Beazer Homes Holding Corp.

ASSIGNMENT AGREEMENT

This Assignment Agreement (this "Assignment Agreement") between _____ (the "Assignor") and _____ (the "Assignee") is dated as of _____, 200 . The parties hereto agree as follows:

1. *PRELIMINARY STATEMENT.* The Assignor is a party to a Credit Agreement (which, as it may be amended, modified, renewed or extended from time to time, is herein called the "Credit Agreement") described in Item 1 of Schedule 1 attached hereto ("Schedule 1"). Capitalized terms used herein and not otherwise defined herein shall have the meanings attributed to them in the Credit Agreement.
2. *ASSIGNMENT AND ASSUMPTION.* The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, an interest in and to the Assignor's rights and obligations under the Credit Agreement such that after giving effect to such assignment the Assignee shall have purchased pursuant to this Assignment Agreement the percentage interest specified in Item 3 of Schedule 1 of all outstanding rights and obligations under the Credit Agreement relating to the facilities listed in Item 3 of Schedule 1 and the other Loan Documents. The Commitment (or Loans, if the applicable Commitment has been terminated) purchased by the Assignee hereunder is set forth in Item 3 of Schedule 1.
3. *EFFECTIVE DATE.* The effective date of this Assignment Agreement (the "Effective Date") shall be the later of the date specified in Item 3 of Schedule 1 or two Business Days (or such shorter period agreed to by the Agent) after a Notice of Assignment substantially in the form of Exhibit 1 attached hereto has been delivered to the Agent. Such Notice of Assignment must include any consents required to be delivered to the Agent by Section 12.03 of the Credit Agreement (including the consent of the Agent). In no event will the Effective Date occur if the payments required to be made by the Assignee to the Assignor on the Effective Date under Sections 4 and 5 hereof are not made on the proposed Effective Date. The Assignor will notify the Assignee of the proposed Effective Date no later than the Business Day prior to the proposed Effective Date. As of the Effective Date, (i) the Assignee shall have the rights and obligations of a Bank under the Loan Documents with respect to the rights and obligations assigned to the Assignee hereunder and (ii) the Assignor shall relinquish its rights and be released from its corresponding obligations under the Loan Documents with respect to the rights and obligations assigned to the Assignee hereunder.
4. *PAYMENTS, OBLIGATIONS.* On and after the Effective Date, the Assignee shall be entitled to receive from the Agent all payments of principal, interest and fees with respect to the interest assigned hereby. The Assignee shall advance funds directly to the Agent with respect to all Loans and reimbursement payments made on or after the Effective Date with respect to the interest assigned hereby. [In consideration for the sale and assignment of Loans hereunder, (i) the Assignee shall pay the Assignor on the Effective Date, an amount equal to the principal amount of the portion of all ABR Loans assigned to the Assignee hereunder and (ii) with respect to each LIBOR Loan made by the Assignor and assigned to the Assignee hereunder which is outstanding on the Effective Date, (a) on the last day of the Interest Period therefor or (b) on such earlier date agreed to by the Assignor and the Assignee or (c) on the date on which any such LIBOR Loan either becomes due (by acceleration or otherwise) or is prepaid (the date as described in the foregoing clauses (a), (b) or (c) being hereinafter referred to as the "Payment Date"), the Assignee shall pay the Assignor an amount equal to the principal amounts of the portion of such LIBOR Loan assigned to the Assignee which is outstanding on the Payment Date. If the Assignor and the Assignee agree that the Payment Date for such LIBOR Loan shall be the Effective Date, they shall agree to the interest rate applicable to the portion of such Loan assigned hereunder for the period from the Effective Date to the end of

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the existing Interest Period applicable to such LIBOR Loan (the "Agreed Interest Rate") and any interest received by the Assignee in excess of the Agreed Interest Rate shall be remitted to the Assignor. In the event interest for the period from the Effective Date to but not including the Payment Date is not paid by the Borrower with respect to any LIBOR Loan sold by the Assignor to the Assignee hereunder, the Assignee shall pay to the Assignor interest for such period on the portion of such LIBOR Loan sold by the Assignor to the Assignee hereunder at the applicable rate provided by the Credit Agreement. In the event a prepayment of any LIBOR Loan which is existing on the Payment Date and assigned by the Assignor to the Assignee hereunder occurs after the Payment Date but before the end of the Interest Period applicable to such LIBOR Loan, the Assignee shall remit to the Assignor the excess of the prepayment penalty paid with respect to the portion of such LIBOR Loan assigned to the Assignee hereunder over the amount which would have been paid if such prepayment penalty was calculated based on the Agreed Interest Rate. The Assignee will also promptly remit to the Assignor (i) any principal payments received from the Agent with respect to LIBOR Loans prior to the Payment Date and (ii) any amounts of interest on Loans and fees received from the Agent which relate to the portion of the Loans assigned to the Assignee hereunder for periods prior to the Effective Date, in the case of ABR Loans, or the Payment Date, in the case of LIBOR Loans, and not previously paid by the Assignee to the Assignor.]* In the event that either party hereto receives any payment to which the other party hereto is entitled under this Assignment Agreement, then the party receiving such amount shall promptly remit it to the other party hereto.

***The parties may insert alternative payment provisions in lieu of the payment terms included in this Exhibit.**

5. *FEES PAYABLE BY THE ASSIGNEE.* [To the extent applicable, the Assignee shall pay to the Assignor a fee on each day on which a payment of interest or commitment fee is made under the Credit Agreement with respect to the amounts assigned to the Assignee hereunder (other than a payment of interest or commitment fee for the period prior to the Effective Date or, in the case of LIBOR Loans, the Payment Date, which the Assignee is obligated to deliver to the Assignor pursuant to Section 4 hereof). The amount of such fee shall be the difference between (i) the interest or fee, as applicable, paid with respect to the amounts assigned to the Assignee hereunder and (ii) the interest or fee, as applicable, which would have been paid with respect to the amounts assigned to the Assignee hereunder if each interest rate was of 1% less than the interest rate paid by the Borrower or if the commitment fee was of 1% less than the commitment fee paid by the Borrower, as applicable. In addition, the Assignee agrees to pay _____ % of the recordation fee required to be paid to the Agent pursuant to the Credit Agreement in connection with this Assignment Agreement.]*

***The parties may insert alternative payment provisions in lieu of the payment terms included in this Exhibit.**

6. *REPRESENTATIONS OF THE ASSIGNOR: LIMITATIONS ON THE ASSIGNOR'S LIABILITY.* The Assignor represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim created by the Assignor. It is understood and agreed that the assignment and assumption hereunder are made without recourse to the Assignor and that the Assignor makes no other representation or warranty of any kind to the Assignee. Neither the Assignor nor any of its officers, directors, employees, agents or attorneys shall be responsible for (i) the due execution, legality, validity, enforceability, genuineness, sufficiency or collectibility of any Loan Documents, including without limitation, documents granting the Assignor and the other Banks a security interest in assets of the Borrower, any Subsidiary, or any Guarantor, (ii) any representation, warranty or statement made in or in connection with any of the Loan Documents, (iii) the financial condition or creditworthiness of the Borrower, any Subsidiary,

or any Guarantor, (iv) the performance of or compliance with any of the terms or provisions of any of the Loan Documents, (v) inspecting any of the property, books or records of the Borrower, any Subsidiary, or any Guarantor, (vi) the validity, enforceability, perfection, priority,

condition, value or sufficiency of any collateral securing or purporting to secure the Loans or (vii) any mistake, error of judgment, or action taken or omitted to be taken in connection with the Loans or the Loan Documents.

7. *REPRESENTATIONS OF THE ASSIGNEE.* The Assignee (i) confirms that it has received a copy of the Credit Agreement, together with copies of such financial statements requested by the Assignee and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement, (ii) agrees that it will, independently and without reliance upon the Agent, the Assignor or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, (iii) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto, (iv) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Bank, (v) agrees that its payment instructions and notice instructions are as set forth in the attachment to Schedule 1, (vi) confirms that none of the funds, monies, assets or other consideration being used to make the purchase and assumption hereunder are "plan assets" as defined under ERISA and that its rights, benefits and interests in and under the Loan Documents will not be "plan assets" under ERISA, [and (vii) attaches the forms prescribed by the Internal Revenue Service of the United States certifying that the Assignee is entitled to receive payments under the Loan Documents without deduction or withholding of any United States federal income taxes]* and (viii) represents and warrants that the assignment hereunder does not and will not, as of the effective date of such assignment, result in any increased costs or expenses, including without limitation pursuant to Section 2.14 or 2.15 of the Credit Agreement, payable by the Borrower or any Guarantor.

***to be inserted if the Assignee is not incorporated under the laws of the United States, or a state thereof.**

8. *INDEMNITY.* The Assignee agrees to indemnify and hold the Assignor harmless against any and all losses, costs and expenses (including, without limitation, reasonable attorneys' fees) and liabilities incurred by the Assignor in connection with or arising in any manner from the Assignee's non-performance of the obligations assumed under this Assignment Agreement.

9. *SUBSEQUENT ASSIGNMENTS.* After the Effective Date, the Assignee shall have the right pursuant to Section 12.03 of the Credit Agreement to assign the rights which are assigned to the Assignee hereunder to any entity or person, provided that (i) any such subsequent assignment does not violate any of the terms or conditions of the Loan Documents or any law, rule, regulation, order, writ, judgment, injunction or decree and that all consents required under the terms of the Loan Documents have been obtained and (ii) unless the prior written consent of the Assignor is obtained, the Assignee is not thereby released from its obligations to the Assignor hereunder, if any remain unsatisfied, including, without limitation, its obligations under Sections 4, 5 and 8 hereof.

10. *REDUCTIONS OF AGGREGATE COMMITMENTS.* If any reduction in the Aggregate Commitments (other than pursuant to Section 2.19(c) of the Credit Agreement) occurs between the date of this Assignment Agreement and the Effective Date, the percentage interest specified in Item 3 of Schedule 1 shall remain the same, but the dollar amount purchased shall be recalculated based on the reduced Commitment of the Assignor.

11. *ENTIRE AGREEMENT.* This Assignment Agreement and the attached Notice of Assignment embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

12. *GOVERNING LAW.* This Assignment Agreement shall be governed by and construed in accordance with, the laws of the State of Illinois without regard to principles of conflict of laws.

13. *NOTICES.* Notices shall be given under this Assignment Agreement in the manner set forth in the Credit Agreement. For the purpose hereof the addresses of the parties hereto (until notice of a change is delivered) shall be the addresses set forth in the attachment to Schedule 1.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement by their duly authorized officers as of the date first above written.

[NAME OF ASSIGNOR]

By: _____

Title: _____

[NAME OF ASSIGNEE]

By: _____

Title: _____

SCHEDULE 1
to Assignment Agreement

1. Description and Date of Credit Agreement:
2. Date of Assignment Agreement: _____, 200
3. Amounts (As of Date of Item 2 above):

| | <u>Facility 1*</u> | <u>Facility 2*</u> | <u>Facility 3*</u> |
|---|------------------------|------------------------|------------------------|
| a. Total of Commitments (Loans)** under Credit Agreement | \$ | \$ | \$ |
| b. Assignee's Percentage of each Facility purchased under the Assignment Agreement*** | | % | % |
| c. Amount of Assigned Share in each Facility purchased under the Assignment Agreement | \$ | \$ | \$ |
| d. Assignee's aggregate Commitment Amount (Loan Amount)*** Purchased Hereunder: | \$ | \$ | \$ |
| e. Proposed Effective Date: | | | |

Accepted and Agreed:

[NAME OF ASSIGNOR]

[NAME OF ASSIGNEE]

By: _____
Title: _____

By: _____
Title: _____

*
Insert specific facility names per Credit Agreement

**
If a Commitment has been terminated, insert outstanding Loans in place of Commitment

Percentage taken to 10 decimal places

Attachment to SCHEDULE 1 to ASSIGNMENT AGREEMENT

Attach Assignor's Administrative Information Sheet, which must include notice address for the Assignor and the Assignee and the ABR Loan Lending Office address and the LIBOR Loan Lending Office address for the Assignee.

EXHIBIT 1
to Assignment Agreement

NOTICE
OF ASSIGNMENT

, 2001

To: [NAME OF BORROWER]*

[NAME OF AGENT]

From: [NAME OF ASSIGNOR] (the "Assignor")

[NAME OF ASSIGNEE] (the "Assignee")

1. We refer to that certain Credit Agreement (the "Credit Agreement") described in Item I of Schedule 1 attached hereto ("Schedule 1"). Capitalized terms used herein and not otherwise defined herein shall have the meanings attributed to them in the Credit Agreement.

2. This Notice of Assignment (this "Notice") is given and delivered to [the Borrower and]* the Agent pursuant to Section 12.03 of the Credit Agreement.

3. The Assignor and the Assignee have entered into an Assignment Agreement, dated as of _____, 2001 (the "Assignment"), pursuant to which, among other things, the Assignor has sold, assigned, delegated and transferred to the Assignee, and the Assignee has purchased, accepted and assumed from the Assignor the percentage interest specified in Item 3 of Schedule 1 of all outstanding rights and obligations under the Credit Agreement relating to the facilities listed in Item 3 of Schedule 1. The Effective Date of the Assignment shall be the later of the date specified in Item 5 of Schedule 1 or two Business Days (or such shorter period as agreed to by the Agent) after this Notice of Assignment and any consents and fees required by Section 12.03 of the Credit Agreement have been delivered to the Agent, provided that the Effective Date shall not occur if any condition precedent agreed to by the Assignor and the Assignee has not been satisfied.

***To be included only if consent must be obtained from the Borrower pursuant to Section 12.03 of the Credit Agreement.**

4. The Assignor and the Assignee hereby give to the Borrower and the Agent notice of the assignment and delegation referred to herein. The Assignor will confer with the Agent before the date specified in Item 5 of Schedule 1 to determine if the Assignment Agreement will become effective on such date pursuant to Section 3 hereof, and will confer with the Agent to determine the Effective Date pursuant to Section 3 hereof if it occurs thereafter. The Assignor shall notify the Agent if the Assignment Agreement does not become effective on any proposed Effective Date as a result of the failure to satisfy the conditions precedent agreed to by the Assignor and the Assignee. At the request of the Agent, the Assignor will give the Agent written confirmation of the satisfaction of the conditions precedent.

5. The Assignor or the Assignee shall pay to the Agent on or before the Effective Date the processing fee of \$4,000.00 required by Section 12.03 of the Credit Agreement.

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6. If any Notes are outstanding on the Effective Date, the Assignor and the Assignee request and direct that the Agent prepare and cause the Borrower to execute and deliver new Notes or, as appropriate, replacement Notes, to the Assignor and the Assignee. The Assignor and, if applicable, the Assignee each agree to deliver to the Agent the original Note received by it from the Borrower upon its receipt of a new Note (or replacement Note) in the appropriate amount, whereupon such original Note shall be marked "canceled" and returned to the Borrower.

7. The Assignee advises the Agent that notice and payment instructions are set forth in the attachment to Schedule 1.

8. The Assignee hereby represents and warrants that none of the funds, monies, assets or other consideration being used to make the purchase pursuant to the Assignment Agreement are "plan assets" as defined under ERISA and that its rights, benefits, and interests in and under the Loan Documents will not be "plan assets" under ERISA.

9. The Assignee authorizes the Agent to act as its agent under the Loan Documents in accordance with the terms thereof. The Assignee acknowledges that the Agent has no duty to supply information with respect to the Borrower or the Loan Documents to the Assignee until the Assignee becomes a party to the Credit Agreement.*

***May be eliminated if Assignee is a party to the Credit Agreement prior to the Effective Date.**

NAME OF ASSIGNOR

NAME OF ASSIGNEE

By: _____

By: _____

Title: _____

Title: _____

ACKNOWLEDGED [AND CONSENTED TO] BY (NAME OF AGENT)

ACKNOWLEDGED [AND CONSENTED TO] BY (NAME OF BORROWER)

By: _____

By: _____

Title: _____

Title: _____

[Attach photocopy of Schedule 1 to Assignment)

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**BEAZER HOMES
2001 Annual Report**

BUSINESS DESCRIPTION

Beazer Homes USA, Inc. is one of the ten largest homebuilders in the country. Our operations are geographically diversified in 14 states in the Southeast, West, Mid-Atlantic and in Texas. Our market strategy focuses on building quality homes targeted to entry-level and first-time move-up homebuyers. We measure our financial performance using "Value Created," a variation of economic value added that measures the extent to which we beat our cost of capital. Founded in 1985, we are headquartered in Atlanta, Georgia, and have been listed on the New York Stock Exchange since 1994 under the symbol "BZH."



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**WELCOME
NEWS**

RECORD SALES IN 2001

**EARNINGS
GROW
62%**

**UNIT BACKLOG
RISES 36%
OVER LAST YEAR**

GROSS
MARGIN
UP 220
BASIS POINTS

MORE NEWS...



MORE
NEWS
TO SHARE



**HOUSEHOLD GROWTH
EXCEEDS
EXPECTATIONS**

Households need homes. And, it turns out, there are even more new households in the United States than previously thought, which translates into continued strong housing demand. Recent U.S. Census data reveals that the number of households in our country grew to more than 105 million during the last decade, a 14.7% increase. With demographic and further cultural factors continuing to create more American households, "Housing production in the coming decade should rival—if not exceed—1990s levels," according to a 2001 report on national housing by the Joint Center for Housing Studies at Harvard University. **Why? Read on.**



**more
HOUSING TRENDS
NEWS TO SHARE**

**DEMOGRAPHICS
FUEL DEMAND**

Two booming population trends will continue to push the growth of new households. The first is immigration. Over 10 million immigrants arrived in the United States in the past 10 years and 75 million more are expected by 2050. There's also the next "boom" generation. As described by the *Wall Street Journal*, "...the so-called echo boomer generation of Americans, now mostly in their teens, will soon enter the housing market. That generation is gigantic, by some estimates even larger than the baby boom." Beyond these demographic trends, there are cultural factors—single mothers, divorcees and other people who live alone, all of whom are adding to the household count and thereby increasing housing demand. Indeed, for the first time one-person households outnumber married couples with children. According to the 2000 Census, that's 27 million Americans living by themselves.



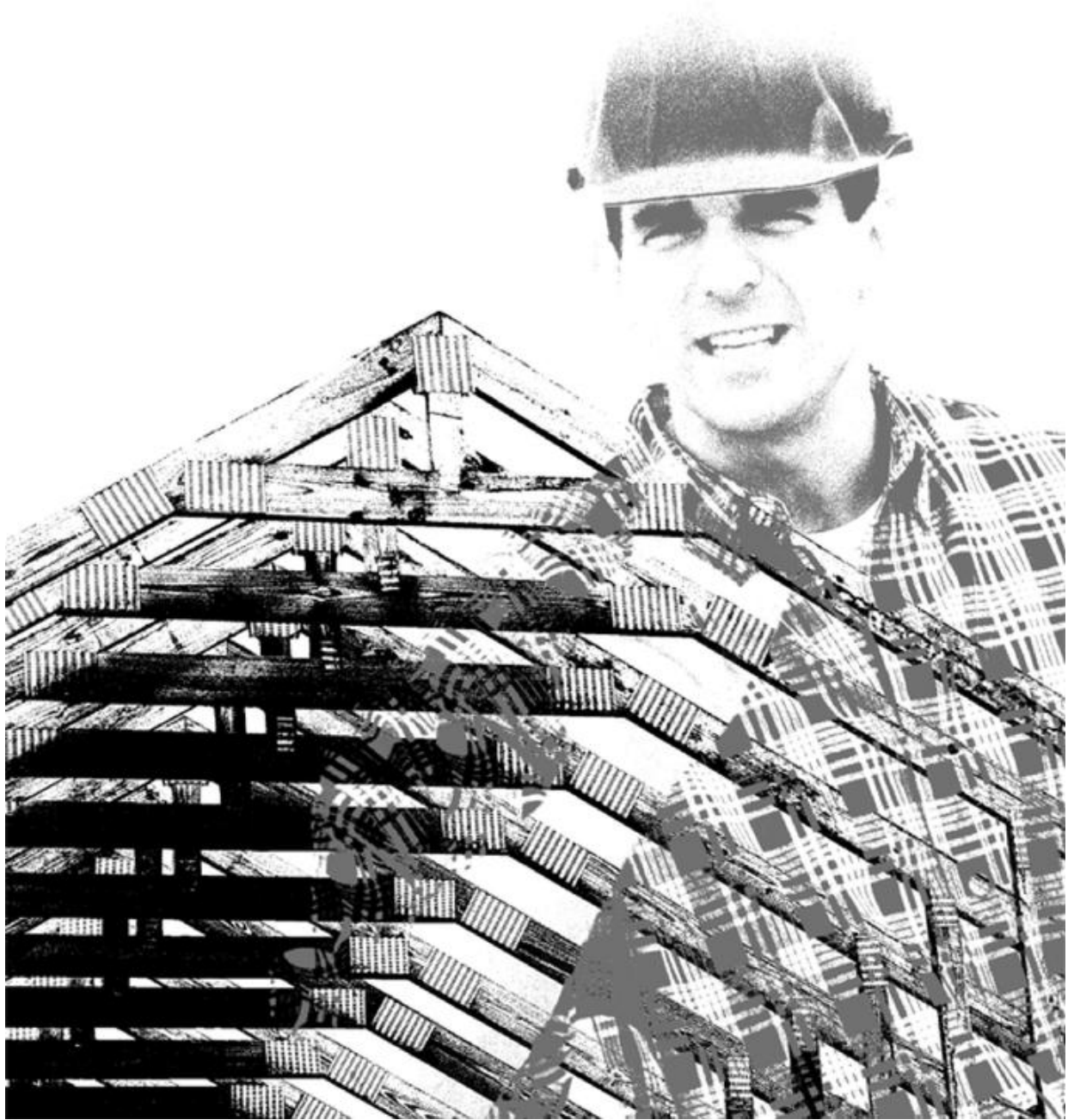
**HOUSING DEMAND
EXCEEDS SUPPLY**

The strong housing demand of the past decade has coincided with historically low levels of housing supply. U.S. Census statistics show that the number of months' supply of unsold homes, a key indicator of housing demand, is at its lowest point in nearly 40 years. Census data also revealed that the vacancy rate for owner-occupied homes has fallen 19% since 1990, despite the addition of 16 million homes and apartments during the same period. In addition to strong demand, supply constraints have been and will continue to be impacted by an ever-tightening land market.

**LARGE PUBLIC BUILDERS
GAIN SHARE**

With these dramatic supply and demand dynamics unfolding, the largest homebuilding companies are poised to gain an even greater share of the market. The nation's ten largest builders already have doubled their share of new home sales over the past decade, accounting for nearly 20% today. With larger land holdings, more advanced technology and ample capital from the public markets, these companies are better positioned than smaller players to capitalize on market trends in the historically fragmented homebuilding industry.

And...

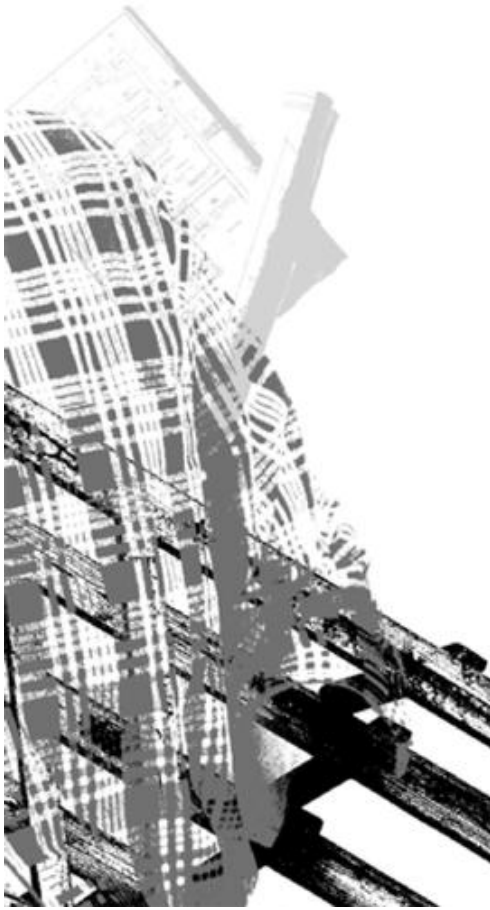


BEAZER IS A HOMEBUILDING LEADER

**FOCUSED ON THE STRONG
FIRST-TIME
HOMEBUYER MARKET**

The demographic factors driving housing demand favor the affordable, entry-level segment of the market, which has always been Beazer's core strength. As studies show, minorities will account for about two-thirds of household growth over the next ten years. A new supply of affordable housing will be critical to meet the needs of these newly formed households. One study also notes, "As the oldest of the echo boomers reach young adulthood, they will drive up demand for apartment homes and starter homes." Simply put: Beazer's market position is where more of the market is headed. Just one of the reasons Beazer is at the forefront of the industry.

**OTHER REASONS?
TURN THE PAGE.**



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INDUSTRY LEADERSHIP
NEWS YOU CAN BUILD ON

WIRED THROUGHOUT THE COMPANY
TECHNOLOGY FUELS A
***CLICKS AND STICKS* STRATEGY**

With over 55% of Beazer's homebuyers now using the Internet as part of their purchasing process, Beazer's award-winning website, beazer.com, is the most visible example of the Company's technological foresight. But what truly makes Beazer an industry leader is the integration of technology in every phase of our business—from market research through planning, sales and marketing, construction, closing and warranty. Beazer seizes every top-and-bottom-line opportunity to capitalize on innovation. The benefits? Enhanced sales velocity through an innovative, guided selling tool within beazer.com that was developed by Online Insight, Inc. to help consumers prioritize buying preferences and match their preferences to Beazer communities and homes. Expanding margins through construction scheduling efficiency with MH2 technology linked to our network of systems. And stronger customer service—such as MyBeazerHome.com, the personalized website for Beazer homeowners that helps build a customer-for-life relationship. Now that is wired.



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BEAZER KEEPS ITS PROMISE STRATEGIC PLANS REAP BIG BENEFITS IN 2001 AND BEYOND

Credibility is an inherent part of leadership. And there's no better measure of credibility than stating a goal and meeting it. Or, in this case, beating it. Beazer first met its goal of doubling earnings per share by 1999, five years after becoming a public company. Next goal? Do it again by 2004. The promise made in 1999 to earn \$9.00 per share by 2004 is well ahead of schedule. It should be met during 2002 based on earnings per share of \$8.18 in fiscal 2001 and backlog up 36% at September 30, 2001. This accelerated performance reflects the success of our technological commitment, tight cost controls, innovative sales initiatives and, most important, creating value for our customers by providing the right homes in the right markets. Promise made. Promise kept. That's leadership.

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DEAR SHAREHOLDERS

We are pleased to report welcome news during these uncertain times:

- **Record financial and operational results that beat expectations.**
- **New initiatives that advanced our strategic position.**
- **Market conditions that favor our products.**
- **A set of demographic trends that present even more opportunity for Beazer in the years ahead.**

Beazer's welcome news starts on the bottom line. Earnings per share in fiscal 2001 soared 62% to \$8.18 due to strong sales and expanding margins. Gross margin (before interest) increased 220 basis points to 20.0% as a result of higher gross margins on home sales due to improved efficiencies and controlled costs. Revenues rose 18% to \$1.8 billion, driven by strong demand in the first-time homebuyer market. Over the past year, we closed 9,059 homes—an all-time high and over 15% more than last year. More importantly, we wrote a record 10,039 new orders for homes, a 22% increase over last year. This has produced a backlog of 3,977 homes at September 30, 2001, up 36% from last year, representing \$776 million in sales volume, again a record high, giving us excellent momentum into fiscal 2002.

In addition to our outstanding operating performance, we further strengthened our financial position in fiscal 2001. With EBITDA (earnings before interest, taxes, depreciation and amortization) increasing 57% to \$166 million, our interest coverage ratio rose to 4.6 times, while debt-to-total capitalization at year-end was a conservative 53%. These ratios not only reflect strong operating fundamentals, but also a stronger capital structure. During the year, we extended the average maturity of our debt from five years to eight years, while still lowering our average interest rate. In July, we were pleased to see Moody's Investors Service acknowledge Beazer's strong capital structure with its second ratings upgrade—from a Ba3 to a Ba2—in two years. Standard & Poor's also raised our outlook from stable to positive in August.

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As you've read on the preceding pages, Beazer's success begins with the most basic of economic principles—supply and demand. Our ability to increase pricing over the past year has been primarily a function of extremely low inventory levels—generally less than one unsold finished home per community at Beazer. This tight supply, however, extends beyond Beazer to the entire housing market. Nationally, available housing inventory is at its lowest level in 40 years

BEAZER'S SUCCESS
begins with the most basic
of economic principles—
supply and demand.

due to tighter land restrictions, less speculative building and greater than expected demand through much of the past decade. The shortage is especially pronounced in the affordable, entry-level market.

Yet, this is where future demand will be greatest. Many of the more than ten million immigrants who arrived in the United States during the 1990s are now ready to become homeowners. The 75 million echo boomers will become homebuyers within the next decade. And, many of the new households formed over the next decade will be singles or married couples without children. For all of these potential buyers, affordability and value will be the primary criteria. Accordingly, we are expanding our focus on this segment of the market. In short, we are building the right product to meet the greatest demand.



Left Brian C. Beazer
Chairman of the Board

Right Ian J. McCarthy
President and Chief Executive Officer

The Wekiva
Orlando, Florida



The right product, however, is only part of the equation. The right markets are equally as important. As we've shared with you in the past, we are spread throughout the South and the West, regions that continue to boast the strongest economic growth in the country. We emphasize the word "spread" because our geographic diversification in these regions is a key strength. With operations currently in 14 states, no single state represents over 20% of our total closings. Our recent acquisition in Colorado will further diversify our business.

The Venetian
Dallas, Texas



Denver is the eighth largest homebuilding market in the country. Our August acquisition of Sanford Homes, the third largest private builder in the area, enabled us to fulfill a longtime goal to enter this market. Sanford is a 40-year-old company that has historically served the move-up market in metro-Denver. Sanford brings to Beazer a strong management team, as well as a four-year supply of land in a very constrained land market. Beazer brings to Sanford the necessary capital and expertise to expand into the entry-level market, as well as technological benefits and ancillary profit vehicles, such as design centers and mortgage services. We believe that Sanford can be as successful an acquisition as Trafalgar House in the Mid-Atlantic region was for us in 1999. This is now one of the fastest growing regions of Beazer, having increased revenues 41% since 1999.

The Rosewood
Santa Clarita, California



The Stratton
Denver, Colorado



Favorable supply and demand dynamics. The right product in the right markets. These conditions certainly set the stage for a successful business, but translating them into true earnings growth is dependent upon sound execution. We remain strong believers in the power of technology to reinvent the homebuilding process. Over the past year, we've continued to develop many of our e-commerce initiatives. Our flagship, the beazer.com website, receives over 200,000 unique visits per month resulting in 5,000 direct customer contacts via e-mail per month, and has proven to be an invaluable marketing tool. Once prospects become buyers, they now receive a customized website—MyBeazerHome.com—to manage and monitor virtually every phase of the home purchasing process, such as financing, design, construction, closing and moving.

The Douglas
Bordentown, New Jersey



The Estancia
Phoenix, Arizona



Innovative technology is not reserved for the marketing side of the business. We're also deploying it on the building side, where it is an increasingly important project and cost management tool. With WorkWithBeazer.com, we have integrated MH2 Technologies' online scheduling and job management tool for our builders, suppliers and contractors which provides continuously updated access to scheduling and purchasing information. With a successful rollout in several divisions complete, we are now extending this tool to the remainder of our markets throughout the country.

The Cotton at Landsdowne
Leesburg, Virginia



The Calvert II
Laurel, Maryland



The Geneva
Houston, Texas



At Beazer, we enjoy and encourage an innovative culture. Our motivation, however, is not simply to create a more progressive way to do business, but to find new ways to significantly drive bottom-line profitability. Beazer design centers are a perfect example. These centers, which allow buyers to personalize their homes through the selection of options and upgrades, produce significantly higher margins than the core building business. In 2001, upgrades and options averaged approximately \$14,600 per home. Similar ancillary businesses, such as mortgage origination services and title insurance, offer high-margin growth for Beazer, while also diversifying our revenue base.

The Grandale
Jacksonville, Florida



As we pointed out at the start of this letter, we're very pleased this year to report an abundance of welcome news. And, we have every confidence that the news can get even better based on Beazer's fundamentals, as well as the dramatically improved fundamentals of the homebuilding industry compared to a decade ago. This confidence is further boosted by our sizeable year-end backlog.

The Danbury
Nashville, Tennessee



At the same time, we are aware that the positive results we have been reporting at Beazer run contrary to much of the tragic and unsettling news in our world. The events of September 11th and their aftermath have created an environment of uncertainty. Beazer responded to this crisis by making a \$1.0 million contribution to relief efforts. Additionally, employee contributions to relief efforts were matched 100% by the Company.

We regard the current environment as one in which our financial strength and prudent management style will help us outperform. We ended fiscal 2001 in an extremely strong financial position, with a conservative level of debt relative to total capitalization (53%), low levels of unsold inventory (less than one unsold

The Huntington
Atlanta, Georgia



finished home per community), high interest coverage (4.6 times EBITDA to interest incurred) and the highest year-end backlog in our history (3,977 homes, up 36%). This puts us in an excellent position to manage through the current period of economic uncertainty. We intend to maintain our strong financial position and, ultimately, use this period as an opportunity to expand our market share, through further prudent acquisitions and share gains in our existing markets.

The Richmond
Charlotte, North Carolina



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Longer term, the same strong industry trends that have supported the growth of housing will continue to dominate—dramatic population growth accompanied by constraints on housing supply, particularly through the land market. These trends are especially pronounced in the first-time buyer segment of the market, the very segment on which we focus. We strongly believe that housing is the right business to be in over the next decade.

Finally, we want to acknowledge the great team that is responsible for producing so much of our welcome news—the nearly 1,900 Beazer employees whose efforts enable thousands of Americans to realize the dream of home ownership. Their talents and dedication are evident not only in the homes they build, but also in the results they produce for you. On behalf of the entire Beazer team, thank you for your continuing support.

Sincerely,

Brian C. Beazer
Chairman of the Board

Ian J. McCarthy
President and Chief Executive Officer

December 10, 2001

The Victoria II
Ft. Myers, Florida



The Overture
Roseville, California



The Ridge
Raleigh, North Carolina



The Marbella
Las Vegas, Nevada



The Beaufort
Charleston, South Carolina



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Selected Financial Data
Beazer Homes USA, Inc.

Year ended September 30, 2001 2000 1999 1998 1997

(dollars in thousands, except per share amounts)

Statement of Operations Data:

| | 2001 | 2000 | 1999 | 1998 | 1997 |
|------------------------------|--------------|--------------|--------------|------------|------------|
| Total revenue | \$ 1,805,177 | \$ 1,527,865 | \$ 1,394,074 | \$ 977,409 | \$ 852,110 |
| Operating income | 122,229 | 75,623 | 61,800 | 36,916 | 17,656(i) |
| Net income | 74,876(ii) | 43,606 | 36,934 | 23,201 | 11,189(i) |
| Net income per common share: | | | | | |

| | | | | | |
|---|--------------------|----------------|----------------|----------------|------------------|
| Basic | 9.19(ii) | 5.28 | 4.59 | 3.27 | 1.18(i) |
| Diluted | 8.18(ii) | 5.05 | 4.15 | 2.66 | 1.15(i) |
| Balance Sheet Data (end of year): | | | | | |
| Cash | \$ 41,678 | \$ — | \$ — | \$ 67,608 | \$ 1,267 |
| Inventory | 844,737 | 629,663 | 532,559 | 405,095 | 361,945 |
| Total assets | 995,289 | 696,228 | 594,568 | 525,591 | 399,595 |
| Total debt | 395,238 | 252,349 | 215,000 | 215,000 | 145,000 |
| Stockholders' equity | 351,195 | 270,538 | 234,662 | 199,224 | 179,286 |
| Supplemental Financial Data: | | | | | |
| Cash provided by/(used in): | | | | | |
| Operating activities | \$ (29,415) | \$ (18,726) | \$ 34,080 | \$ 27,149 | \$ (20,467) |
| Investing activities | (72,835) | (11,805) | (98,004) | (23,741) | (9,445) |
| Financing activities | 143,928 | 30,531 | (3,684) | 62,933 | 18,237 |
| EBIT(iii) | 157,185(ii) | 99,189 | 86,013 | 56,525 | 33,051(i) |
| EBITDA(iii) | 166,438(ii) | 106,041 | 91,521 | 59,794 | 35,272(i) |
| Interest incurred | 35,825 | 30,897 | 26,874 | 21,259 | 16,159 |
| EBIT/interest incurred | 4.39x | 3.21x | 3.20x | 2.66x | 2.05x |
| EBITDA/interest incurred | 4.65x | 3.43x | 3.41x | 2.81x | 2.18x |
| Financial Statistics(iv): | | | | | |
| Total debt as a percentage of total debt and stockholders' equity | 53.0% | 48.3% | 47.8% | 51.9% | 44.7% |
| Asset turnover | 2.13x | 2.37x | 2.49x | 2.11x | 2.25x |
| EBIT margin | 8.7% | 6.5% | 6.2% | 5.8% | 3.9% |
| Return on average assets | 18.6% | 15.4% | 15.4% | 12.2% | 8.7% |
| Return on average capital | 24.8% | 20.4% | 19.9% | 15.3% | 10.7% |
| Return on average equity | 24.1% | 17.3% | 17.0% | 12.3% | 6.3% |

- (i) Fiscal 1997 results include the effect of a \$6,326 writedown to inventory in Nevada.
- (ii) Fiscal 2001 results include the effect of a \$733 (net of taxes) extraordinary loss on the early extinguishment of debt. Excluding this extraordinary loss, net income and diluted net income per share for fiscal 2001 are \$75,609 and \$8.26, respectively.
- (iii) EBIT and EBITDA: EBIT (earnings before interest and taxes) equals net income before (a) previously capitalized interest amortized to costs and expenses; (b) income taxes; and (c) extraordinary item. EBITDA (earnings before interest, taxes, depreciation and amortization) is calculated by adding depreciation and amortization for the period to EBIT. EBITDA is commonly used to analyze companies on the basis of operating performance, leverage and liquidity. EBIT and EBITDA are not intended to represent cash flows for the period nor have they been presented as an alternative to net income as an indicator of operating performance. EBITDA is a non-GAAP measure and may not be comparable to similarly titled measures reported by other companies.
- (iv) Asset turnover = (total revenue divided by average total assets); EBIT margin = (EBIT divided by total revenues); Return on average assets = (EBIT divided by average total assets); Return on average capital = (EBIT divided by average total debt plus stockholders' equity); Return on average equity = (net income divided by average stockholders' equity).

FINANCIAL INFORMATION

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Management's Responsibility for Financial Reporting and System of Internal Controls
Beazer Homes USA, Inc.

FINANCIAL STATEMENTS

The accompanying consolidated financial statements are the responsibility of the Company's management. The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and, as such, include amounts based on management's best estimates and judgments.

The Company's consolidated financial statements have been audited by Deloitte & Touche LLP, independent auditors, who were given unrestricted access to all financial records and related data. The Company believes that all representations made to the independent auditors during their audit were valid and appropriate. Deloitte & Touche LLP's audit report included on page 44 provides an independent opinion as to the fairness of presentation of the consolidated financial statements.

SYSTEM OF INTERNAL CONTROLS

The Company maintains a system of internal controls over financial recording and reporting which is designed to provide reasonable assurance that assets are safeguarded and transactions are recorded in accordance with the Company's policies and procedures and which ultimately will result in the preparation of reliable financial statements. The system contains self-monitoring mechanisms, and actions are taken to correct deficiencies as they are identified. Even an effective internal control system has inherent limitations—including the possibility of the overriding of controls—and therefore can provide only reasonable, not absolute, assurance with respect to financial statement preparation.

The Company has assessed its internal control system as of September 30, 2001, in relation to criteria for effective internal control over preparation of its published annual (and interim) financial statements described in "Internal Control—Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commissions. Based on this assessment, the Company believes that, as of September 30, 2001, its system of internal controls over the preparation of its published annual (and interim) financial statements met these criteria. Deloitte & Touche LLP also reviews and tests the effectiveness of these systems to the extent they deem necessary to determine the extent of audit procedures needed in connection with their audit of the consolidated financial statements.

The Audit Committee of the Board of Directors, which is composed of Directors who are not officers or employees of the Company, provides oversight to the financial reporting process. The independent auditors have unrestricted access to the Audit Committee.



Ian J. McCarthy
 President and Chief Executive Officer



David S. Weiss
 Executive Vice President and Chief Financial Officer



Michael Rand
 Vice President and Controller

Operations Review/Management's Discussion and Analysis
Beazer Homes USA, Inc.

GENERAL

Homebuilding: We design, sell and build single-family homes in the following regions and states:

Southeast

Florida, Georgia,
 North Carolina,
 South Carolina,
 Tennessee

| | |
|---------------------|---|
| West | Arizona, California, Colorado, Nevada |
| Central | Texas |
| Mid-Atlantic | Maryland, New Jersey, Pennsylvania, Virginia |

We intend, subject to market conditions, to expand in our current markets and to consider entering new markets either through expansion from existing markets or through acquisitions of established regional homebuilders. We seek to be one of the five largest builders in each of the markets that we serve.

Most of our homes are designed to appeal to entry-level and first-time move-up homebuyers, and are generally offered for sale in advance of their construction. Once a sales contract has been signed, we classify the transaction as a "new order" and include the home in "backlog." Such sales contracts are usually subject to certain contingencies such as the buyer's ability to qualify for financing. We do not recognize revenue on homes in backlog until the sales are closed and the risk of ownership has been transferred to the buyer.

Ancillary Businesses: We have established several businesses to support our core homebuilding operations. We operate design centers in the majority of our markets. Through design centers, homebuyers can choose non-structural upgrades and options for their new home. We also provide mortgage origination services for our homebuyers through Beazer Mortgage Corporation ("BMC"). BMC originates, processes and brokers mortgages to third-party investors. BMC does not retain or service the mortgages that it brokers. We also provide title services to our homebuyers in many of our markets and have an insurance agency to provide homeowners and other insurance to our homebuyers. We will continue to evaluate opportunities to provide other ancillary services to our homebuyers.

Value Created: We evaluate our financial performance and the financial performance of our operations using *Value Created*, a variation of economic profit or economic value added. *Value Created* measures the extent to which we exceed our cost of capital. It is calculated as earnings before interest and taxes (EBIT), less a charge for all of the capital employed multiplied by our estimate of our minimum weighted average cost of capital (currently 14%). Most of our employees receive incentive compensation based upon a combination of *Value Created* and the change in *Value Created* during the year. For key managers, a portion of the incentive is put in a bank. This portion is always at risk and may be paid out over three years. We believe that our *Value Created* system encourages managers to act like owners, rewards profitable growth and focuses attention on long-term loyalty and performance.

The following tables present certain operating and financial data for the years discussed:

| Year ended September 30, | 2001 | | 2000 | | 1999 |
|---|--------|----------|--------|----------|--------|
| | Amount | % Change | Amount | % Change | Amount |
| Number of new orders, net of cancellations(1): | | | | | |
| Southeast Region: | | | | | |
| Georgia | 410 | 64.7% | 249 | 27.7% | 195 |
| North Carolina | 999 | 25.3 | 797 | (14.0) | 927 |
| South Carolina | 498 | (4.0) | 519 | 3.0 | 504 |
| Tennessee | 779 | 91.4 | 407 | (10.0) | 452 |
| Florida | 1,084 | 17.8 | 920 | (4.5) | 963 |
| Total Southeast | 3,770 | 30.4 | 2,892 | (4.9) | 3,041 |
| West Region: | | | | | |
| Arizona | 1,175 | 6.9 | 1,099 | (9.0) | 1,208 |
| California | 1,767 | (4.8) | 1,857 | 43.1 | 1,298 |
| Colorado | 177 | n/a | — | — | — |
| Nevada | 691 | 58.1 | 437 | 10.9 | 394 |
| Total West | 3,810 | 12.3 | 3,393 | 17.0 | 2,900 |
| Central Region: | | | | | |
| Texas | 1,022 | 47.1 | 695 | 43.3 | 485 |
| Mid-Atlantic Region: | | | | | |
| Maryland | 385 | 18.1 | 326 | 7.6 | 303 |
| New Jersey/Pennsylvania | 330 | 48.6 | 222 | 16.2 | 191 |
| Virginia | 722 | 3.1 | 700 | 13.8 | 615 |
| Total Mid-Atlantic | 1,437 | 15.1 | 1,248 | 12.5 | 1,109 |
| Total | 10,039 | 22.0% | 8,228 | 9.2% | 7,535 |
| Backlog at end of year: | | | | | |
| Southeast Region: | | | | | |
| Georgia | 120 | 3.4% | 116 | 93.3% | 60 |
| North Carolina | 189 | 23.5 | 153 | (39.5) | 253 |
| South Carolina | 119 | 11.2 | 107 | (39.5) | 177 |

| | | | | | |
|-----------------------------|--------------|--------------|--------------|---------------|--------------|
| Tennessee | 275 | 157.0 | 107 | (10.8) | 120 |
| Florida | 537 | 37.0 | 392 | 0.8 | 389 |
| Total Southeast | 1,240 | 41.7 | 875 | (12.4) | 999 |
| West Region: | | | | | |
| Arizona | 532 | 39.6 | 381 | (17.5) | 462 |
| California | 553 | (5.6) | 586 | 185.9 | 205 |
| Colorado | 195 | n/a | — | — | — |
| Nevada | 326 | 79.1 | 182 | 52.9 | 119 |
| Total West | 1,606 | 39.8 | 1,149 | 46.2 | 786 |
| Central Region: | | | | | |
| Texas | 384 | 48.3 | 259 | 25.7 | 206 |
| Mid-Atlantic Region: | | | | | |
| Maryland | 175 | 36.7 | 128 | (16.9) | 154 |
| New Jersey/Pennsylvania | 136 | 23.6 | 110 | 1.9 | 108 |
| Virginia | 436 | 6.9 | 408 | 33.8 | 305 |
| Total Mid-Atlantic | 747 | 15.6 | 646 | 13.9 | 567 |
| Total | 3,977 | 35.8% | 2,929 | 14.5% | 2,558 |

- (1) New orders for 2001 and 1999 do not include 68 and 555 homes in backlog, respectively, from acquired operations.
- (n/a) Percentage change is not applicable. We entered Colorado in August 2001 when we acquired Sanford Homes.

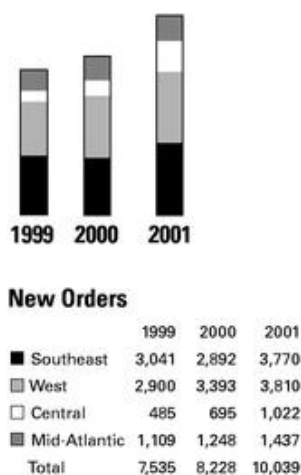
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| Year ended September 30, | 2001 | | 2000 | | 1999 |
|--|--------------|--------------|--------------|--------------|--------------|
| | Amount | % Change | Amount | % Change | Amount |
| Number of closings: | | | | | |
| Southeast Region: | | | | | |
| Georgia | 406 | 110.4% | 193 | (15.0)% | 227 |
| North Carolina | 933 | 4.0 | 897 | (0.3) | 900 |
| South Carolina | 516 | (12.4) | 589 | 15.7 | 509 |
| Tennessee | 611 | 45.5 | 420 | (13.6) | 486 |
| Florida | 948 | 3.4 | 917 | (7.0) | 986 |
| Total Southeast | 3,414 | 13.2 | 3,016 | (3.0) | 3,108 |
| West Region: | | | | | |
| Arizona | 1,024 | (13.2) | 1,180 | (3.6) | 1,224 |
| California | 1,800 | 22.0 | 1,475 | 15.7 | 1,275 |
| Colorado | 41 | n/a | — | — | — |
| Nevada | 547 | 45.9 | 375 | 4.7 | 358 |
| Total West | 3,412 | 12.6 | 3,030 | 6.1 | 2,857 |
| Central Region: | | | | | |
| Texas | 897 | 39.7 | 642 | 7.5 | 597 |
| Mid-Atlantic Region: | | | | | |
| Maryland | 338 | (4.0) | 352 | 15.0 | 306 |
| New Jersey/Pennsylvania | 304 | 38.2 | 220 | 4.3 | 211 |
| Virginia | 694 | 16.2 | 597 | 17.1 | 510 |
| Total Mid-Atlantic | 1,336 | 14.3 | 1,169 | 13.8 | 1,027 |
| Total | 9,059 | 15.3% | 7,857 | 3.5% | 7,589 |
| Homebuilding Revenues (in thousands): | | | | | |
| Southeast Region | \$ 605,860 | 17.0% | \$ 517,879 | (0.1)% | \$ 518,589 |
| West Region | 703,196 | 17.6 | 597,990 | 13.5 | 526,931 |

| | | | | | |
|--|--------------|--------|--------------|-------|--------------|
| Central Region | 143,288 | 25.6 | 114,119 | 6.9 | 106,767 |
| Mid-Atlantic Region | 316,725 | 18.1 | 268,208 | 19.6 | 224,270 |
| Total | \$ 1,769,069 | 18.1% | \$ 1,498,196 | 8.8% | \$ 1,376,557 |
| Average sales price per home closed (in thousands): | | | | | |
| Southeast Region | \$ 177.5 | 3.4% | \$ 171.7 | 2.9% | \$ 166.9 |
| West Region | 206.1 | 4.4 | 197.4 | 7.0 | 184.4 |
| Central Region | 159.7 | (10.2) | 177.8 | (0.6) | 178.8 |
| Mid-Atlantic Region | 237.1 | 3.4 | 229.4 | 5.0 | 218.4 |
| Company Average | 195.3 | 2.4 | 190.7 | 5.1 | 181.4 |
| Number of active subdivisions at year-end: | | | | | |
| Southeast Region | 124 | 5.1% | 118 | 6.3% | 111 |
| West Region | 86 | 26.5 | 68 | 7.9 | 63 |
| Central Region | 31 | 10.7 | 28 | 7.7 | 26 |
| Mid-Atlantic Region | 40 | (2.4) | 41 | 0.0 | 41 |
| Total | 281 | 10.2% | 255 | 5.8% | 241 |

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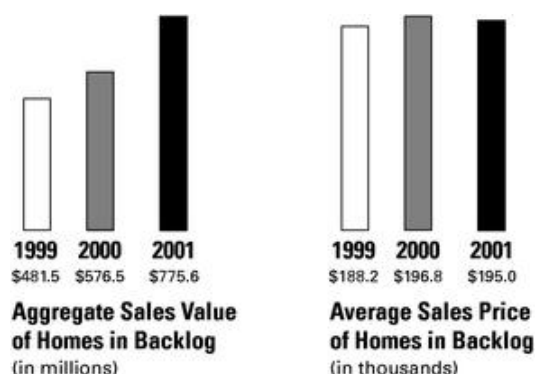
NEW ORDERS BY FISCAL YEAR:



New orders increased in each of the last two fiscal years over the prior year. The fiscal 2001 increase reflects order strength in all four of our regions. We believe that this increase in new orders was due to the reduction in interest rates, strong population growth fueling demand in the first-time buyer segment and gains in market share. New orders in the Southeast and Central regions were especially strong due to our commitment to the first-time buyer segment in these markets. Most of our new community openings in fiscal 2001 targeted this segment of the market. The overall increase in new orders in 2000 is attributable to the growth of the Mid-Atlantic region, entered via acquisition in December 1998, and to growth in the West region.

The fundamentals that drive sales activity are numerous and varied. On a macro level, low unemployment and low mortgage interest rates each contribute to a positive general homebuilding market environment. Our ability to stay ahead of changing customer preferences and local demographic trends with our product mix and to maintain adequate product supply (as measured by the number of active subdivisions) contributes locally to new order trends.

Backlog: The increases in unit backlog in each of the past two fiscal years reflect the favorable homebuilding environment driving new order activity. The average sales price of homes in backlog decreased at September 30, 2001, to \$195,000 from \$196,800 at September 30, 2000, due to our increased expansion in the first-time buyer segment, where sales prices are generally lower. The average sales price of homes in backlog at September 30, 2000, increased as compared to September 30, 1999, principally due to the growth in California and Virginia, markets which have higher prices than the overall average.

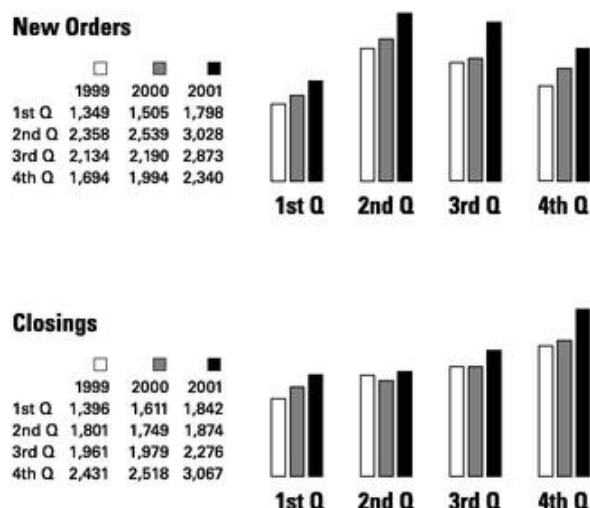


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SEASONALITY AND QUARTERLY VARIABILITY:

Beazer's homebuilding operating cycle generally reflects escalating new order activity in our second and third fiscal quarters and higher closings in our third and fourth fiscal quarters. We believe that this seasonality reflects the preference of homebuyers to shop for a new home in the spring, as well as the scheduling of construction to accommodate seasonal weather conditions.

The following chart presents certain quarterly operating data for our last twelve fiscal quarters and is indicative of this seasonality.

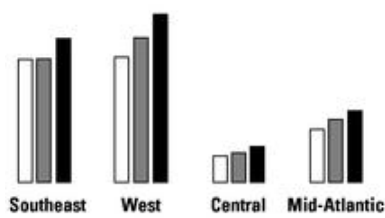


FINANCIAL RESULTS:

The following table provides additional details of revenues and certain expenses included in the Company's consolidated statements of operations (in thousands):

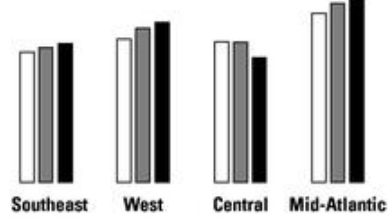
| Year Ended September 30, | 2001 | 2000 | 1999 |
|---|---------------------|---------------------|---------------------|
| Revenues: | | | |
| Homebuilding | \$ 1,769,069 | \$ 1,498,196 | \$ 1,376,557 |
| Land and lot sales | 18,017 | 19,017 | 10,553 |
| Mortgage origination | 26,572 | 17,671 | 13,059 |
| Intercompany elimination—mortgage | (8,481) | (7,019) | (6,095) |
| Total revenue | \$ 1,805,177 | \$ 1,527,865 | \$ 1,394,074 |
| Cost of home construction and land sales: | | | |
| Homebuilding | \$ 1,438,101 | \$ 1,248,099 | \$ 1,151,460 |
| Land and lot sales | 14,595 | 14,838 | 8,077 |
| Intercompany elimination—mortgage | (8,481) | (7,019) | (6,095) |
| Total cost of home construction and land sales | \$ 1,444,215 | \$ 1,255,918 | \$ 1,153,442 |
| Selling, general and administrative: | | | |
| Homebuilding operations | \$ 190,551 | \$ 157,794 | \$ 145,201 |
| Mortgage origination operations | 14,947 | 10,826 | 8,162 |
| Total selling, general and administrative | \$ 205,498 | \$ 168,620 | \$ 153,363 |

REVENUES:



Total Revenues by Region
(in millions)

| | Southeast | West | Central | Mid-Atlantic |
|------|-----------|---------|---------|--------------|
| 1999 | \$518.6 | \$526.9 | \$106.8 | \$224.3 |
| 2000 | \$517.9 | \$598.0 | \$114.1 | \$268.2 |
| 2001 | \$605.9 | \$703.2 | \$143.3 | \$316.7 |



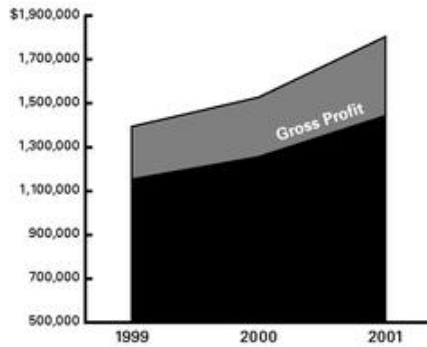
Average Sales Price by Region
(in thousands)

| | Southeast | West | Central | Mid-Atlantic |
|------|-----------|---------|---------|--------------|
| 1999 | \$166.9 | \$184.4 | \$178.8 | \$218.4 |
| 2000 | \$171.7 | \$197.4 | \$177.8 | \$229.4 |
| 2001 | \$177.5 | \$206.1 | \$159.7 | \$237.1 |

In fiscal 2001, we experienced revenue increases in all of our regions due to an increase in the number of home closings. The decrease in the average sales price of homes closed in the Central region is a result of our increased focus on the first-time buyer segment in Texas.

The increase in homebuilding revenues for fiscal 2000 compared to fiscal 1999 is the result of both an increase in the average price per home closed and an increase in the number of homes closed.

COST OF HOME CONSTRUCTION AND LAND SALES:



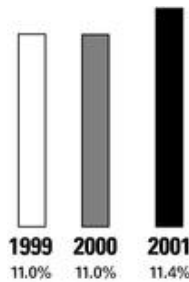
Cost of Home Construction and Land Sales:
(in thousands)

| | 1999 | 2000 | 2001 |
|--|-------------|-------------|-------------|
| Revenues | \$1,394,074 | \$1,527,865 | \$1,805,177 |
| Cost of home construction and land sales | \$1,153,442 | \$1,255,918 | \$1,444,215 |
| Gross Margin | 17.3% | 17.8% | 20.0% |

The increase in gross margins in each of the last two fiscal years is the result of a strong housing market and the continued expansion of our profitability initiatives, specifically the sale of upgrades and options through design centers and the services of our mortgage origination operations. The gross margin on upgrades and options sold through our design centers are significantly higher than our base homebuilding business, generally averaging 25% to 30%. Mortgage origination operations contribute to gross margin improvements by directing payment of certain mortgage closing costs and discounts to BMC rather than a third-party lender. In addition, a strong general economic environment has allowed us to increase sales prices in most of our markets, while overall costs were stable.

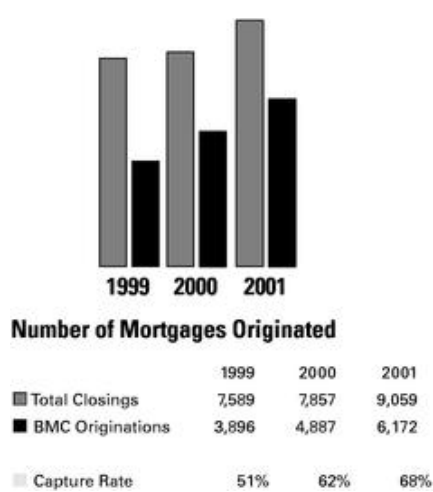
We executed several land sales during the past three fiscal years, and we realized gross profits of \$3.4 million, \$4.2 million and \$2.5 million on these land sales in fiscal 2001, 2000 and 1999, respectively.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSE:



During fiscal 2001, SG&A increased as a percentage of revenue due to higher management bonuses, the determination of which is related to the increase in profits rather than the increase in revenue, and increased insurance costs.

MORTGAGE ORIGINATION OPERATIONS:



During fiscal 2001, 2000 and 1999, we expanded our mortgage origination operations, resulting in a higher capture rate (Beazer Mortgage originations as a percentage of total home closings). During fiscal 2000, we opened a centralized processing center for our mortgage operations that we believe will contribute to increased efficiency in those operations in the future.

INCOME TAXES:

Income taxes for fiscal 2001, 2000 and 1999 were provided at the effective rate of 39.0% in each year. The principal difference between our effective rate and the U.S. Federal statutory rate is state income taxes.

DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES:

Effective October 1, 2000, we adopted Statement of Financial Accounting Standards ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. Upon adoption of this statement, we held no derivative instruments and, accordingly, recorded no transition adjustment. SFAS No. 133 establishes accounting and reporting standards for derivative instruments and

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for hedging activities by requiring that all derivatives be recognized in the balance sheet and measured at fair value. Gains or losses resulting from changes in the fair value of derivatives are recognized in earnings or recorded in other comprehensive income and recognized in the income statement when the hedged item affects earnings, depending on the purpose of the derivatives and whether they qualify for hedge accounting treatment.

We are exposed to fluctuations in interest rates. We enter into derivative agreements to manage interest costs and hedge against risks associated with fluctuating interest rates. We do not enter into or hold derivatives for trading or speculative purposes. During the year ended September 30, 2001, we entered into interest rate swap agreements (the "Swap Agreements") to effectively fix the variable interest rate on our \$100 million four-year Term Loan. The Swap Agreements mature in December 2004, on the same day as our \$100 million Term Loan.

The Swap Agreements have been designated as cash flow hedges and, accordingly, are recorded at fair value in our consolidated balance sheet and the related gains or losses are deferred in stockholders' equity, net of taxes, as a component of other comprehensive income. Amounts to be received or paid as a result of the Swap Agreements are accrued and recognized as adjustments to interest related to the designated debt. The net effect of this accounting on our operating results is that interest on the variable-rate debt is generally recorded based on fixed interest rates. No portion of these hedges was considered ineffective for the year ended September 30, 2001. We expect to reclassify \$1.0 million, net of taxes of \$0.6 million, from other comprehensive loss to interest expense over the next twelve months.

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The effect of the Swap Agreements as of September 30, 2001, was to record an after-tax other comprehensive loss of \$3.5 million. The estimated fair value of the Swap Agreements, based on current market rates, approximated \$5.7 million at September 30, 2001, and is included in other liabilities.

FINANCIAL CONDITION AND LIQUIDITY:

In August 2001, we acquired the assets of the homebuilding operations of Sanford Homes of Colorado for approximately \$68 million, of which \$59 million was paid in cash and approximately \$9 million for the assumption of accounts payable and accrued expenses. The acquisition has been accounted for as a purchase and, accordingly, the purchase price has been tentatively allocated to reflect the fair value of assets and liabilities acquired. The purchase price is subject to possible adjustment, which we expect to finalize in fiscal 2002. The acquisition was funded through cash generated from operations and a portion of the proceeds from a senior note offering.

At September 30, 2001, we had the following long-term debt (in thousands):

| Debt | Due | Amount |
|--|---------------|-------------------|
| 8 ⁵ / ₈ % Senior Notes | May 2011 | \$ 200,000 |
| 8 ⁷ / ₈ % Senior Notes | April 2008 | 100,000 |
| Term Loan | December 2004 | 100,000 |
| Unamortized discount | | (4,762) |
| Total | | \$ 395,238 |

During fiscal 2001, we renewed and extended our \$250 million revolving credit facility. The new facility provides for up to \$250 million of unsecured borrowings and bears interest at a fluctuating rate based upon the corporate base rate of interest announced by our lead bank, the federal funds rate or LIBOR. All outstanding borrowings under the facility will be due in September 2004. At September 30, 2001, we had no outstanding borrowings under the revolving credit facility. We fulfill our short-term cash requirements with cash generated from our operations and funds available from our unsecured revolving credit facility. Available borrowings under this credit facility are limited to certain percentages of homes under contract, unsold homes, substantially improved lots and accounts receivable. At September 30, 2001, we had available borrowings of \$207 million under the credit facility.

In December 2000, we entered into a \$75 million four-year term loan with a group of banks (the "Term Loan"). The Term Loan was subsequently increased to \$100 million during fiscal 2001. The Term Loan matures in December 2004 and bears interest at a fluctuating rate based upon the corporate base rate of interest announced by our lead bank, the federal funds rate or LIBOR (4.25% at September 30, 2001). The Term Loan contains various operating and financial covenants. Each of our significant subsidiaries is a guarantor under the Term Loan. All proceeds from the Term Loan were used to pay down then outstanding borrowings under our \$250 million revolving credit facility.

During fiscal 2001, we entered into Swap Agreements to manage interest costs and hedge against risks associated with fluctuating interest rates related to the Term Loan. These swaps effectively fix the interest rate (before spread) on the \$100 million Term Loan as follows: \$75 million is fixed at 5.925% per annum; \$10 million is fixed at 5.17% per annum; \$5 million is fixed at 5.50% per annum; and \$10 million is fixed at 5.055% per annum. The Swap Agreements expire in December 2004, when the Term Loan matures.

In May 2001, we issued \$200 million 8⁵/₈% Senior Notes due May 2011 (the "8⁵/₈% Senior Notes") at a price of 99.178% of their face amount (before underwriting discount and other issuance costs). Interest on the 8⁵/₈% Senior Notes is payable semiannually. We may, at our option, redeem the 8⁵/₈% Senior Notes in whole or in part at any time after May 2006, initially at 104.3125% of the principal amount and declining to 100% of the principal amount after May 2009. A portion of such notes may

also be redeemed prior to May 2004 under certain conditions. We used a portion of the proceeds from the issuance of the 8⁵/₈% Senior Notes to redeem \$115 million of our 9% Senior Notes which were due in March 2004. As a result of this redemption of the 9% Senior Notes, we recorded an extraordinary charge during fiscal 2001 of \$1.2 million for the write-off of associated unamortized debt issuance costs.

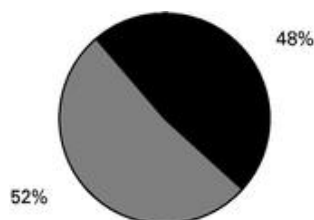
We have also previously issued \$100 million of 8⁷/₈% Senior Notes due in April 2008 (the "8⁷/₈% Senior Notes").

Interest on the 8⁷/₈% Senior Notes is payable semiannually. We may, at our option, redeem the 8⁷/₈% Senior Notes in whole or in part at any time after March 2003, initially at 104.438% of the principal amount and declining to 100% of the principal amount after March 2006.

All significant subsidiaries of Beazer Homes USA, Inc. are full and unconditional guarantors of the Senior Notes and our obligations under the credit facility and Term Loan, and are jointly and severally liable for our obligations under the Senior Notes, credit facility and Term Loan. Each significant subsidiary is a wholly owned subsidiary of Beazer, and Beazer has no independent assets or operations. Any subsidiaries of Beazer that are not guarantors are minor subsidiaries. Separate financial statements and other disclosures concerning each of the significant subsidiaries are not included, as the aggregate assets, liabilities, earnings and equity of the subsidiaries equal such amounts for the Company on a consolidated basis and separate subsidiary financial statements are not considered material to investors. The total assets, revenues and operating profit of the non-guarantor subsidiaries are in the aggregate immaterial to the Company on a consolidated basis. Neither the credit facility, Term Loan nor the Senior Notes restrict distributions to Beazer Homes USA, Inc. by its subsidiaries. At September 30, 2001, under the most restrictive covenants of each indenture, approximately \$114.9 million of our retained earnings was available for cash dividends and for share repurchases.

During fiscal 2000, our Board of Directors approved a stock repurchase plan authorizing the purchase of up to 500,000 shares of our outstanding common stock. Using borrowings under our credit facility, we completed during fiscal 2000 the repurchase of 500,000 shares on the open market for an aggregate purchase price of \$9.2 million.

We attempt to maintain approximately a three-year supply of land, with half or more controlled through options. At September 30, 2001, we controlled 30,759 lots (a 3.4 year supply based on fiscal 2001 closings), with 14,766 lots owned and 15,993 lots under option. At September 30, 2001, we had commitments with respect to option contracts with specific performance obligations of approximately \$23.7 million. We expect to exercise all of our option contracts with specific performance obligations and, subject to market conditions, substantially all of our option contracts without specific performance obligations. As a result of the flexibility that these options provide us, upon a change in market conditions, we may renegotiate the terms of the options prior to their ultimate exercise.



Land Bank

| | Lots |
|--------------|---------------|
| Optioned | 15,993 |
| Owned | 14,766 |
| Total | 30,759 |

In January 2000, we filed a \$300 million universal shelf registration statement on Form S-3 with the Securities and Exchange Commission. Pursuant to the filing, we may, from time to time over an extended period, offer new debt or equity securities. This shelf registration allows us to expediently access capital markets periodically. Our \$200 million 8⁵/₈% Senior Notes were sold pursuant to this registration statement. The timing and amount of future offerings, if any, will depend on market and general business conditions.

We believe that our current borrowing capacity at September 30, 2001, and anticipated cash flows from operations is sufficient to meet liquidity needs for the foreseeable future.

RECENT ACCOUNTING PRONOUNCEMENTS:

In July 2001, the Financial Accounting Standards Board ("FASB") issued SFAS No. 141, "Business Combinations," and SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 141 requires business combinations initiated after June 30, 2001, to be accounted for using the purchase method of accounting and broadens the criteria for recording intangible assets separate from goodwill. SFAS No. 141 also prohibits the use of the pooling-of-interest method for all business combinations initiated after June 30, 2001.

SFAS No. 142 requires the use of a nonamortization approach to account for purchased goodwill and certain intangibles. Under a nonamortization approach, goodwill and certain intangibles would not be amortized into results of operations, but instead would be reviewed for impairment at least annually and written down and charged to results of operations in the periods in which the recorded value of goodwill and certain intangibles are determined to be greater than their fair value.

SFAS No. 142 is generally effective for fiscal years beginning after December 15, 2001; however, we are considering early adoption of this statement on October 1, 2001, the first day of our 2002 fiscal year, as permitted by the statement. The adoption of SFAS No. 142 would result in the discontinuation of amortization of goodwill recorded at September 30, 2001 of \$0.8 million annually. We do not believe that any impairment charges will result from the adoption of this statement.

In addition, as required by SFAS No. 142 transition provisions, our August 2001 acquisitions have been accounted for under this new statement. Accordingly, goodwill of \$7.6 million recorded in these acquisitions is not being amortized.

SFAS No. 144, "Accounting for the Impairment of Long-Lived Assets," issued in August 2001 addresses accounting for and reporting of the impairment or disposal of long-lived assets. We must adopt SFAS No. 144 on October 1, 2002, the beginning of fiscal 2003. Early adoption of this standard is permitted; however, we have not yet decided if we will adopt this standard prior to fiscal 2003. We expect that the adoption of SFAS No. 144 will not have a significant impact on our financial position or results of operations. However, SFAS No. 144 may modify the presentation of the operating results from abandoned or disposed markets in our statement of operations in the future.

MARKET RISKS FOR FINANCIAL INSTRUMENTS:

We are exposed to a number of market risks in the ordinary course of business. Our primary market risk exposure for financial instruments relates to fluctuations in interest rates. We do not believe that our exposure in this area is material to cash flows or earnings. During fiscal 2001, we entered into interest rate swap agreements with an aggregate notional amount of \$100 million to manage our exposure to fluctuations in interest rates on our \$100 million variable rate Term Loan maturing in December 2004. These swaps effectively fix the rate on this debt at 5.74%. We do not enter into or hold derivatives for trading or speculative purposes.

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We have formally designated these agreements as cash flow hedges as discussed in Note 3 of the consolidated financial statements. The estimated fair value of the Swap Agreements, based on current market rates, approximated \$5.7 million at September 30, 2001 and is included in other liabilities.

The estimated fair value of our fixed rate debt at September 30, 2001 was \$291.5 million, compared to a carrying value of \$300 million. In addition, the effect of a hypothetical one percentage point decrease in interest rates would increase the estimated fair value of the fixed rate debt instruments from \$291.5 million to \$295.5 million at September 30, 2001.

OUTLOOK:

We are optimistic about our prospects for fiscal 2002 and confident about our long-term prospects. As a result of increased backlog at September 30, 2001, we expect home closings to increase in fiscal 2002. Based upon these factors, we currently target achieving earnings of \$9.00 per share for fiscal 2002. Over the long-term, we believe that projected population growth and household formation will drive demand for housing, especially in the growth states in which we operate. We continue to refine and improve the construction process with technology, invest in our people through education and explore new ways to expand our revenue base and reduce our costs using the Internet. All the while, we are maintaining financial discipline through the framework of our Value Created incentive plan. Our five-year plan, introduced in fiscal 1999, targeted earning \$9.00 per diluted share by fiscal 2004. We now target achieving this level of earnings in fiscal 2002, two years earlier than our five-year plan.

Forward-Looking Statements Beazer Homes USA, Inc.

CAUTIONARY STATEMENT PURSUANT TO SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Certain of the statements contained in this report, including those under "Outlook" and "Financial Condition," constitute "forward-looking statements" within the meaning of the federal securities laws. These statements include short-term and long-term targets for home closings and earnings per share. While we believe that these statements are accurate, our business is dependent upon general economic conditions and is subject to risks and uncertainties that could cause actual results to differ materially from those expressed in, or implied by, such statements. The most significant factors that could cause actual results to differ materially from those expressed in the forward-looking statements include, but are not limited to, the following:

Economic changes nationally or in one of our local markets,

- Volatility of mortgage interest rates and inflation,
- Increased competition,
- Shortages of skilled labor or raw materials used in production of houses,
- Increased prices for labor, land and raw materials used in the production of houses,
- Increased land development costs on projects under development,
- Availability and cost of general liability and other insurance to manage risks,
- Any delays in reacting to changing consumer preference in home design,
- Terrorist acts and other acts of war,
- Changes in consumer confidence,

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- Delays or difficulties in implementing our initiatives to reduce our production and overhead cost structure,
- Delays in land development or home construction resulting from adverse weather conditions,
- Potential delays or increased costs in obtaining necessary permits as a result of changes to laws, regulations or governmental policies,
- Other factors over which we have little or no control.

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Consolidated Statements of Income
Beazer Homes USA, Inc.

(dollars in thousands, except per share amounts)

| Year ended September 30, | 2001 | 2000 | 1999 |
|---|--------------|--------------|--------------|
| Total revenue | \$ 1,805,177 | \$ 1,527,865 | \$ 1,394,074 |
| Costs and expenses: | | | |
| Home construction and land sales | 1,444,215 | 1,255,918 | 1,153,442 |
| Amortization of previously capitalized interest | 33,235 | 27,704 | 25,469 |
| Selling, general and administrative | 205,498 | 168,620 | 153,363 |
| Operating income | 122,229 | 75,623 | 61,800 |
| Other income/(expense), net | 1,721 | (4,138) | (1,256) |
| Income before income taxes and extraordinary item | 123,950 | 71,485 | 60,544 |
| Provision for income taxes | 48,341 | 27,879 | 23,610 |
| Net income before extraordinary item | 75,609 | 43,606 | 36,934 |
| Extraordinary item—loss on early extinguishment of debt (net of taxes of \$469) | (733) | — | — |
| Net income | \$ 74,876 | \$ 43,606 | \$ 36,934 |
| Dividends and other payments to preferred stockholders | \$ — | \$ — | \$ 3,343 |

Weighted average number of shares (in thousands):

| | | | |
|--------------------------------------|---------|---------|---------|
| Basic | 8,145 | 8,254 | 7,320 |
| Diluted | 9,156 | 8,630 | 8,895 |
| Basic earnings per share: | | | |
| Net income before extraordinary item | \$ 9.28 | \$ 5.28 | \$ 4.59 |
| Extraordinary item | (0.09) | — | — |
| Net earnings | \$ 9.19 | \$ 5.28 | \$ 4.59 |
| Diluted earnings per share: | | | |
| Net income before extraordinary item | \$ 8.26 | \$ 5.05 | \$ 4.15 |
| Extraordinary item | (0.08) | — | — |
| Net earnings | \$ 8.18 | \$ 5.05 | \$ 4.15 |

See Notes to Consolidated Financial Statements.

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Consolidated Balance Sheets Beazer Homes USA, Inc.

(dollars in thousands, except per share amounts)

| September 30, | 2001 | 2000 |
|---|------------|------------|
| Assets: | | |
| Cash and cash equivalents | \$ 41,678 | \$ — |
| Accounts receivable | 38,921 | 23,087 |
| Inventory | 844,737 | 629,663 |
| Deferred tax asset | 19,640 | 9,506 |
| Property, plant and equipment, net | 12,586 | 12,206 |
| Goodwill, net | 14,094 | 7,250 |
| Other assets | 23,633 | 14,516 |
| Total Assets | \$ 995,289 | \$ 696,228 |
| Liabilities and Stockholders' Equity: | | |
| Liabilities: | | |
| Trade accounts payable | \$ 70,893 | \$ 72,212 |
| Other liabilities | 177,963 | 101,129 |
| Revolving credit facility | — | 40,000 |
| Term Loan | 100,000 | — |
| Senior Notes (net of discount of \$4,762 and \$2,651, respectively) | 295,238 | 212,349 |
| Total Liabilities | 644,094 | 425,690 |
| Stockholders' Equity: | | |
| Preferred stock (par value \$.01 per share, 5,000,000 shares authorized, no shares issued) | — | — |
| Common stock (par value \$.01 per share, 30,000,000 shares authorized, 12,422,935 and 12,275,851 issued, 8,623,931 and 8,483,824 outstanding) | 124 | 123 |
| Paid-in capital | 202,121 | 195,134 |
| Retained earnings | 215,970 | 141,094 |
| Treasury stock, at cost (3,799,004 and 3,792,027 shares) | (61,510) | (61,204) |
| Unearned restricted stock | (2,027) | (4,609) |
| Accumulated other comprehensive loss | (3,483) | — |
| Total Stockholders' Equity | 351,195 | 270,538 |
| Total Liabilities and Stockholders' Equity | \$ 995,289 | \$ 696,228 |

See Notes to Consolidated Financial Statements.

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Consolidated Statements of Stockholders' Equity
Beazer Homes USA, Inc.

(dollars in thousands)

| | Preferred Stock | Common Stock | Paid-in Capital | Retained Earnings | Treasury Stock | Unearned Restricted Stock | Accumulated Other Comprehensive Loss | Total |
|---|-----------------|--------------|-----------------|-------------------|----------------|---------------------------|--------------------------------------|------------|
| Balance, September 30, 1998 | \$ 20 | \$ 93 | \$ 192,729 | \$ 64,003 | \$ (51,983) | \$ (5,638) | — | \$ 199,224 |
| Net income | | | | 36,934 | | | | 36,934 |
| Amortization of unearned restricted stock | | | 138 | | | 933 | | 1,071 |
| Exercises of stock options | | 1 | 202 | | | | | 203 |
| Issuance of Bonus Stock | | 2 | 677 | | | | | 679 |
| Dividends and other payments to preferred stockholders | | | | (3,449) | | | | (3,449) |
| Conversion and redemption of preferred stock | (20) | 27 | (7) | | | | | — |
| Other | | | 789 | | | (789) | | — |
| Balance, September 30, 1999 | — | 123 | 194,528 | 97,488 | (51,983) | (5,494) | — | 234,662 |
| Net income | | | | 43,606 | | | | 43,606 |
| Amortization of unearned restricted stock | | | 240 | | | 1,140 | | 1,380 |
| Issuance of Bonus Stock | | | 111 | | | | | 111 |
| Purchase of treasury stock (500,000 shares) | | | | | (9,221) | | | (9,221) |
| Other | | | 255 | | | (255) | | — |
| Balance, September 30, 2000 | — | 123 | 195,134 | 141,094 | (61,204) | (4,609) | — | 270,538 |
| Comprehensive income: | | | | | | | | |
| Net income | | | | 74,876 | | | | 74,876 |
| Unrealized loss on interest rate swaps, net of tax of \$2,228 | | | | | | | (3,483) | (3,483) |
| Total comprehensive income | | | | | | | | 71,393 |
| Amortization of unearned restricted stock | | | | | | 2,926 | | 2,926 |
| Exercises of stock options | | 1 | 2,286 | | | | | 2,287 |
| Issuance of Bonus Stock | | | 431 | | | 89 | | 520 |
| Tax benefit from stock transactions | | | 3,837 | | | | | 3,837 |
| Purchase of treasury stock (6,977 shares) | | | | | (306) | | | (306) |
| Other | | | 433 | | | (433) | | — |
| Balance, September 30, 2001 | \$ — | \$ 124 | \$ 202,121 | \$ 215,970 | \$ (61,510) | \$ (2,027) | \$ (3,483) | \$ 351,195 |

See Notes to Consolidated Financial Statements.

Consolidated Statements of Cash Flows
Beazer Homes USA, Inc.

(dollars in thousands)

| Year ended September 30, | 2001 | 2000 | 1999 |
|--|-----------|-----------|-----------|
| Cash flows from operating activities: | | | |
| Net income | \$ 74,876 | \$ 43,606 | \$ 36,934 |
| Adjustments to reconcile net income to net cash (used)/provided by operating activities: | | | |

| | | | |
|---|------------------|-----------------|-----------------|
| Depreciation and amortization | 9,253 | 6,852 | 5,508 |
| Loss on early extinguishment of debt | 1,202 | — | — |
| Provision for deferred income taxes | (7,906) | (3,792) | (2,431) |
| Changes in operating assets and liabilities, net of effects from acquisitions: | | | |
| Increase in accounts receivable | (15,814) | (1,671) | (4,467) |
| Increase in inventory | (153,668) | (97,104) | (23,129) |
| (Decrease)/increase in trade accounts payable | (26,676) | 28,571 | (8,382) |
| Increase in other liabilities | 65,397 | 11,083 | 34,440 |
| Change in book overdraft | 20,095 | (11,219) | (8,876) |
| Other | 3,826 | 4,948 | 4,483 |
| Net cash (used)/provided by operating activities | (29,415) | (18,726) | 34,080 |
| Cash flows from investing activities: | | | |
| Capital expenditures | (5,906) | (3,775) | (4,104) |
| Investments in unconsolidated joint ventures | (4,517) | (8,030) | (2,100) |
| Acquisitions, net of cash acquired | (62,412) | — | (91,800) |
| Net cash used by investing activities | (72,835) | (11,805) | (98,004) |
| Cash flows from financing activities: | | | |
| Change in revolving credit facility | (40,000) | 40,000 | — |
| Proceeds from Term Loan | 100,000 | — | — |
| Proceeds from issuance of 8 ⁵ /8% Senior Notes | 198,356 | — | — |
| Redemption of 9% Senior Notes | (115,000) | — | — |
| Debt issuance costs | (5,246) | (248) | (438) |
| Proceeds from stock option exercises | 2,287 | — | 203 |
| Tax benefit related to stock options exercised | 3,837 | — | — |
| Dividends paid on preferred stock | — | — | (3,449) |
| Common share repurchases | (306) | (9,221) | — |
| Net cash provided/(used) by financing activities | 143,928 | 30,531 | (3,684) |
| Increase/(decrease) in cash and cash equivalents | 41,678 | — | (67,608) |
| Cash and cash equivalents at beginning of year | — | — | 67,608 |
| Cash and cash equivalents at end of year | \$ 41,678 | \$ — | \$ — |
| Supplemental cash flow information: | | | |
| Interest paid | \$ 28,241 | \$ 29,244 | \$ 25,356 |
| Income taxes paid | \$ 38,288 | \$ 31,533 | \$ 25,909 |

See Notes to Consolidated Financial Statements.

Notes To Consolidated Financial Statements

Beazer Homes USA, Inc.

(1) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization—Beazer Homes USA, Inc. is one of the ten largest single-family homebuilders in the United States based on number of homes closed. We design, sell and build single-family homes in 35 markets located in Arizona, California, Colorado, Florida, Georgia, Maryland, Nevada, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas and Virginia. We also provide mortgage origination services for our homebuyers through Beazer Mortgage Corporation ("BMC"). In addition, we provide title services and homeowners and other insurance to our homebuyers.

Presentation—Our homebuilding operations conducted across several different geographic regions of the United States have similar characteristics; therefore, they have been aggregated into one reportable segment—the homebuilding segment.

The accompanying consolidated financial statements include the accounts of Beazer Homes USA, Inc. and our wholly owned subsidiaries. Intercompany balances have been eliminated in consolidation.

Cash and Cash Equivalents—We consider investments with maturities of three months or less when purchased to be cash equivalents. Book overdrafts of \$20.1 million were included in trade accounts payable at September 30, 2000.

Inventory—Inventory consists solely of residential real estate developments. Interest, real estate taxes and development costs are capitalized in inventory during the development and construction period.

Property, Plant and Equipment—Property, plant and equipment are recorded at cost. Depreciation is computed on a straight line basis at rates based on estimated useful lives as follows:

| | |
|-------------------------|--------------|
| Buildings | 15 years |
| Machinery and equipment | 3 - 12 years |
| Information systems | 3 - 5 years |
| Furniture and fixtures | 3 - 5 years |

Goodwill—Goodwill represents the excess of the purchase price over the fair value of assets acquired and, for acquisitions completed by June 2001, is being amortized over a 15-year period. Goodwill arising from our August 2001 acquisitions (Note 2) is not being amortized. Amortization expense of goodwill was \$801,000 for each of the three years ended September 30, 2001, 2000 and 1999. Associated accumulated amortization was \$5,588,000 and \$4,787,000 at September 30, 2001 and 2000, respectively. In the event that facts and circumstances indicate that the carrying value of goodwill may be impaired, an evaluation of recoverability is performed. The evaluation compares the estimated future undiscounted cash flows associated with the asset to the asset's carrying amount to determine whether a write-down to discounted cash flow value is required.

Other Assets—Other assets include prepaid expenses, debt issuance costs and investments in unconsolidated entities, including our interests in real estate development joint ventures in Maryland and northern Virginia.

We also have a non-controlling 49% equity method interest in Premier Communities, a joint venture with Corporacion GEO S.A. de C.V., a Mexican homebuilder, to build affordable housing in the United States. The joint venture is now in the process of winding down. Included in other expense for the year ended September 30, 2000, is a \$3.3 million charge to write-off our then remaining impaired investment in the joint venture and to record our then expected obligation to fund certain

letters of credit we issued to guarantee our share of the outstanding indebtedness of the joint venture. In addition to this charge, other expense includes \$2.8 million for the year ended September 30, 2000 and \$2.1 million for the year ended September 30, 1999, respectively, for our share of the joint venture's operating losses. At September 30, 2001, we had \$0.4 million accrued for the winding down of the joint venture, which we anticipate will occur in fiscal 2002. We currently do not expect to record further charges relating to the winding down of the joint venture in the future.

Income Taxes—Deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse.

Other Liabilities—Other liabilities include homebuyer deposits, land purchase obligations, accrued compensation, accrued warranty costs and various other accrued expenses.

Income Recognition and Classification of Costs—Income from the sale of a residential unit or land parcel is recognized when the closing has occurred and the risk of ownership is transferred to the buyer. Sales commissions are included in selling, general and administrative expense.

Fees paid to BMC from third-party lenders are recognized as revenue concurrent with the closing on the sale of the residential unit. All expenses of operating BMC are included in selling, general and administrative expense in the period incurred.

Estimated future warranty costs are charged to cost of sales in the period when the revenues from home closings are recognized. Such estimated warranty costs generally range from 0.5% to 1.0% of total revenue and, based upon experience, have been sufficient to cover costs incurred.

Advertising costs of \$19,793,000, \$16,545,000 and \$14,349,000 for fiscal years 2001, 2000 and 1999, respectively, are expensed as incurred.

Earnings Per Share—The computation of basic earnings per common share is determined by dividing net income applicable to common shareholders by the weighted average number of common shares outstanding during the period. Diluted earnings per share additionally gives effect (when dilutive) to stock options, stock awards, and the assumed conversion of convertible preferred stock.

Fair Value of Financial Instruments—The historical carrying amounts of cash and cash equivalents and our Term Loan (Note 8) are reasonable estimates of their fair value. The fair value of our publicly held Senior Notes (Note 9) is estimated based on the quoted bid prices for these debt instruments and was approximately \$291.5 million at September 30, 2001. The fair values of our interest rate swaps, based on current market rates, approximated \$5.7 million at September 30, 2001, and is included in other liabilities.

Stock-Based Compensation—As described in Note 14, we have elected to follow the intrinsic value method to account for compensation expense related to stock awards and to furnish the pro forma disclosures required under Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation." Since our stock option awards are granted at prices no less than the fair-market value of the shares at the date of grant, no compensation expense is recognized for these awards. Compensation expense related to restricted stock awards is determined at the date of grant, recorded as unearned compensation expense and amortized over the vesting period of the awarded shares. The unearned compensation expense related to such awards is reflected as a reduction of stockholders' equity.

Use of Estimates—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 reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications—Certain items in prior period financial statements have been reclassified to conform to the current presentation.

Recent Accounting Pronouncements—In July 2001, the Financial Accounting Standards Board ("FASB") issued SFAS No. 141, "Business Combinations," and SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 141 requires business combinations initiated after June 30, 2001, to be accounted for using the purchase method of accounting and broadens the criteria for recording intangible assets separate from goodwill. SFAS No. 141 also prohibits the use of the pooling-of-interest method for all business combinations initiated after June 30, 2001.

SFAS No. 142 requires the use of a nonamortization approach to account for purchased goodwill and certain intangibles. Under a nonamortization approach, goodwill and certain intangibles would not be amortized into results of operations, but instead would be reviewed for impairment at least annually and written down and charged to results of operations in the periods in which the recorded value of goodwill and certain intangibles are determined to be greater than their fair value.

SFAS No. 142 is generally effective for fiscal years beginning after December 15, 2001; however, we are considering early adoption of this statement on October 1, 2001, the first day of our 2002 fiscal year, as permitted by the statement. The adoption of SFAS No. 142 would result in the discontinuation of amortization of goodwill recorded at September 30, 2001 of \$0.8 million annually. We do not believe any impairment charges will result from the adoption of this statement.

In addition, as required by SFAS No. 142 transition provisions, our August 2001 acquisitions (Note 2) have been accounted for under this new statement. Accordingly, goodwill of \$7.6 million recorded in these acquisitions is not being amortized.

SFAS No. 144, "Accounting for the Impairment of Long-Lived Assets," issued in August 2001 addresses accounting for and reporting of the impairment or disposal of long-lived assets. We must adopt SFAS No. 144 on October 1, 2002, the beginning of fiscal 2003. Early adoption of this standard is permitted; however, we have not yet decided if we will adopt this standard prior to fiscal 2003. We expect that the adoption of SFAS No. 144 will not have a significant impact on our financial position or results of operations. However, SFAS No. 144 may modify the presentation of the operating results from abandoned or disposed markets in our statement of operations in the future.

(2) ACQUISITIONS

In August 2001, we acquired certain assets and assumed certain liabilities (approximately \$9 million) of Sanford Homes of Colorado for approximately \$59 million in cash. The acquisition has been accounted for as a purchase; accordingly, the purchase price has been tentatively allocated to reflect the fair value of assets and liabilities acquired. This acquisition resulted in \$6.9 million of goodwill and \$1 million of other intangible assets; however, as discussed in Note 1, this goodwill recorded will not be amortized as a result of SFAS No. 142 transition provisions.

The following unaudited pro forma financial data (in thousands, except per share amounts) gives effect to our acquisition of Sanford Homes as if it had occurred on October 1, 1999. The pro forma financial data is provided for comparative purposes only and is not necessarily indicative of the results which would have been obtained if the Sanford Homes acquisition had been effected at that date.

| Year ended September 30, | 2001 | 2000 |
|--------------------------|--------------|--------------|
| Total revenues | \$ 1,910,231 | \$ 1,666,026 |
| Net income | 82,478 | 47,458 |
| Net income per share | | |
| Basic | \$ 10.13 | \$ 5.75 |
| Diluted | 9.01 | 5.50 |

In addition, in August 2001 we acquired certain assets of a homebuilder in Jacksonville, Florida, for approximately \$3 million resulting in \$0.7 million of goodwill.

In December 1998, we acquired the assets and assumed certain liabilities (approximately \$22 million) of the homebuilding operations of Trafalgar House Property, Inc. ("THPI") for approximately \$90 million in cash. The acquisition has been accounted for as a purchase; accordingly, the purchase price has been allocated to reflect the fair value of assets and liabilities acquired. This resulted in no goodwill.

(3) DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

Effective October 1, 2000, we adopted SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. Upon adoption of this statement, we held no derivative instruments and, accordingly, recorded no transition adjustment. SFAS No. 133 establishes accounting and reporting standards for derivative instruments and for hedging activities by requiring that all derivatives be recognized in the balance sheet and measured at fair value. Gains or losses resulting from changes in the fair value of derivatives are recognized in earnings or recorded in other comprehensive income, and recognized in the income statement when the hedged item affects earnings, depending on the purpose of the derivatives and whether they qualify for hedge accounting treatment.

We are exposed to fluctuations in interest rates. We enter into derivative agreements to manage interest costs and hedge against risks associated with fluctuating interest rates. We do not enter into or hold derivatives for trading or speculative purposes. During the year ended September 30, 2001, we entered into interest rate swap agreements (the "Swap Agreements") to effectively fix the variable interest rate on our \$100 million four-year Term Loan (Note 8). The Swap Agreements mature in December 2004, on the same day as our \$100 million Term Loan.

The Swap Agreements have been designated as cash flow hedges and, accordingly, are recorded at fair value in our consolidated balance sheet and the related gains or losses are deferred in stockholders' equity, net of taxes, as a component of other comprehensive income. Amounts to be received or paid as a result of the Swap Agreements are accrued and recognized as adjustments to interest related to the designated debt. The net effect of this accounting on our operating results is that interest on the variable-rate debt is generally recorded based on fixed interest rates. No portion of these hedges was considered ineffective for the year ended September 30, 2001. We expect to reclassify \$1.0 million, net of taxes of \$0.6 million, from other comprehensive loss to interest expense over the next twelve months.

The effect of the Swap Agreements as of September 30, 2001, was to record an after-tax other comprehensive loss of \$3.5 million. The estimated fair value of the Swap Agreements, based on current market rates, approximated \$5.7 million at September 30, 2001, and is included in other liabilities.

(4) INVENTORY

Inventory includes (in thousands):

| September 30, | 2001 | 2000 |
|---|-------------------|-------------------|
| Homes under construction | \$ 435,856 | \$ 290,277 |
| Development projects in progress | 338,401 | 283,563 |
| Unimproved land held for future development | 22,417 | 12,325 |
| Model homes | 48,063 | 43,498 |
| Total | \$ 844,737 | \$ 629,663 |

Homes under construction include homes finished and ready for delivery and homes in various stages of construction. We had 264 (\$45.9 million) and 296 (\$41.8 million) completed homes that were

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not subject to a sales contract, not including model homes, at September 30, 2001, and 2000, respectively.

Development projects in progress consist principally of land and land improvement costs. Certain of the fully developed lots in this category are reserved by a deposit or sales contract.

Inventory located in California, the state with our largest concentration of inventory, was \$203.8 million and \$150.5 million at September 30, 2001, and 2000, respectively.

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We acquire certain lots by means of option contracts. Option contracts generally require the payment of cash for the right to acquire lots during a specified period of time at a certain price. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, which aggregated approximately \$15.1 million and \$17.8 million at September 30, 2001, and 2000, respectively, and are included in development projects in process. Under option contracts, both with and without specific performance, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Below is a summary of amounts (in thousands) committed under all options at September 30, 2001:

| | Aggregate Purchase Price of Options | |
|--------------------------------------|--|----------------|
| Options with specific performance | \$ | 23,679 |
| Options without specific performance | | 487,226 |
| Total options | \$ | 510,905 |

(5) INTEREST

Information regarding interest (in thousands) is as follows:

| Year Ended September 30, | 2001 | 2000 | 1999 |
|---|-----------|-----------|-----------|
| Capitalized interest in inventory, beginning of year: | \$ 13,681 | \$ 10,488 | \$ 9,083 |
| Interest incurred and capitalized | 35,825 | 30,897 | 26,874 |
| Capitalized interest amortized to cost of sales | (33,235) | (27,704) | (25,469) |
| Capitalized interest in inventory, end of the year: | \$ 16,271 | \$ 13,681 | \$ 10,488 |

(6) PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment consists of (in thousands):

| September 30, | 2001 | 2000 |
|------------------------------------|-----------|-----------|
| Land and buildings | \$ 967 | \$ 967 |
| Leasehold improvements | 2,962 | 2,063 |
| Machinery and equipment | 10,003 | 7,512 |
| Information systems | 13,009 | 11,403 |
| Furniture and fixtures | 4,915 | 4,518 |
| | 31,856 | 26,463 |
| Less: Accumulated depreciation | 19,270 | 14,257 |
| Property, plant and equipment, net | \$ 12,586 | \$ 12,206 |

(7) REVOLVING CREDIT FACILITY

We maintain a revolving line of credit with a group of banks. During fiscal 2001, we renewed and extended our \$250 million revolving credit facility. The new credit facility provides for up to \$250 million of unsecured borrowings. Borrowings under the credit facility generally bear interest at a fluctuating rate based upon the corporate base rate of interest announced by our lead bank, the federal funds rate or LIBOR. All outstanding borrowings will be due in September 2004. The credit facility contains various operating and financial covenants. Each of our significant subsidiaries is a guarantor under the credit facility.

Available borrowings under the credit facility are limited to certain percentages of homes under contract, unsold homes, substantially improved lots and accounts receivable. At September 30, 2001, we had no borrowings outstanding and had available borrowings of \$207 million under the credit facility. At September 30, 2000, we had borrowings of \$40 million outstanding under the credit facility at an average interest rate of 9.6%.

(8) TERM LOAN

In December 2000, we entered into a \$75 million four-year term loan with a group of banks (the "Term Loan"). The Term Loan was subsequently increased to \$100 million during fiscal 2001. The Term Loan matures in December 2004 and bears interest at a fluctuating rate based upon the corporate base rate of interest announced by our lead bank, the federal funds rate or LIBOR (4.25% at September 30, 2001). The Term Loan contains various operating and financial covenants. Each of our significant subsidiaries is a guarantor under the Term Loan. All proceeds from the Term Loan were used to pay down then outstanding borrowings under our revolving credit facility.

As discussed in Note 3, we entered into Swap Agreements to manage interest costs and hedge against risks associated with fluctuating interest rates related to the Term Loan. As of September 30, 2001, we had entered into interest rate swaps to effectively fix the interest rate (before spread) on the \$100 million Term Loan as follows: \$75 million is fixed at 5.925% per annum; \$10 million is fixed at 5.17% per annum; \$5 million is fixed at 5.50% per annum; and \$10 million is fixed at 5.055% per annum. The Swap Agreements expire in December 2004, when the Term Loan matures.

(9) SENIOR NOTES

In May 2001, we issued \$200 million 8⁵/₈% Senior Notes due May 2011 (the "8⁵/₈% Senior Notes") at a price of 99.178% of their face amount (before underwriting discount and other issuance costs). Interest on the 8⁵/₈% Senior Notes is payable semiannually. We may, at our option, redeem the 8⁵/₈% Senior Notes in whole or in part at any time after May 2006, initially at 104.3125% of the principal amount and declining to 100% of the principal amount after May 2009. A portion of such notes may also be redeemed prior to May 2004 under certain conditions. We used a portion of the proceeds from the issuance of the 8⁵/₈% Senior Notes to redeem \$115 million of our 9% Senior Notes which were due in March 2004. As a result of this redemption of the 9% Senior Notes, we recorded an extraordinary charge during fiscal 2001 of \$1.2 million for the write-off of associated unamortized debt issuance costs.

We have also previously issued \$100 million of 8⁷/₈% Senior Notes due in April 2008 (the "8⁷/₈% Senior Notes"). Interest on the 8⁷/₈% Senior Notes is payable semiannually. We may, at our option, redeem the 8⁷/₈% Senior Notes in whole or in part at any time after March 2003, initially at 104.438% of the principal amount and declining to 100% of the principal amount after March 2006.

The 8⁵/₈% Senior Notes and the 8⁷/₈% Senior Notes are unsecured obligations ranking pari passu with all other existing and future senior indebtedness. All of our significant subsidiaries are full and unconditional guarantors of the Senior Notes and our obligations under the credit facility and Term Loan, and are jointly and severally liable for obligations under the Senior Notes, credit facility and Term Loan. Each significant subsidiary is a wholly owned subsidiary of Beazer, and Beazer has no independent assets or operations. Any subsidiaries of Beazer that are not guarantors are minor subsidiaries.

The indentures under which the 8⁵/₈% Senior Notes and the 8⁷/₈% Senior Notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At September 30, 2001, under the most restrictive covenants of each indenture, approximately \$114.9 million of our retained earnings was available for cash dividends and for share repurchases. Each indenture provides that, in the event of defined changes in control or if our consolidated tangible net worth falls below a

specified level or in certain circumstances upon sale of assets, we are required to offer to repurchase certain specified amounts of outstanding Senior Notes.

(10) INCOME TAXES

The provision for income taxes, before extraordinary item, consists of (in thousands):

| Year Ended September 30, | 2001 | 2000 | 1999 |
|--------------------------|------------------|------------------|------------------|
| Current: | | | |
| Federal | \$ 49,323 | \$ 28,448 | \$ 23,013 |
| State | 8,015 | 3,965 | 3,440 |
| Deferred | (8,997) | (4,534) | (2,843) |
| Total | \$ 48,341 | \$ 27,879 | \$ 23,610 |

The provision for income taxes, before extraordinary item, differs from the amount computed by applying the federal income tax statutory rate as follows (in thousands):

| Year Ended September 30, | 2001 | 2000 | 1999 |
|--|-----------|-----------|-----------|
| Income tax computed at statutory rate | \$ 43,383 | \$ 25,020 | \$ 21,189 |
| State income taxes, net of federal benefit | 4,734 | 2,615 | 2,236 |

| | | | |
|-----------------------|-----------|-----------|-----------|
| Goodwill amortization | 189 | 189 | 189 |
| Other | 35 | 55 | (4) |
| | | | |
| Total | \$ 48,341 | \$ 27,879 | \$ 23,610 |

Deferred tax assets and liabilities are composed of the following (in thousands):

| September 30, | 2001 | 2000 |
|---|-----------|----------|
| Deferred Tax Assets: | | |
| Warranty, litigation and other reserves | \$ 10,071 | \$ 5,151 |
| Incentive compensation | 5,732 | 2,789 |
| Inventory valuation | 157 | 848 |
| Property, equipment and other assets | 805 | — |
| Interest rate swaps | 2,229 | — |
| Other | 646 | 1,859 |
| | | |
| Total Deferred Tax Assets | 19,640 | 10,647 |
| Deferred Tax Liabilities: | | |
| Property, equipment and other | — | (1,141) |
| | | |
| Net Deferred Tax Assets | \$ 19,640 | \$ 9,506 |

We believe that based upon our history of profitable operations, it is more likely than not that our net deferred tax asset will be realized.

(11) LEASES

We are obligated under various noncancelable operating leases for office facilities and equipment. Rental expense under these agreements amounted to approximately \$7,569,000, \$5,992,000 and \$5,381,000 for the years ended September 30, 2001, 2000 and 1999, respectively. As of September 30,

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2001, future minimum lease payments under noncancelable operating lease agreements are as follows (in thousands):

| Year Ending September 30, | |
|---------------------------|-----------|
| 2002 | \$ 5,446 |
| 2003 | 4,418 |
| 2004 | 3,710 |
| 2005 | 2,732 |
| 2006 | 1,650 |
| Thereafter | 1,162 |
| | |
| Total | \$ 19,118 |

(12) STOCKHOLDERS' EQUITY

Preferred Stock—During fiscal 1999, we induced the conversion of our then outstanding preferred stock into common stock and redeemed unconverted shares for cash. We currently have no shares of preferred stock outstanding.

Common Stock Repurchase Plan—In November 1999, our Board of Directors approved a new stock repurchase plan authorizing the purchase of up to 500,000 shares of our outstanding common stock. During fiscal 2000 we completed the plan and repurchased 500,000 shares on the open market for an aggregate purchase price of \$9.2 million (average price of \$18.38 per share).

Shareholder Rights Plan—In June 1996, our Board of Directors adopted a Shareholder Rights Plan and distributed a dividend of one preferred share purchase right (a "Right") to purchase one one-hundredth of a share of Series B Junior Participating Preferred Stock, par value \$0.01 per share (the "Junior Preferred Shares"), of the Company. The Rights become exercisable in certain limited circumstances involving principally the acquisition of over 20% of our outstanding common stock by any one individual or group. The Rights are initially exercisable at a price of \$80 per one hundredth of a Junior Preferred Share subject to adjustment. Following certain other events after the Rights have become exercisable, each Right entitles its holder to purchase at the Right's then-current exercise price, a number of shares of our common stock having a market value of twice such price or, in certain circumstances, securities of the acquirer, having a then-current market value of two times the exercise price of the Right.

The Rights are redeemable and may be amended at our option before they become exercisable. Until a Right is exercised, the holder of a Right has no rights as a shareholder of the Company. The Rights expire in June 2006.

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(13) EARNINGS PER SHARE

Basic and diluted earnings per share are calculated as follows (in thousands, except per share amounts):

| | 2001 | 2000 | 1999 |
|--|-----------|-----------|-----------|
| Earnings: | | | |
| Net income before extraordinary item | \$ 75,609 | \$ 43,606 | \$ 36,934 |
| Extraordinary loss on early extinguishment of debt | (733) | — | — |
| Net income | 74,876 | 43,606 | 36,934 |
| Less: Dividends and other payments to preferred stockholders | — | — | 3,343 |
| Net income applicable to common stockholders | \$ 74,876 | \$ 43,606 | \$ 33,591 |
| Basic: | | | |
| Net income applicable to common stockholders | \$ 74,876 | \$ 43,606 | \$ 33,591 |
| Weighted average number of common shares outstanding | 8,145 | 8,254 | 7,320 |
| Basic earnings per share before extraordinary item | \$ 9.28 | \$ 5.28 | \$ 4.59 |
| Extraordinary item per share | (0.09) | — | — |
| Basic earnings per share | \$ 9.19 | \$ 5.28 | \$ 4.59 |
| Diluted: | | | |
| Net income applicable to common stockholders | \$ 74,876 | \$ 43,606 | \$ 33,591 |
| Add back: Payments to preferred stockholders | — | — | 3,343 |
| Adjusted net income applicable to common stockholders | \$ 74,876 | \$ 43,606 | \$ 36,934 |
| Weighted average number of common shares outstanding | 8,145 | 8,254 | 7,320 |
| Effect of dilutive securities: | | | |
| Assumed conversion of | | | |
| Preferred stock | — | — | 1,232 |
| Restricted stock | 493 | 298 | 254 |
| Options to acquire common stock | 518 | 78 | 89 |
| Diluted weighted average number of common shares outstanding | 9,156 | 8,630 | 8,895 |
| Diluted earnings per share before extraordinary item | \$ 8.26 | \$ 5.05 | \$ 4.15 |
| Extraordinary item per share | (0.08) | — | — |
| Diluted earnings per share | \$ 8.18 | \$ 5.05 | \$ 4.15 |

Options to purchase 276,370 and 18,000 shares of common stock were not included in the computation of diluted earnings per share for the years ended September 30, 2000, and 1999, respectively, because the options' exercise price was greater than the average market price of the common shares during those years.

(14) RETIREMENT PLAN AND INCENTIVE AWARDS

401(k) Retirement Plan—We sponsor a 401(k) Plan (the "Plan"). Substantially all employees are eligible for participation in the Plan after completing one month of service with us. Participants may defer and contribute to the Plan from 1% to 17% of their salary with certain limitations on highly compensated individuals. We match 50% of the first 6% of the participant's contributions. The participant's contributions vest 100% immediately, while our contributions vest over five years. Our total contributions for the years ended September 30, 2001, 2000 and 1999 were approximately \$1,632,000, \$1,555,000 and \$1,496,000, respectively.

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Stock Incentive Plans—During fiscal 2000, we adopted the 1999 Stock Incentive Plan (the "1999 Plan") which replaced the 1994 Stock Incentive Plan (the "1994 Plan"). We also have the Non-Employee Director Stock Option Plan (the "Non-Employee Director Plan"). At September 30, 2001, we had reserved 2,275,000 shares of common stock for issuance under our various stock incentive plans and have 172,664 shares available for future grants.

Stock Option Awards—We have issued several stock option awards to officers and key employees under both the 1999 Plan and the 1994 Plan and to non-employee directors under the Non-Employee Director Plan. Stock options are generally exercisable at the fair market value on the grant date and may be exercised between 3-10 years from the date such options were granted.

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Stock Option Awards—Information regarding activity under our stock option plans is summarized as follows:

| Year ended September 30, | | | | | |
|--------------------------|---------------------------------|--------|---------------------------------|--------|---------------------------------|
| 2001 | | 2000 | | 1999 | |
| Shares | Weighted Average Exercise Price | Shares | Weighted Average Exercise Price | Shares | Weighted Average Exercise Price |
| | | | | | |

| | | | | | | |
|--|-----------|----------|-----------|----------|----------|----------|
| Options outstanding at beginning of year | 1,369,290 | \$ 19.37 | 806,000 | \$ 18.50 | 808,500 | \$ 18.39 |
| Granted | — | — | 564,643 | 20.64 | 18,000 | 23.13 |
| Exercised | (134,000) | 17.02 | — | — | (20,500) | 17.51 |
| Forfeited | (4,750) | 20.19 | (1,353) | 17.75 | — | — |
| Options outstanding at end of year | 1,230,540 | \$ 19.62 | 1,369,290 | \$ 19.37 | 806,000 | \$ 18.50 |
| Options exercisable at end of year | 649,250 | \$ 18.63 | 540,000 | \$ 17.53 | 325,500 | \$ 15.93 |

The following table summarizes information about stock options outstanding and exercisable at September 30, 2001:

| Range of Exercise Prices | Stock Options Outstanding | | | Stock Options Exercisable | | |
|--------------------------|---------------------------|---|---------------------------------|---------------------------|---------------------------------|--|
| | Number Outstanding | Weighted Average Contractual Remaining Life (Years) | Weighted Average Exercise Price | Number Exercisable | Weighted Average Exercise Price | |
| \$13-\$16 | 107,000 | 3 | \$ 14.28 | 107,000 | \$ 14.28 | |
| \$16-\$19 | 429,920 | 7 | 17.64 | 125,000 | \$ 17.38 | |
| \$19-\$22 | 417,250 | 6 | 20.12 | 417,250 | \$ 20.12 | |
| \$22-\$25 | 276,370 | 9 | 24.00 | — | — | |

We apply Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," in accounting for our stock option plans and, accordingly, no compensation cost has been recognized for stock options in the accompanying financial statements. SFAS No. 123, "Accounting for Stock-Based Compensation," requires disclosure of pro forma net earnings and pro forma net earnings per share as if the fair value based method had been applied in measuring compensation expense for awards granted since 1996. Reported and such pro forma net earnings (in thousands) and net income per share amounts are set forth below:

| Year Ended September 30, | 2001 | 2000 | 1999 |
|------------------------------|-----------|-----------|-----------|
| Reported: | | | |
| Net income | \$ 74,876 | \$ 43,606 | \$ 36,934 |
| Basic net income per share | \$ 9.19 | \$ 5.28 | \$ 4.59 |
| Diluted net income per share | 8.18 | 5.05 | 4.15 |
| Pro forma: | | | |
| Net income | \$ 73,437 | \$ 42,397 | \$ 35,992 |
| Basic net income per share | \$ 9.02 | \$ 5.14 | \$ 4.46 |
| Diluted net income per share | 8.02 | 4.91 | 4.04 |

The weighted average fair value of each option granted during the years ended September 30, 2000 and 1999 was \$10.08 and \$11.61, respectively. There were no options granted during fiscal 2001.

The fair values of options granted were estimated on the date of their grant using the Black-Scholes option pricing model based on the following weighted average assumptions:

| Year Ended September 30, | 2000 | 1999 |
|--------------------------|-------|-------|
| Expected volatility | 33.3% | 37.6% |
| Expected dividend yield | none | none |
| Risk-free interest rate | 6.5% | 5.5% |
| Expected life (in years) | 7.0 | 7.0 |

Other Stock Awards—We have made several restricted stock awards to officers and key employees under both the 1999 Plan and the 1994 Plan. All restricted stock is awarded in the name of each participant, who has all the rights of other common stockholders subject to restrictions and forfeiture provisions. Accordingly, such restricted stock awards are considered outstanding shares. Compensation expense recognized for such awards totaled \$2,926,000, \$1,140,000 and \$933,000 for the years ended September 30, 2001, 2000 and 1999, respectively.

Activity relating to restricted stock awards is summarized as follows:

| Year Ended September 30, | 2001 | 2000 | 1999 |
|--------------------------------------|-----------|---------|---------|
| Restricted shares, beginning of year | 381,624 | 381,624 | 371,624 |
| Shares awarded | — | — | 18,000 |
| Shares forfeited | (4,820) | — | (4,226) |
| Shares vested | (242,179) | — | (3,774) |
| Restricted shares, end of year | 134,625 | 381,624 | 381,624 |

We have an incentive compensation plan (called the Value Created Incentive Plan) modeled under the concepts of economic profit or economic value added. Participants may receive a portion of their earned annual incentive compensation under the plan in our common stock (the "Bonus Stock"). Such shares are issued after a three-year vesting period at a discount to the stock's market value at the time the bonus is earned. Should the participant's employment terminate during the vesting period, the deferred incentive compensation is settled in cash or cash and stock, depending on the cause of termination.

Activity relating to Bonus Stock is as follows:

| Year Ended September 30, | 2001 | 2000 | 1999 |
|---|----------|----------|----------|
| Bonus Stock issuable, beginning of year | 227,713 | 191,578 | 118,408 |
| Shares awarded | 47,504 | 52,128 | 119,604 |
| Shares forfeited | (10,598) | (1,867) | (1,276) |
| Shares vested and issued | (27,257) | (14,126) | (45,158) |
| Bonus Stock issuable, end of year | 237,362 | 227,713 | 191,578 |

Employee Receivables—Included in accounts receivable are notes receivable from certain key employees of \$1.8 million and \$0.3 million at September 30, 2001 and 2000, respectively. The loans were made to assist these employees with their tax obligations upon vesting of certain restricted stock awards. Such notes bear interest at market rates as determined by the Board of Directors. The notes are full recourse, collateralized by shares of our stock owned by the employees, and due upon the sale of such shares, or ten years, whichever occurs first.

(15) CONTINGENCIES

We had outstanding letters of credit and performance bonds of approximately \$31.9 million and \$202.9 million, respectively, at September 30, 2001, related principally to our obligations to local governments to construct roads and other improvements in various developments. We do not believe that any such letters of credit or bonds are likely to be drawn upon.

We are a defendant or plaintiff in various legal actions which have arisen in the normal course of business, the most significant of which relate to construction defects and product liability. In our opinion, the ultimate resolution of these matters will not have a material adverse effect on our financial position or results of operations.

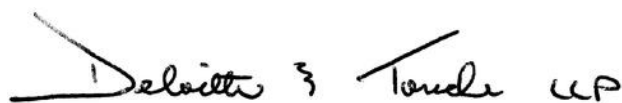
Independent Auditors' Report Beazer Homes USA, Inc.

To the Board of Directors and Stockholders of
Beazer Homes USA, Inc.

We have audited the accompanying consolidated balance sheets of Beazer Homes USA, Inc. and subsidiaries as of September 30, 2001 and 2000, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended September 30, 2001. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Beazer Homes USA, Inc. and subsidiaries at September 30, 2001 and 2000, and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2001 in conformity with accounting principles generally accepted in the United States of America.



Atlanta, Georgia
November 2, 2001

Summarized Quarterly Financial Information (unaudited): Beazer Homes USA, Inc.

| Quarter ended | September 30 | June 30 | March 31 | December 31 |
|---------------|--------------|---------|----------|-------------|
|---------------|--------------|---------|----------|-------------|

(dollars in thousands, except per share data)

| Fiscal 2001: | | | | | | | | |
|---|----|---------|----|---------|----|---------|----|---------|
| Total revenue | \$ | 617,005 | \$ | 448,825 | \$ | 374,297 | \$ | 365,050 |
| Operating income | | 38,278 | | 31,885 | | 29,074 | | 22,992 |
| Net income before extraordinary item | | 23,845 | | 19,925 | | 17,507 | | 14,332 |
| Extraordinary item—loss on early extinguishment of debt | | — | | (733) | | — | | — |
| Net income | | 23,845 | | 19,192 | | 17,507 | | 14,332 |

Basic earnings per share:

| | | | | | | | | |
|--------------------------------------|----|------|----|--------|----|------|----|------|
| Net income before extraordinary item | \$ | 2.90 | \$ | 2.43 | \$ | 2.15 | \$ | 1.77 |
| Extraordinary item | | — | | (0.09) | | — | | — |
| Net earnings | \$ | 2.90 | \$ | 2.34 | \$ | 2.15 | \$ | 1.77 |

Diluted earnings per share:

| | | | | | | | | |
|--------------------------------------|----|------|----|--------|----|------|----|------|
| Net income before extraordinary item | \$ | 2.56 | \$ | 2.15 | \$ | 1.92 | \$ | 1.61 |
| Extraordinary item | | — | | (0.08) | | — | | — |
| Net earnings | \$ | 2.56 | \$ | 2.07 | \$ | 1.92 | \$ | 1.61 |

| Fiscal 2000: | | | | | | | | |
|--------------------------------|----|---------|----|---------|----|---------|----|---------|
| Total revenue | \$ | 496,602 | \$ | 389,557 | \$ | 332,961 | \$ | 308,745 |
| Operating income | | 26,503 | | 20,943 | | 14,979 | | 13,201 |
| Net income | | 16,689 | | 10,574 | | 8,826 | | 7,517 |
| <i>Net earnings per share:</i> | | | | | | | | |
| Basic | \$ | 2.06 | \$ | 1.31 | \$ | 1.06 | \$ | 0.88 |
| Diluted | | 1.94 | | 1.26 | | 1.02 | | 0.85 |

Quarterly Stock Price Information:

| 2001 Period: | | | | | | | | |
|---------------------|----|-------|----|-------|----|-------|----|-------|
| High | \$ | 79.35 | \$ | 69.50 | \$ | 57.77 | \$ | 41.00 |
| Low | | 41.50 | | 37.75 | | 33.69 | | 25.69 |

| 2000 Period: | | | | | | | | |
|---------------------|----|-------|----|-------|----|-------|----|-------|
| High | \$ | 27.38 | \$ | 22.19 | \$ | 20.25 | \$ | 20.75 |
| Low | | 18.25 | | 17.44 | | 17.06 | | 15.63 |

Selected Financial and Operating Data: 1993-2001
Beazer Homes USA, Inc.

| Year ended September 30, | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 | 1993 | | | | | | | | | |
|---|------|-----------|------|-----------|------|-----------|------|---------|------|---------|----|---------|----|---------|----|---------|----|---------|
| FINANCIAL HIGHLIGHTS: | | | | | | | | | | | | | | | | | | |
| Statement of Operations Data— | | | | | | | | | | | | | | | | | | |
| Total revenue | \$ | 1,805,177 | \$ | 1,527,865 | \$ | 1,394,074 | \$ | 977,409 | \$ | 852,110 | \$ | 866,627 | \$ | 647,828 | \$ | 536,526 | \$ | 275,054 |
| Earnings before interest and taxes ("EBIT") | | 157,185 | | 99,189 | | 86,013 | | 56,525 | | 33,051 | | 45,327 | | 32,188 | | 37,169 | | 22,713 |
| Net income | | 74,876 | | 43,606 | | 36,934 | | 23,201 | | 11,189 | | 18,266 | | 11,352 | | 16,468 | | 16,046 |
| Net earnings per share: | | | | | | | | | | | | | | | | | | |
| Basic | \$ | 9.19 | \$ | 5.28 | \$ | 4.59 | \$ | 3.27 | \$ | 1.18 | \$ | 2.24 | \$ | 1.26 | \$ | 1.78(1) | | n/m |
| Diluted | | 8.18 | | 5.05 | | 4.15 | | 2.66 | | 1.15 | | 2.01 | | 1.23 | | 1.76(1) | | n/m |
| Balance Sheet Data at Year-End | | | | | | | | | | | | | | | | | | |
| Total assets | \$ | 995,289 | \$ | 696,228 | \$ | 594,568 | \$ | 525,591 | \$ | 399,595 | \$ | 356,643 | \$ | 345,240 | \$ | 314,941 | \$ | 245,349 |
| Total debt | | 395,238 | | 252,349 | | 215,000 | | 215,000 | | 145,000 | | 115,000 | | 115,000 | | 115,000 | | 119,925 |
| Stockholders' equity | | 351,195 | | 270,538 | | 234,662 | | 199,224 | | 179,286 | | 178,701 | | 164,544 | | 150,406 | | 95,595 |
| Return Data— | | | | | | | | | | | | | | | | | | |
| Return on average assets | | 18.6% | | 15.4% | | 15.4% | | 12.2% | | 8.7% | | 12.9% | | 9.8% | | 13.3% | | 14.6% |
| Return on average capital | | 24.8% | | 20.4% | | 19.9% | | 15.3% | | 10.7% | | 15.8% | | 11.8% | | 15.5% | | 20.8% |
| Return on average equity | | 24.1% | | 17.3% | | 17.0% | | 12.3% | | 6.3% | | 10.6% | | 7.2% | | 13.4% | | 16.6% |
| Book value per share (2) | \$ | 38.36 | \$ | 31.35 | \$ | 26.38 | \$ | 22.82 | \$ | 20.14 | \$ | 19.64 | \$ | 18.88 | \$ | 16.31 | | n/m |

OPERATING DATA:
Number of new orders, net of cancellations—(3)

| | | | | | | | | | |
|--------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Southeast Region | 3,770 | 2,892 | 3,041 | 2,888 | 1,969 | 2,048 | 2,083 | 1,726 | 1,392 |
| West Region | 3,810 | 3,393 | 2,900 | 3,245 | 2,817 | 3,172 | 2,660 | 1,902 | 1,071 |
| Central Region | 1,022 | 695 | 485 | 749 | 765 | 401 | 98 | — | — |
| Mid-Atlantic Region | 1,437 | 1,248 | 1,109 | — | — | — | — | 48 | 80 |
| Total | 10,039 | 8,228 | 7,535 | 6,882 | 5,551 | 5,621 | 4,841 | 3,676 | 2,543 |
| Backlog at end of year: | | | | | | | | | |
| Southeast Region | 1,240 | 875 | 999 | 996 | 505 | 580 | 708 | 478 | 437 |
| West Region | 1,606 | 1,149 | 786 | 743 | 479 | 680 | 722 | 506 | 677 |
| Central Region | 384 | 259 | 206 | 318 | 208 | 166 | 53 | — | — |
| Mid-Atlantic Region | 747 | 646 | 567 | — | — | — | 1 | 3 | 74 |
| Total | 3,977 | 2,929 | 2,558 | 2,057 | 1,192 | 1,426 | 1,484 | 987 | 1,188 |
| Number of closings: | | | | | | | | | |
| Southeast Region | 3,414 | 3,016 | 3,108 | 2,493 | 2,044 | 2,212 | 1,853 | 1,734 | 1,312 |
| West Region | 3,412 | 3,030 | 2,857 | 2,981 | 3,018 | 3,343 | 2,444 | 2,073 | 775 |
| Central Region | 897 | 642 | 597 | 639 | 723 | 379 | 64 | — | — |
| Mid-Atlantic Region | 1,336 | 1,169 | 1,027 | — | — | 1 | 2 | 119 | 6 |
| Total | 9,059 | 7,857 | 7,589 | 6,113 | 5,785 | 5,935 | 4,363 | 3,926 | 2,093 |
| Average sales price per home closed: | \$ 195.3 | \$ 190.7 | \$ 181.4 | \$ 156.4 | \$ 146.8 | \$ 145.8 | \$ 148.5 | \$ 136.7 | \$ 131.4 |

n/m—Earnings and book value per share figures for periods prior to and including the Company's initial public offering are not meaningful.

- (1) Pro forma to give effect to the initial public offering and related transactions, as if such transactions were effected as of October 1, 1993.
- (2) Book value per share is calculated as stockholders' equity divided by diluted weighted average shares.
- (3) New orders do not include homes in backlog from acquired operations.

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At-A-Glance Beazer Homes USA, Inc.

Southeast

We are optimistic about our opportunities to gain additional market share in Florida. Job growth and household formation remains strong in that state, fueled by both immigration and relocation from other states. We have developed strong positions in Tennessee and the Carolinas. We anticipate maintaining our positions in these markets and leveraging off the strong operations into satellite markets to expand volume opportunities. Having previously reduced our investment in Atlanta to improve our return on capital, we are now re-igniting growth in that market.

| state | backlog at year-end 2001 | FY 2001 closings | active subdivisions at year-end | average price of homes closed in FY 2001 | |
|---|---|------------------|--|---|------------|
| Georgia | | 120 | 406 | 11 | \$ 146,000 |
| North Carolina | | 189 | 933 | 34 | 148,800 |
| South Carolina | | 119 | 516 | 10 | 133,200 |
| Tennessee | | 275 | 611 | 20 | 200,100 |
| Florida | | 537 | 948 | 49 | 228,600 |
| Beazer Homes Florida—Ft. Myers 11934 Fairway Lakes Drive Fort Myers, FL 33913 | Beazer Homes Florida— Jacksonville 12854 Kenan Drive Suite 100 Jacksonville, FL 32258 | | Beazer Homes Florida—Tampa 5911 Breckenridge Parkway Suite H Tampa, FL 33610 | Beazer Homes Florida—Orlando 215 N. Westmonte Drive Altamonte Springs, FL 32714 | |
| Beazer Homes—Charlotte 1300 S. Boulevard Suite K Charlotte, NC 28203-4265 | Beazer Homes—Raleigh 5811 Glenwood Avenue Suite 200 Raleigh, NC 27612 | | Beazer Homes—Charleston 7410 Northside Drive Suite 208 N. Charleston, SC 29420-4259 | Beazer Homes—Columbia 500 Lawand Drive Suite 208 Columbia, SC 29210 | |
| Beazer Homes—Georgia 3975 Johns Creek Court Suite 400 Suwanee, GA 30024 | Phillips Builders—Nashville 2910 Kraft Drive Nashville, TN 37204 | | | | |

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West

Each of our Western markets remains strong. We have seen strong growth in California, in both Sacramento and Southern California, and expect to continue to do so. Growth in the first-time buyer segment is especially strong in California. Our Arizona operations have been consistent performers in a strong Phoenix market. We anticipate that the market will remain robust, and we have the land bank to continue our profitable performance. The Las Vegas market continues to enjoy strong growth, and our operation there is now expanding to meet that growth. We entered Colorado in August 2001 through the acquisition of Sanford Homes.

| state | | backlog at year-end 2001 | FY 2001 closings | active subdivisions at year-end | average price of homes closed in FY 2001 |
|---|--|--------------------------|--|---|--|
| Arizona | | 532 | 1,024 | 27 | \$ 153,500 |
| California | | 553 | 1,800 | 33 | 238,600 |
| Colorado | | 195 | 41 | 14 | 441,500 |
| Nevada | | 326 | 547 | 12 | 180,000 |
| Beazer Homes California—Southern California 1100 Town and Country Road Suite 100 Orange, CA 92868 | Beazer Homes California—Northern California 3009 Douglas Boulevard Suite 150 Roseville, CA 95661 | | Beazer Homes—Arizona 2005 W. 14th Street Suite 100 Tempe, AZ 85281 | Beazer Homes Nevada—Las Vegas 4670 S. Fort Apache Suite 200 Las Vegas, NV 89147 | |
| Sanford Homes Colorado—Denver 7600 East Orchard Road Suite 270-N Greenwood Village, CO 80111 | | | | | |

Central

Population and household growth are expected to continue in Texas, fueled by immigration. We expect to continue to expand in this state, focusing especially on affordability for the first-time buyer segment.

| state | | backlog at year-end 2001 | FY 2001 closings | active subdivisions at year-end | average price of homes closed in FY 2001 |
|--|---|--------------------------|------------------|---------------------------------|--|
| Texas | | 384 | 897 | 31 | \$ 159,700 |
| Beazer Homes Texas—Dallas/Fort Worth 5900 West Plano Parkway Suite 700 Plano, TX 75093 | Beazer Homes Texas—Houston 10235 West Little York Suite 240 Houston, TX 77040 | | | | |

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Mid-Atlantic

We are extremely pleased with the performance of our Mid-Atlantic region, entered in fiscal 1999 by acquisition. This region of the country, and the metropolitan Washington, D.C. market in particular, continues to outpace the nation in housing growth. We have continued to allocate more capital to the expansion of this region and anticipate continued growth and profitability during the next several years.

| state | | backlog at year-end 2001 | FY 2001 closings | active subdivisions at year-end | average price of homes closed in FY 2001 |
|---|--|--------------------------|---|---------------------------------|--|
| Maryland | | 175 | 338 | 14 | \$ 227,300 |
| New Jersey/ | | | | | |
| Pennsylvania | | 136 | 304 | 7 | 256,400 |
| Virginia | | 436 | 694 | 19 | 233,400 |
| Total | | 3,977 | 9,059 | 281 | \$ 195,300 |
| Beazer Homes—Maryland 8965 Guilford Road Suite 290 Columbia, MD 21046 | Beazer Homes—New Jersey 250 Phillips Boulevard Suite 290 Trenton, NJ 08618 | | Beazer Homes—Virginia 14901 Bogle Drive Suite 100 Chantilly, VA 20151 | | |

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Board of Directors Beazer Homes USA, Inc.

Brian C. Beazer, 66, is the Non-Executive Chairman of Beazer's Board of Directors and has served as a Director of Beazer since its inception in November 1993. Mr. Beazer began work in the construction industry in the late 1950s. He served as Chief Executive Officer of Beazer PLC, a company organized under the laws of the United Kingdom, or its predecessors, from 1968 to 1991, and Chairman of that company from 1983 to the date of its acquisition by an indirect, wholly owned subsidiary of Hanson PLC (effective December 1, 1991). During that time, Beazer PLC expanded its activities to include homebuilding, quarrying, contracting and real-estate, and became an international group with annual revenue of approximately \$3.4 billion, employing 28,000 people at December 1991. Mr. Beazer was educated at Cathedral School, Wells, Somerset, England. Mr. Beazer is also a director of Beazer Japan, Ltd., Seal Mint, Ltd., Jade Technologies Singapore Pte. Ltd., FSM Europe B.V., Electronic Convergence Technology Ltd., United Pacific Industries Ltd. and U.S. Industries, Inc., and is a private investor.

Thomas B. Howard, Jr., 73, was appointed a Director of Beazer on November 2, 1995. Mr. Howard held various positions with Gifford-Hill & Company, a construction and aggregates company, from 1969 to 1986 and served as its Chairman and Chief Executive Officer from 1986 to 1989. Gifford-Hill & Company

was acquired by Beazer PLC in 1989 and Mr. Howard served as Chairman and Chief Executive Officer of the successor company until 1992. During the period from 1957 to 1969, Mr. Howard held various positions with Vulcan Materials Company. Mr. Howard holds a degree in Industrial Engineering from Georgia Institute of Technology. Mr. Howard currently serves on the Board of Trustees of the Methodist Hospitals Foundation and previously served as a Director of Lennox International, Inc., Director of the Dallas Chamber of Commerce and member of the Dallas Citizens Council.

Ian J. McCarthy, 48, is the President and Chief Executive Officer of Beazer and has served as a Director of Beazer since Beazer's initial public offering of common stock (the "IPO") in March 1994. Mr. McCarthy has served as President of predecessors of Beazer since January 1991, responsible for all United States residential homebuilding operations in that capacity. During the period May 1981 to January 1991, Mr. McCarthy was employed in Hong Kong and Thailand, becoming a Director of Beazer Far East and, from January 1980 to May 1981, was employed by Kier, Ltd., a company engaged in the United Kingdom construction industry, which became an indirect, wholly owned subsidiary of Beazer PLC. Mr. McCarthy is a Chartered Civil Engineer with a Bachelor of Science degree from The City University, London. Mr. McCarthy currently serves as a Director of HomeAid America's National Advisory Board.

George W. Mefferd, 74, has served as a Director of Beazer since the IPO. Mr. Mefferd had previously been retired since 1986. During the period from 1974 to 1986, Mr. Mefferd held various positions with Fluor Corporation, an engineering and construction company, including Senior Vice President—Finance, Treasurer, Group Vice President and Chief Financial Officer. Additionally, Mr. Mefferd served on Fluor Corporation's Executive Committee and Board of Directors. Mr. Mefferd earned a Bachelor of Science degree in Business Administration from the University of California, Los Angeles.

D.E. Mundell, 69, has served as a Director of Beazer since the IPO. Mr. Mundell is currently an advisor and Director of ORIX USA Corporation, a financial services company, and served as Chairman of ORIX from 1991 to 1999. During the period from 1959 to 1990, Mr. Mundell held various positions within United States Leasing International, Inc., retiring as Chairman in 1990. Mr. Mundell attended the Royal Military College of Canada, McGill University and Harvard Business School. Mr. Mundell is also Chairman of Varian, Inc., and a Director of Stockton Holdings LTD and ORIX USA Corporation.

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Larry T. Solari, 59, has served as a Director of Beazer since the IPO. From 1998 to 2001, Mr. Solari was the Chairman and CEO of BSI Holdings, Inc. in Carmel, California. Mr. Solari was the Chairman and CEO of Sequentia, Inc. from 1996 to 1997 and the President of the Building Materials Group of Domtar, Inc. from 1994 to 1996. Mr. Solari was the President of the Construction Products Group of Owens-Corning Fiberglas from 1986 to 1994. Mr. Solari held various other positions with Owens-Corning Fiberglas since 1966. Mr. Solari earned a Bachelor of Science degree in Industrial Management and a Master of Business Administration degree from San Jose State University and is a graduate of Stanford University's Management Program. Mr. Solari is a Director of Pacific Coast Building Products, Inc., Therma-Tru, Inc., Aneco, Inc., Listman Homes Technologies and Performance Contracting Group. Mr. Solari is a past Director of the Policy Advisory Board of the Harvard Joint Center for Housing Studies and an Advisory Board Member of the National Home Builders Association.

David S. Weiss, 41, is the Executive Vice President and Chief Financial Officer of Beazer and has served as a Director of Beazer since the IPO. Mr. Weiss served as the Assistant Corporate Controller of Hanson Industries, the United States arm of Hanson PLC, for the period from February 1993 to March 1994. Mr. Weiss was Manager of Financial Reporting for Colgate-Palmolive Company from November 1991 to February 1993 and was with the firm of Deloitte & Touche from 1982 to November 1991, at which time he served as a Senior Audit Manager. Mr. Weiss holds a Master of Business Administration degree from the Wharton School and undergraduate degrees in Accounting and English from the University of Pennsylvania. Mr. Weiss is a licensed Certified Public Accountant.

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Operating and Corporate Management Beazer Homes USA, Inc.

OPERATING MANAGEMENT

| | | | Years in Homebuilding | Years in Market |
|----------------------------|--------------------|--|--------------------------|--------------------|
| Southeast Region | | | | |
| Florida | J. Marty Shaffer | Regional President, Florida Region | 27 | 24 |
| | William J. Mazar | Division President, Jacksonville Division | 18 | 11 |
| | Christin Cupp | Division President, Mid-Florida Division | 19 | 19 |
| | David G. Byrnes | Division President, Orlando Division | 22 | 22 |
| Georgia | James Parker | Division President, Georgia Division | 12 | 8 |
| North Carolina | Scott K. Thorson | Regional President, South Atlantic Region | 18 | 7 |
| | Robert J. Polanco | Division President, Raleigh Division | 24 | 9 |
| South Carolina | Frank L. Finlaw | Division President, Charleston Division | 24 | 9 |
| Tennessee | H. Eddie Phillips | Regional President, Phillips Builders—Nashville | 34 | 34 |
| West Region | | | | |
| Arizona | Joseph C. Thompson | Regional President, Arizona Division | 30 | 30 |
| California | Anthony R. Tonso | Regional President, Northern California Division | 33 | 12 |
| | Gerald A. Gates | Regional President, Southern California Division | 29 | 24 |
| Colorado | Peter H. Simons | Senior Division President, Colorado Division | 13 | 1 |
| Nevada | Kent A. Lay | Senior Division President, Nevada Division | 19 | 9 |
| Central Region | | | | |
| Texas | Kurt S. Watzek | Senior Division President, Houston Division | 24 | 24 |
| | G. Michael Henry | Division President, Dallas Division | 25 | 21 |
| Mid-Atlantic Region | | | | |

| | | | | |
|------------|-------------------|---|---------|----|
| Maryland | David L. Carney | Division President, Maryland Division | 23 | 23 |
| New Jersey | Michael J. Neill | Division President, New Jersey Division | 24 | 15 |
| Virginia | Donald W. Knutson | Regional President, Mid-Atlantic Region | 15 | 10 |
| | | | Average | 22 |

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CORPORATE MANAGEMENT

Ian J. McCarthy
President & Chief Executive Officer

David S. Weiss
Executive Vice President & Chief Financial Officer

Michael H. Furlow
Executive Vice President & Chief Operating Officer

John Skelton
Senior Vice President, Financial Planning

C. Lowell Ball, Esq.
Senior Vice President, General Counsel

Michael T. Rand
Vice President, Corporate Controller

Cory J. Boydston
Vice President, Financial Services & Treasurer

Jonathan P. Smoke
Vice President & Chief Technology Officer

Carla J. Collinge
Vice President, Operations

Jennifer P. Jones
Vice President, Human Resources

J. William Montgomery
Vice President, Internal Audit

Marilyn E. Gardner
Vice President, Sales & Marketing

Edmond G. Snider, Jr.
Vice President, Training & Safety

Ron J. Kuhn
President, Beazer Mortgage Corp.

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Shareholder and Corporate Information

Beazer Homes USA, Inc.

Corporate Headquarters

Beazer Homes USA, Inc.
5775 Peachtree Dunwoody Road
Suite B 200
Atlanta, Georgia 30342
Telephone: (404) 250-3420
www.beazer.com

General Counsel

C. Lowell Ball, Esq., Senior Vice President, General Counsel

Independent Auditors

Deloitte & Touche LLP

Inquiries

Individuals seeking financial data should contact David S. Weiss, Executive Vice President and Chief Financial Officer, or Lauren L. Bingham, Director of Financial Reporting and Investor Relations.

Others seeking information about the Company and its operations should contact Ian J. McCarthy, President and Chief Executive Officer.

Form 10-K

Copies of Beazer Homes USA, Inc.'s Annual Report on Form 10-K as filed with the United States Securities and Exchange Commission will be furnished upon written request to David S. Weiss, Executive Vice President and Chief Financial Officer, or can be accessed @beazer.com.

Transfer Agent

American Stock Transfer & Trust Company
59 Maiden Lane
New York, New York 10038
(212) 936-5100

Trading Information

Beazer Homes USA, Inc. lists its common shares on the New York Stock Exchange under the symbol "BZH." On December 10, 2001, the last reported sales price of the Company's common stock on the New York Stock Exchange was \$71.76.

Duplicate Mailings

If you are receiving duplicate or unwanted copies of our publications, please contact American Stock Transfer & Trust Company at the number listed above or contact Lauren L. Bingham, Director of Financial Reporting and Investor Relations, at Beazer Homes.

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BUILDING UP, GIVING BACK

Beazer's mission is not only to build communities, but also to give back to them. These efforts can be spontaneous ones. After the September 11th attacks, for instance, Beazer contributed \$1 million to relief efforts and also matched employee donations with a 100% corporate match.

Commitment to HomeAid

The Company has a longstanding commitment and relationship with HomeAid America, a public-private partnership of homebuilders, community leaders and service providers. As a national sponsor, Beazer has been focused on expanding the program, which began in California, to its markets across the country. During 2001, the Company assisted with the organization's first projects in Dallas and Northern Virginia.

Dallas, Texas

In Dallas, Beazer served as the first builder captain to help Brighter Tomorrows, a local non-profit organization, expand its ability to provide a safe house for abused women and children. With the help of contractors and suppliers, Beazer and Brighter Tomorrows were able to construct a six-bedroom facility that can accommodate 13 adults and 22 children.

Vienna, Virginia

Beazer Homes Virginia was proud to lead the renovation and construction of the Alternative House in Vienna. This center is a short-term residential program and crisis intervention center for 13 to 17 year olds that serves over 250 teens annually. The construction project added an additional 2,200 square feet to the facility, enhancing its living and counseling capabilities.

As Beazer President and CEO Ian McCarthy notes, "We feel very fortunate that our news this year includes many positive developments for the Company and many positive actions on the part of our employees and partners to help those in need."



BEAZER HOMES
2001 Annual Report

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[Independent Auditors' Report Beazer Homes USA, Inc.](#)

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Subsidiaries of the Company:

| Name | Jurisdiction of Incorporation |
|---|--------------------------------------|
| April Corporation | Colorado |
| Beazer Homes Corp. | Tennessee |
| Beazer Homes Holdings Corp. | Delaware |
| Beazer Homes Sales Arizona, Inc. | Delaware |
| Beazer Homes Texas Holdings, Inc. | Delaware |
| Beazer Homes Texas, LP | Texas |
| Beazer Mortgage Corporation | Delaware |
| Beazer Realty Corp. | Georgia |
| Beazer Realty, Inc. | New Jersey |
| Beazer SPE LLC | Georgia |
| Beazer/Squires Realty, Inc. | North Carolina |
| Homebuilders Title Services of Virginia, Inc. | Virginia |
| Homebuilders Title Services, Inc. | Delaware |
| Seabrook Homes, Inc | Florida |
| Security Title Insurance Company, Inc. | Vermont |
| Texas Lone Star Title, LP | Texas |
| United Home Insurance Co. | Vermont |
| Universal Solutions Insurance Agency, Inc. | Delaware |

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EXHIBIT 23

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in Registration Statements No. 333-24765 and No. 333-69398 on Form S-8 and No. 333-94843 on Form S-3 of Beazer Homes USA, Inc. of our report dated November 2, 2001, incorporated by reference in the Annual Report on Form 10-K of Beazer Homes USA, Inc. for the year ended September 30, 2001 and to the reference to us under the heading "Experts" in each of these Registration Statements.

/s/ DELOITTE & TOUCHE LLP

Atlanta, Georgia
December 21, 2001

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[INDEPENDENT AUDITORS' CONSENT](#)