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

**FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

BEAZER HOMES USA, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

1531
(Primary Standard Industrial
Classification Code Number)

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

2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia 30319
(770) 829-3700

(Address, including zip code, and telephone number, including area code, of each registrant's principal executive offices)

Keith L. Belknap
Executive Vice President and General Counsel
Beazer Homes USA, Inc.
2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia 30319
(770) 829-3700

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies To:

William C. Smith, III
Zachary J. Davis
King & Spalding LLP
1180 Peachtree Street
Atlanta, GA 30309
(404) 572-4600

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective, as determined by market considerations and other factors.

If the only securities being registered on this Form are to be offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

TABLE OF CO-REGISTRANTS

	State of Incorporation / Formation	Primary Standard Industrial Classification Code Number	IRS Employer Identification No.
Ballard Green Utility Company, LLC	MD	1531	85-3909613
Beazer Clarksburg, LLC	MD	1531	not applied for ⁽¹⁾
Beazer Fundamental, LLC	DE	1531	87-4800089
Beazer Gain, LLC	DE	1531	83-0896049
Beazer General Services, Inc.	DE	1531	20-1887139
Beazer Homes Holdings, LLC	DE	1531	58-2222637
Beazer Homes Indiana Holdings Corp.	DE	1531	20-2184688
Beazer Homes Indiana LLP	IN	1531	35-1901790
Beazer Homes Investments, LLC	DE	1531	04-3617414
Beazer Homes Sales, Inc.	DE	1531	86-0728694
Beazer Homes Texas Holdings, Inc.	DE	1531	58-2222643
Beazer Homes Texas, L.P.	DE	1531	76-0496353
Beazer Homes, LLC	DE	1531	62-0880780
Beazer Mortgage Corporation	DE	6163	58-2203537
Beazer Realty Corp.	GA	1531	59-1200012
Beazer Realty Los Angeles, Inc.	DE	1531	20-2495958
Beazer Realty Services, LLC	DE	1531	35-1679596
BH Building Products, LP	DE	1531	20-2498366
BH Investment Holdings, LLC	DE	1531	not applied for ⁽¹⁾
BH Materials, LLC	DE	1531	88-0856670
BH Procurement Services, Inc.	DE	1531	88-0828148
Clarksburg Arora LLC	MD	1531	52-2321110
Clarksburg Skylark, LLC	MD	1531	82-3342182
Dove Barrington Development LLC	DE	1531	20-1737164
Marshfield Land, LLC	DE	1531	87-1595146

The address for each Co-Registrant is 2002 Summit Boulevard NE, 15th Floor, Atlanta, Georgia 30319.

(1) Does not have any employees.

PROSPECTUS

BEAZER HOMES USA, INC.

Senior Debt Securities
Subordinated Debt Securities
Common Stock
Preferred Stock
Depository Shares
Warrants
Rights
Stock Purchase Contracts
Stock Purchase Units
Units
Guarantees of Debt Securities

Beazer Homes USA, Inc. may offer, from time to time, senior debt securities, subordinated debt securities, common stock, preferred stock, depository shares, warrants, rights, stock purchase contracts, stock purchase units or units. In addition, certain of our subsidiaries may guarantee the debt securities we offer.

This prospectus describes some of the general terms that may apply to these securities. We will provide the specific terms of any securities to be offered in a supplement to this prospectus. Any prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus and any supplement carefully before you invest.

Our common stock is listed on the New York Stock Exchange under the symbol “BZH.”

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. The prospectus supplement for each offering of securities will describe in detail the plan of distribution.

This prospectus may not be used to sell securities unless accompanied by a prospectus supplement.

These securities are speculative and involve a high degree of risk. You should carefully read the information under the heading “[Risk Factors](#)” on page 6 of this prospectus and the risk factors incorporated by reference in any applicable prospectus supplement before making a decision to purchase our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is August 10, 2023.

TABLE OF CONTENTS

FORWARD-LOOKING STATEMENTS	1
ABOUT THIS PROSPECTUS	3
WHERE YOU CAN FIND MORE INFORMATION	4
BEAZER HOMES USA, INC.	5
RISK FACTORS	6
USE OF PROCEEDS	7
DESCRIPTION OF DEBT SECURITIES AND GUARANTEES	8
DESCRIPTION OF CAPITAL STOCK	23
DESCRIPTION OF DEPOSITARY SHARES	27
DESCRIPTION OF WARRANTS	29
DESCRIPTION OF RIGHTS	31
DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK PURCHASE UNITS	32
DESCRIPTION OF UNITS	33
PLAN OF DISTRIBUTION	34
LEGAL MATTERS	37
EXPERTS	37
PART II INFORMATION NOT REQUIRED IN PROSPECTUS	II-1
EXHIBIT INDEX	II-8

You should rely only on the information contained in this prospectus, in an accompanying prospectus supplement or incorporated by reference herein or therein. We have not authorized anyone to provide you with information or make any representation that is different. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus and any accompanying prospectus supplement do not constitute an offer to sell or a solicitation of an offer to buy any securities other than the registered securities to which they relate, and this prospectus and any accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction where, or to any person to whom, it is unlawful to make such an offer or solicitation. You should not assume that the information contained in this prospectus and any accompanying prospectus supplement is correct on any date after the respective dates of the prospectus and such prospectus supplement or supplements, as applicable, even though this prospectus and such prospectus supplement or supplements are delivered or securities are sold pursuant to the prospectus and such prospectus supplement or supplements at a later date. Since the respective dates of the prospectus contained in this registration statement and any accompanying prospectus supplement, our business, financial condition, results of operations and prospects may have changed. We may only use this prospectus to sell the securities if it is accompanied by a prospectus supplement.

FORWARD-LOOKING STATEMENTS

This prospectus (including the documents incorporated by reference herein) contains forward-looking statements. These forward-looking statements represent our expectations or beliefs concerning future events or results, and it is possible that such events or results described in this prospectus (including the documents incorporated by reference herein) will not occur or be achieved. These forward-looking statements can generally be identified by the use of statements that include words such as “estimate,” “project,” “believe,” “expect,” “anticipate,” “intend,” “plan,” “foresee,” “likely,” “will,” “goal,” “target” or other similar words or phrases. All forward-looking statements are based upon information available to us on the date of this prospectus.

These forward-looking statements involve risks, uncertainties and other factors, many of which are outside of our control, that could cause actual events or results to differ materially from the results discussed in the forward-looking statements, including, among other things, the risks discussed in the sections captioned “Risk Factors” below, in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022, which are incorporated herein by reference. These factors are not intended to be an all-inclusive list of risks and uncertainties that may affect the operations, performance, development and results of our business, but instead are the risks that we currently perceive as potentially being material. Such factors may include:

- the cyclical nature of the homebuilding industry and deterioration in homebuilding industry conditions;
- continued increases in mortgage interest rates and reduced availability of mortgage financing due to, among other factors, additional actions by the Federal Reserve to address sharp increases in inflation;
- other economic changes nationally and in local markets, including changes in consumer confidence, wage levels, declines in employment levels, and an increase in the number of foreclosures, each of which is outside our control and affects the affordability of, and demand for, the homes we sell;
- continued supply chain challenges negatively impacting our homebuilding production, including shortages of raw materials and other critical components such as windows, doors, and appliances;
- continued shortages of or increased costs for labor used in housing production, and the level of quality and craftsmanship provided by such labor;
- inaccurate estimates related to homes to be delivered in the future (backlog), as they are subject to various cancellation risks that cannot be fully controlled;
- financial institution disruptions, such as recent bank failures;
- potential negative impacts of public health emergencies such as the COVID-19 pandemic, which, in addition to exacerbating each of the risks listed above and below, may include a significant decrease in demand for our homes or consumer confidence generally with respect to purchasing a home, an inability to sell and build homes in a typical manner or at all, increased costs or decreased supply of building materials, including lumber, or the availability of subcontractors, housing inspectors, and other third-parties we rely on to support our operations, and recognizing charges in future periods, which may be material, for goodwill impairments, inventory impairments and/or land option agreement abandonments;
- factors affecting margins, such as adjustments to home pricing, increased sales incentives and mortgage rate buy down programs in order to remain competitive; decreased revenues; decreased land values underlying land option agreements; increased land development costs in communities under development or delays or difficulties in implementing initiatives to reduce our cycle times and production and overhead cost structures; not being able to pass on cost increases (including cost increases due to increasing the energy efficiency of our homes) through pricing increases;
- the availability and cost of land and the risks associated with the future value of our inventory, such as asset impairment charges we took on select California assets during the second quarter of fiscal 2019;

Table of Contents

- our ability to raise debt and/or equity capital, due to factors such as limitations in the capital markets (including market volatility), adverse credit market conditions and financial institution disruptions, and our ability to otherwise meet our ongoing liquidity needs (which could cause us to fail to meet the terms of our covenants and other requirements under our various debt instruments and therefore trigger an acceleration of a significant portion or all of our outstanding debt obligations), including the impact of any downgrades of our credit ratings or reduction in our liquidity levels;
- market perceptions regarding any capital raising initiatives we may undertake (including future issuances of equity or debt capital);
- changes in tax laws or otherwise regarding the deductibility of mortgage interest expenses and real estate taxes;
- increased competition or delays in reacting to changing consumer preferences in home design;
- natural disasters or other related events that could result in delays in land development or home construction, increase our costs or decrease demand in the impacted areas;
- the potential recoverability of our deferred tax assets;
- increases in corporate tax rates;
- potential delays or increased costs in obtaining necessary permits as a result of changes to, or complying with, laws, regulations or governmental policies, and possible penalties for failure to comply with such laws, regulations or governmental policies, including those related to the environment;
- the results of litigation or government proceedings and fulfillment of any related obligations;
- the impact of construction defect and home warranty claims;
- the cost and availability of insurance and surety bonds, as well as the sufficiency of these instruments to cover potential losses incurred;
- the impact of information technology failures, cybersecurity issues or data security breaches;
- the impact of governmental regulations on homebuilding in key markets, such as regulations limiting the availability of water and electricity (including availability of electrical equipment such as transformers and meters);
- the success of our ESG initiatives, including our ability to meet our goal that by the end of 2025 every home we build will be Net Zero Energy Ready, as well as the success of any other related partnerships or pilot programs we may enter into in order to increase the energy efficiency of our homes and prepare for a Net Zero future; and
- terrorist acts, protests and civil unrest, political uncertainty, acts of war or other factors over which the Company has no control.

Any forward-looking statement, including any statement expressing confidence regarding future outcomes, speaks only as of the date on which such statement is made and, except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible to predict all such factors.

ABOUT THIS PROSPECTUS

In this prospectus, “we,” “us,” “our” or the “Company” refer to Beazer Homes USA, Inc. and its subsidiaries, unless we state otherwise or the context indicates otherwise.

This prospectus is part of an automatic shelf registration statement on Form S-3 that we filed with the Securities and Exchange Commission (the “SEC”) as a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act of 1933, as amended (the “Securities Act”). Under this shelf process, we may, from time to time, sell the securities or combinations of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities that we may offer. Each time we offer securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement also may add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading “Where You Can Find More Information.”

You should rely only on the information contained or incorporated by reference in this prospectus and in any prospectus supplement. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making offers to sell or solicitations to buy the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making that offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation. You should not assume that the information in this prospectus or any prospectus supplement, as well as the information we previously filed with the SEC that we incorporate by reference in this prospectus or any prospectus supplement, is accurate as of any date other than its respective date. Our business, financial condition, results of operations and prospects may have changed since those dates.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We also filed a registration statement on Form S-3, including exhibits, under the Securities Act with respect to the securities offered by this prospectus. This prospectus is a part of the registration statement, but does not contain all of the information included in the registration statement or the exhibits. The SEC maintains a website that contains reports and other information regarding registrants that file electronically with the SEC. The address of that site is <http://www.sec.gov>. We also make available on our Internet website our annual, quarterly and current reports and amendments as soon as reasonably practicable after such documents are electronically filed with, or furnished to, the SEC. Our Internet address is <http://www.beazer.com>. The information on our website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus.

We are “incorporating by reference” specified documents that we file with the SEC, which means:

- incorporated documents are considered part of this prospectus;
- we are disclosing important information to you by referring you to those documents; and
- information we file later with the SEC will automatically update and supersede information contained in this prospectus.

We incorporate by reference the documents listed below, which we filed with the SEC under the Securities Exchange Act of 1934, as amended (the “Exchange Act”):

- our Annual Report on [Form 10-K](#) for the year ended September 30, 2022, filed on November 10, 2022;
- our Quarterly Reports on Form 10-Q for the fiscal quarters ended December 31, 2022, March 31, 2023, and June 30, 2023, filed on [February 2, 2023](#), [April 27, 2023](#), and [July 27, 2023](#), respectively;
- our Current Reports on Form 8-K filed on [October 13, 2022](#), [November 14, 2022](#) and [February 9, 2023](#);
- the description of our capital stock contained in our Registration Statement on Form 8-A, filed on January 28, 1994, as updated by the description of our capital stock contained in [Exhibit 4.37](#) to our Annual Report on Form 10-K for the fiscal year ended September 30, 2021, including any amendment or report filed for the purpose of updating that description;
- the description of the Series A Junior Participating Preferred Stock Purchase Rights contained in our Registration Statement on [Form 8-A](#), filed on November 7, 2013, including any amendment or report filed for the purpose of updating the description; and
- all documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (i) after the date on which the registration statement that includes this prospectus was initially filed with the SEC and before the effectiveness of such registration statement and (ii) after the date of this prospectus and prior to the termination of this offering, unless otherwise stated therein, shall be deemed to be incorporated by reference in this prospectus and to be part hereof from the date of filing of such documents.

We will provide without charge to each person, including any beneficial owner, to whom a copy of this prospectus has been delivered, upon written or oral request, a copy of any or all of the documents referred to above that have been or may be incorporated in this prospectus by reference. Requests for copies should be directed to our Corporate Secretary, Beazer Homes USA, Inc., 2002 Summit Boulevard NE, 15th Floor, Atlanta, Georgia 30319, telephone (770) 829-3700.

BEAZER HOMES USA, INC.

We are a geographically diversified homebuilder with active operations in 13 states within three geographic regions in the United States: the West, East and Southeast. Our homes are designed to appeal to homeowners at different price points across various demographic segments and are generally offered for sale in advance of their construction. Our objective is to provide our customers with homes that incorporate extraordinary value at an affordable price, delivered through our three strategic pillars of Mortgage Choice, Choice Plans[®], and Surprising Performance, while seeking to maximize investment returns over the course of a housing cycle.

Our principal executive offices are located at 2002 Summit Boulevard NE, 15th Floor, Atlanta, Georgia 30319, telephone (770) 829-3700. We also provide information about our active communities through our Internet website located at <http://www.beazer.com>. Except for materials specifically incorporated by reference herein, information on our website is not a part of and shall not be deemed incorporated by reference in this prospectus.

RISK FACTORS

Investment in any securities offered pursuant to this prospectus involves risks. You should carefully consider the factors contained in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022 under the heading “Risk Factors,” before investing in our securities. You should also consider similar information contained in any Annual Report on Form 10-K, Form 10-Q or other document filed by us with the SEC after the date of this prospectus before deciding to invest in our securities. If applicable, we will include in any prospectus supplement a description of those significant factors that could make the offering described herein speculative or risky.

USE OF PROCEEDS

Unless we otherwise specify in the applicable prospectus supplement, we expect to use the net proceeds from the sale of the securities for general corporate purposes, which may include the retirement or refinancing of indebtedness under our outstanding debt securities. Until we use the net proceeds from the sale of the securities for these purposes, we may place the net proceeds in temporary investments.

DESCRIPTION OF DEBT SECURITIES AND GUARANTEES

General

We may issue senior or subordinated debt securities, which may be secured or unsecured.

The senior debt securities will constitute part of our senior debt and will be issued under our senior debt indenture described below.

The subordinated debt securities will constitute part of our subordinated debt, will be issued under our subordinated debt indenture described below and will be subordinate in right of payment to all of our “senior debt,” as defined in the indenture. The prospectus supplement for any series of subordinated debt securities or the information incorporated in this prospectus by reference will indicate the approximate amount of senior debt outstanding as of the end of our most recent fiscal quarter.

When we refer to “debt securities” in this prospectus, we mean both the senior debt securities and the subordinated debt securities.

The debt securities may have the benefit of guarantees (each, a “guarantee”), by one or more of our subsidiaries (each, a “guarantor”). If a guarantor issues guarantees, the guarantees may be secured or unsecured and, if guaranteeing senior debt securities, unsubordinated or, if guaranteeing subordinated debt securities, subordinated obligations of the respective guarantors. Unless otherwise expressly stated or the context otherwise requires, as used in this section, the term “guaranteed debt securities” means debt securities that, as described in the prospectus supplement relating thereto, are guaranteed by one or more guarantors pursuant to the applicable indenture.

The debt indentures and their associated documents evidencing the debt securities contain the full legal text of the matters described in this section and the applicable prospectus supplement. We have filed the senior debt indenture and subordinated debt indenture with the SEC as exhibits to our registration statement, of which this prospectus is a part. See “Where You Can Find More Information” above for information on how to obtain copies of them.

This section and the applicable prospectus supplement summarize certain material terms of the indentures and the debt securities. They do not, however, describe every aspect of the indentures and the debt securities and are subject to and qualified in their entirety by reference to all the provisions of the applicable indentures and debt securities. For example, in this section and the applicable prospectus supplement, we use terms that have been given special meaning in the indentures, but we describe the meaning for only the more important of those terms. The applicable prospectus supplement will have a more detailed description of the specific terms of the debt security and any applicable guarantees.

Indentures

The senior and subordinated debt securities are governed by a document called an indenture. Each indenture is a contract between us and a trustee, initially Regions Bank, or any successor named in a prospectus supplement. The indenture relating to the senior debt securities and the indenture relating to the subordinated debt securities are substantially similar, except for certain provisions including those relating to subordination, which are included only in the indenture relating to subordinated debt securities.

The trustee under each indenture has two main roles:

- First, the trustee can enforce your rights against us if we default. There are some limitations on the extent to which the trustee acts on your behalf, which we describe later under “—Default, Remedies and Waiver of Default.”
- Second, the trustee performs certain administrative duties for us.

[Table of Contents](#)

When we refer to the indenture or the trustee with respect to any debt securities, we mean the indenture under which those debt securities are issued and the trustee under that indenture.

Series of Debt Securities

We may issue many distinct debt securities or series of debt securities under any indenture as we wish. This section summarizes terms of the securities that apply generally to all debt securities and series of debt securities. The provisions of each indenture allow us not only to issue debt securities with terms different from those of debt securities previously issued under that indenture, but also to “reopen” a previously issued series of debt securities and issue additional debt securities of that series. We will describe most of the specific terms of your series, whether it be a series of the senior debt securities or subordinated debt securities, in the prospectus supplement for that series. Those terms may vary from the terms described here.

As you read this section, please remember that the specific terms of your debt security as described in the applicable prospectus supplement will supplement and, if applicable, may modify or replace the general terms described in this section. If there are any differences between your prospectus supplement and this prospectus, your prospectus supplement will control. Thus, the statements we make in this section may not apply to your debt security.

When we refer to “debt securities” or a “series of debt securities,” we mean, respectively, debt securities or a series of debt securities issued under the applicable indenture. When we refer to your prospectus supplement, we mean the prospectus supplement describing the specific terms of the debt security you purchase. The terms used in the applicable prospectus supplement will have the meanings described in this prospectus, unless otherwise specified.

Amounts of Issuances

None of the indentures limit the aggregate amount of debt securities that we may issue or the number of series or the aggregate amount of any particular series. We may issue debt securities and other securities at any time without your consent and without notifying you.

Principal Amount, Stated Maturity and Maturity

Unless otherwise stated, the principal amount of a debt security means the principal amount plus the premium, if any, payable at its stated maturity, unless that amount is not determinable, in which case the principal amount of a debt security is its face amount.

The term “stated maturity” with respect to any debt security means the day on which the principal amount of your debt security is scheduled to become due. The principal may become due sooner, by reason of redemption or acceleration after a default or otherwise in accordance with the terms of the debt security. The day on which the principal actually becomes due, whether at the stated maturity or earlier, is called the “maturity” of the principal.

We also use the terms “stated maturity” and “maturity” to refer to the days when other payments become due. For example, we may refer to a regular interest payment date when an installment of interest is scheduled to become due as the “stated maturity” of that installment. When we refer to the “stated maturity” or the “maturity” of a debt security without specifying a particular payment, we mean the stated maturity or maturity, as the case may be, of the principal.

Specific Terms of Debt Securities

The applicable prospectus supplement will describe the specific terms of your debt security, which will include some or all of the following:

- the title of the series of your debt security and whether it is a senior debt security or a subordinated debt security;
- the aggregate principal amount (or any limit on the aggregate principal amount) of the debt securities of the same series and, if any debt securities of a series are to be issued at a discount from their face amount, the method of computing the accretion of such discount and whether the debt securities will be “original issue discount” securities for U.S. federal income tax purposes;
- the initial public offering price and the denomination of the offered debt securities;
- the interest rate or method of calculation of the interest rate;
- the date from which interest will accrue;
- the record dates for interest payable on the debt securities of a series;
- the dates when, places where and manner in which principal and interest are payable;
- the registrar and paying agent;
- the terms of any mandatory (including any sinking fund requirements) or optional redemption by the Company;
- the terms of any redemption at the option of holders;
- whether the debt securities are convertible or exchangeable, the price or rate of conversion or exchange, and the applicable terms and conditions;
- the denominations in which the debt securities are issuable;
- whether the debt securities will be issued in registered or bearer form and the terms of any such forms of debt securities;
- whether any debt securities will be represented by a global security and the terms of any such global security;
- the currency or currencies (including any composite currency) in which principal or interest or both may be paid;
- if payments of principal or interest may be made in a currency other than that in which debt securities are denominated, the manner for determining such payments;
- provisions for electronic issuance of debt securities or issuance of debt securities in uncertificated form;
- any events of default, covenants and/or defined terms in addition to or in lieu of those set forth in this prospectus;
- whether and upon what terms debt securities may be defeased or discharged if different from the provisions set forth in this prospectus;
- the form of the debt securities if different from the form set forth in this prospectus;
- any terms that may be required by or advisable under applicable law;
- the percentage of the principal amount of the debt securities which is payable if the maturity of the debt securities is accelerated in the case of debt securities issued at a discount from their face amount;
- whether the debt security will be guaranteed by any guarantors and, if so, the identity of the guarantors and, to the extent the terms thereof differ from those described in this prospectus, a description of the terms of the guarantees;

[Table of Contents](#)

- whether the debt security is secured or unsecured, and if secured, what the collateral will consist of; and
- any other terms in addition to or different from those contained in this prospectus.

Original Issue Discount Debt Securities

We may issue original issue discount debt securities at an issue price (as specified in the applicable prospectus supplement) that is less than 100% of the principal amount of such debt securities (i.e., par). Original issue discount debt securities may not bear any interest currently or may bear interest at a rate that is below market rates at the time of issuance. The difference between the issue price of an original issue discount debt security and par is referred to herein as the “discount.”

Certain original issue discount debt securities may not be treated as having original issue discount for federal income tax purposes, and debt securities other than original issue discount debt securities may be treated as issued with original issue discount for federal income tax purposes.

Governing Law

The indentures and the debt securities (and any guarantees thereof) will be governed by New York law.

Form of Debt Securities

We may issue each debt security only in registered form, without coupons, unless we specify otherwise in the applicable prospectus supplement. In addition, we will issue each debt security in global—i.e., book-entry—form only, unless we specify otherwise in the applicable prospectus supplement. Debt securities in book-entry form will be represented by a global security registered in the name of a depository, which will be the holder of all the debt securities represented by the global security. Those who own beneficial interests in a global debt security will do so through participants in the depository’s securities clearance system, and the rights of these indirect owners will be governed solely by the applicable procedures of the depository and its participants. References to “holders” in this section mean those who own debt securities registered in their own names, on the books that we or the trustee maintain for this purpose, and not those who own beneficial interests in debt securities registered in street name or in debt securities issued in book-entry form through one or more depositories.

Unless otherwise indicated in the prospectus supplement, the following is a summary of the depository arrangements applicable to debt securities issued in global form and for which The Depository Trust Company, New York, New York (“DTC”), will act as depository.

Each global debt security will be deposited with, or on behalf of, DTC, as depository, or its nominee, and registered in the name of a nominee of DTC. Except under the limited circumstances described below, global debt securities are not exchangeable for definitive certificated debt securities.

Ownership of beneficial interests in a global debt security is limited to institutions that have accounts with DTC or its nominee, or persons that may hold interests through those participants. In addition, ownership of beneficial interests by participants in a global debt security will be evidenced only by, and the transfer of that ownership interest will be effected only through, records maintained by DTC or its nominee for a global debt security. Ownership of beneficial interests in a global debt security by persons that hold those interests through participants will be evidenced only by, and the transfer of that ownership interest within that participant will be effected only through, records maintained by that participant. DTC has no knowledge of the actual beneficial owners of the debt securities. Beneficial owners will not receive written confirmation from DTC of their purchase, but beneficial owners are expected to receive written confirmations providing details of the transaction,

[Table of Contents](#)

as well as periodic statements of their holdings, from the participants through which the beneficial owners entered the transaction. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities they purchase in definitive form. These laws may impair your ability to transfer beneficial interests in a global debt security.

We will make payment of principal of, and interest on, debt securities represented by a global debt security registered in the name of or held by DTC or its nominee to DTC or its nominee, as the case may be, as the registered owner and holder of the global debt security representing those debt securities. DTC has advised us that upon receipt of any payment of principal of, or interest on, a global debt security, DTC immediately will credit accounts of participants on its book-entry registration and transfer system with payments in amounts proportionate to their respective interests in the principal amount of that global debt security, as shown in the records of DTC. Payments by participants to owners of beneficial interests in a global debt security held through those participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the sole responsibility of those participants, subject to any statutory or regulatory requirements that may be in effect from time to time.

Neither we, the trustee nor any of our respective agents will be responsible for any aspect of the records of DTC, any nominee or any participant relating to, or payments made on account of, beneficial interests in a permanent global debt security or for maintaining, supervising or reviewing any of the records of DTC, any nominee or any participant relating to such beneficial interests.

A global debt security is exchangeable for definitive certificated debt securities registered in the name of, and a transfer of a global debt security may be registered to, any person other than DTC or its nominee, only if:

- DTC notifies us that it is unwilling or unable to continue as depository for that global security or has ceased to be a registered clearing agency and we are unable to locate a qualified successor depository;
- an event of default occurs with respect to the applicable series of securities; or
- we notify the trustee that we wish to terminate that global security.

Any global debt security that is exchangeable pursuant to the preceding paragraph will be exchangeable in whole for definitive certificated debt securities in registered form, of like tenor and of an equal aggregate principal amount as the global debt security, in denominations specified in the applicable prospectus supplement, if other than \$1,000 and multiples of \$1,000. The definitive debt securities will be registered by the registrar in the name or names instructed by DTC. We expect that these instructions may be based upon directions received by DTC from its participants with respect to ownership of beneficial interests in the global debt security.

In the event definitive securities are issued:

- holders of definitive securities will be able to receive payments of principal and interest on their debt securities at the office of our paying agent maintained in the Borough of Manhattan or, at our option, by check mailed to the address of the person entitled to the payment at his or her address in the security register;
- holders of definitive securities will be able to transfer their debt securities, in whole or in part, by surrendering the debt securities for registration of transfer at the corporate trust office of Regions Bank designated for such purpose. We will not charge any fee for the registration or transfer or exchange, except that we may require the payment of a sum sufficient to cover any applicable tax or other governmental charge payable in connection with the transfer; and
- any moneys we pay to our paying agents for the payment of principal and interest on the debt securities that remains unclaimed at the second anniversary of the date such payment was due will be returned to us, and thereafter holders of definitive securities may look only to us, as general unsecured creditors, for payment.

[Table of Contents](#)

If an issue of debt securities is denominated in a currency other than the U.S. dollar, we will make payments of principal and any interest in the foreign currency in which the debt securities are denominated or in U.S. dollars. DTC has elected to have all payments of principal and interest paid in U.S. dollars unless notified by any of its participants through which an interest in the debt securities is held that it elects, in accordance with, and to the extent permitted by, the accompanying prospectus supplement and the relevant debt security, to receive payment of principal or interest in the foreign currency. On or prior to the third business day after the record date for payment of interest and 12 days prior to the date for payment of principal, a participant will be required to notify DTC of (a) its election to receive all, or the specified portion, of payment in the foreign currency and (b) its instructions for wire transfer of payment to a foreign currency account.

Except as provided above or in your prospectus supplement, owners of the beneficial interests in a global debt security will not be entitled to receive physical delivery of debt securities in definitive certificated form and will not be considered the holders of debt securities for any purpose under the indentures. Except as provided above, no global debt security shall be exchangeable except for another global debt security of like denomination and tenor to be registered in the name of DTC or its nominee. Accordingly, each person owning a beneficial interest in a global debt security must rely on the procedures of DTC and, if that person is not a participant, on the procedures of the participant through which that person owns its interest, to exercise any rights of a holder under the global debt security or the indentures.

We understand that, under existing industry practices, in the event that we request any action of holders, or an owner of a beneficial interest in a global debt security desires to give or take any action that a holder is entitled to give or take under the debt securities or the indentures, DTC would authorize the participants holding the relevant beneficial interests to give or take that action. Additionally, those participants would authorize beneficial owners owning through those participants to give or take that action or would otherwise act upon the instructions of beneficial owners owning through them.

DTC has advised us that it is a limited-purpose trust company organized under the laws of the State of New York, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered under the Exchange Act. DTC was created to hold securities of its participants and to facilitate the clearance and settlement of transactions among its participants in securities through electronic book-entry changes in accounts of the participants. By doing so, DTC eliminates the need for physical movement of securities certificates. DTC’s participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its participants and by the New York Stock Exchange, Inc. and NYSE Amex Equities. Access to DTC’s book-entry system is also available to others such as banks, brokers, dealers, and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly. The rules applicable to DTC and its participants are on file with the SEC.

The information in this section concerning DTC and its book-entry system has been obtained from sources that we believe to be accurate, but we assume no responsibility for the accuracy thereof.

Clearstream Banking (“Clearstream”) and Euroclear System (“Euroclear”) will hold interests on behalf of their participants through customers’ securities accounts in Clearstream’s and Euroclear’s names on the books of their respective depositaries, which in turn will hold interests in customers’ securities accounts in the depositaries’ names on the books of DTC. At the present time, Citibank, N.A. acts as U.S. depositary for Clearstream and JPMorgan Chase Bank, N.A. acts as U.S. depositary for Euroclear (the “U.S. Depositaries”).

Clearstream holds securities for its participating organizations (“Clearstream Participants”) and facilitates the clearance and settlement of securities transactions between Clearstream Participants through electronic book-entry changes in accounts of Clearstream Participants, thereby eliminating the need for physical movement of certificates. Clearstream provides to Clearstream Participants, among other things, services for safekeeping,

[Table of Contents](#)

administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Clearstream interfaces with domestic markets in several countries.

Clearstream is registered as a bank in Luxembourg, and as such is subject to regulation by the Commission de Surveillance du Secteur Financier and the Banque Centrale du Luxembourg, which supervise and oversee the activities of Luxembourg banks. Clearstream Participants are world-wide financial institutions including underwriters, securities brokers and dealers, banks, trust companies and clearing corporations, and may include the underwriters or their affiliates. Indirect access to Clearstream is available to other institutions that clear through or maintain a custodial relationship with a Clearstream Participant. Clearstream has established an electronic bridge with Euroclear as the operator of the Euroclear System (the “Euroclear Operator”) in Brussels to facilitate settlement of trades between Clearstream and the Euroclear Operator.

Euroclear holds securities and book-entry interests in securities for participating organizations (“Euroclear Participants”) and facilitates the clearance and settlement of securities transactions between Euroclear Participants, and between Euroclear Participants and participants of certain other securities intermediaries through electronic book-entry changes in accounts of such participants or other securities intermediaries. Euroclear provides Euroclear Participants, among other things, with safekeeping, administration, clearance and settlement, securities lending and borrowing, and related services. Euroclear Participants are investment banks, securities brokers and dealers, banks, central banks, supranationals, custodians, investment managers, corporations, trust companies and certain other organizations, and may include the underwriters or their affiliates. Non-participants in Euroclear may hold and transfer beneficial interests in a global security through accounts with a Euroclear Participant or any other securities intermediary that holds a book-entry interest in a global security through one or more securities intermediaries standing between such other securities intermediary and Euroclear.

Securities clearance accounts and cash accounts with the Euroclear Operator are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear System, and applicable Belgian law (collectively, the “Terms and Conditions”). The Terms and Conditions govern transfers of securities and cash within Euroclear, withdrawals of securities and cash within Euroclear, withdrawals of securities and cash from Euroclear and receipts of payments with respect to securities in Euroclear. All securities in Euroclear are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts. The Euroclear Operator acts under the Terms and Conditions only on behalf of Euroclear Participants, and has no record of or relationship with persons holding through Euroclear Participants.

Distributions with respect to debt securities held beneficially through Euroclear will be credited to the cash accounts of Euroclear Participants in accordance with the Terms and Conditions, to the extent received by the U.S. depository for Euroclear.

Distributions with respect to debt securities held beneficially through Clearstream will be credited to cash accounts of Clearstream Participants in accordance with its rules and procedures, to the extent received by the U.S. depository for Clearstream.

We have provided the descriptions herein of the operations and procedures of Euroclear and Clearstream solely as a matter of convenience. These operations and procedures are solely within the control of Euroclear and Clearstream and are subject to change by them from time to time. Neither we, any underwriters nor the trustee takes any responsibility for these operations or procedures, and you are urged to contact Euroclear or Clearstream or their respective participants directly to discuss these matters.

Initial settlement for the securities will be made in immediately available funds. Secondary market trading between DTC participants will occur in the ordinary way in accordance with DTC’s rules and will be settled in immediately available funds. Secondary market trading between Euroclear Participants and/or Clearstream Participants will occur in the ordinary way in accordance with the applicable rules and operating procedures of

[Table of Contents](#)

Euroclear and Clearstream, as applicable, and will be settled using the procedures applicable to conventional eurobonds in immediately available funds.

Cross-market transfers between persons holding directly or indirectly through DTC, on the one hand, and directly or indirectly through Euroclear or Clearstream Participants, on the other, will be effected within DTC in accordance with DTC's rules on behalf of the relevant European international clearing system by its U.S. depository; however, such cross-market transactions will require delivery of instructions to the relevant European international clearing system by the counterparty in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transaction meets its settlement requirements, deliver instructions to its U.S. depository to take action to effect final settlement on its behalf by delivering or receiving debt securities in DTC, and making or receiving payment in accordance with normal procedures for same day funds settlement applicable to DTC. Euroclear Participants and Clearstream Participants may not deliver instructions directly to their respective U.S. depositories.

Because of time-zone differences, credits of securities received in Euroclear or Clearstream as a result of a transaction with a DTC participant will be made during subsequent securities settlement processing and dated the business day following the DTC settlement date. Such credits, or any transactions in the securities settled during such processing, will be reported to the relevant Euroclear Participants or Clearstream Participants on that business day. Cash received in Euroclear or Clearstream as a result of sales of securities by or through a Euroclear Participant or a Clearstream Participant to a DTC participant will be received with value on the business day of settlement in DTC but will be available in the relevant Euroclear or Clearstream cash account only as of the business day following settlement in DTC.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures in order to facilitate transfers of debt securities among participants of DTC, Euroclear and Clearstream, they are under no obligation to perform or continue to perform such procedures and they may discontinue the procedures at any time.

Redemption or Repayment

If there are any provisions regarding redemption or repayment applicable to your debt security, we will describe them in the applicable prospectus supplement.

We or our affiliates may purchase debt securities from investors who are willing to sell from time to time, either in the open market at prevailing prices or in private transactions at negotiated prices. Debt securities that we or they purchase may, at our discretion, be held, resold or canceled.

Mergers and Similar Transactions

We will generally be permitted under the indenture for the relevant series to merge or consolidate with another corporation or other entity. We will also be permitted under the indenture for the relevant series to sell all or substantially all of our assets to another corporation or other entity. With regard to any series of debt securities, however, we may not take any of these actions unless all the following conditions, among other things, are met:

- If the successor entity in the transaction is not the Company, the successor entity must be organized as a corporation, partnership or trust and must expressly assume our obligations under the debt securities of that series and the indenture with respect to that series. The successor entity shall be required to be organized under the laws of the United States, any state thereof or the District of Columbia;
- Immediately after the transaction, no default under the debt securities of that series has occurred and is continuing; and

[Table of Contents](#)

- The trustee shall have received the officers' certificate and opinion of counsel called for by such indenture.

Subordination Provisions

Holders of subordinated debt securities should recognize that contractual provisions in a subordinated debt indenture may prohibit us from making payments on those securities. Subordinated debt securities are subordinate and junior in right of payment, to the extent and in the manner stated in the subordinated debt indenture, to all of our senior debt, as defined in the subordinated debt indenture.

We may modify the subordination provisions with respect to one or more series of subordinated debt securities. Such modifications will be set forth in the applicable prospectus supplement.

The subordinated debt indenture provides that, unless all principal of and any premium or interest on the senior debt has been paid in full, no payment or other distribution may be made in respect of any subordinated debt securities in the following circumstances:

- in the event of any insolvency or bankruptcy proceedings, or any receivership, liquidation, reorganization, assignment for creditors or other similar proceedings or events involving us or our assets;
- (a) in the event and during the continuation of any default in the payment of principal, premium or interest on any senior debt beyond any applicable grace period or (b) in the event that any event of default with respect to any senior debt has occurred and is continuing, permitting the holders of that senior debt (or a trustee) to accelerate the maturity of that senior debt, whether or not the maturity is in fact accelerated (unless, in the case of (a) or (b), the payment default or event of default has been cured or waived or ceased to exist and any related acceleration has been rescinded) or (c) in the event that any judicial proceeding is pending with respect to a payment default or event of default described in (a) or (b); or
- in the event that any subordinated debt securities have been declared due and payable before their stated maturity.

If the trustee under the subordinated debt indenture or any holders of the subordinated debt securities receive any payment or distribution that is prohibited under the subordination provisions, then the trustee or the holders will have to repay that money to the company which shall remit payment to the holders of the senior debt.

Even if the subordination provisions prevent us from making any payment when due on the subordinated debt securities of any series, we will be in default on our obligations under that series if we do not make the payment when due. This means that the trustee under the subordinated debt indenture and the holders of that series can take action against us, but they will not receive any money until the claims of the holders of senior debt have been fully satisfied.

Defeasance, Covenant Defeasance and Satisfaction and Discharge

When we use the term defeasance, we mean discharge from some or all of our obligations under the indentures. If we deposit with the trustee funds or government securities, or if so provided in your prospectus supplement, obligations other than government securities, sufficient to make payments on any series of debt securities on the dates those payments are due and payable and other specified conditions are satisfied, then, at our option, either of the following will occur:

- we will be discharged from our obligations with respect to the debt securities of such series and all obligations of any guarantors of such debt securities will also be discharged with respect to the guarantees of such debt securities ("legal defeasance"); or

[Table of Contents](#)

- we will be discharged from any covenants we make in the applicable indenture for the benefit of such series and the related events of default will no longer apply to us (“covenant defeasance”).

If we defease any series of debt securities, the holders of such securities will not be entitled to the benefits of the indenture, except for our obligations to register the transfer or exchange of such securities, replace stolen, lost or mutilated securities or maintain paying agencies and hold moneys for payment in trust. In case of covenant defeasance, our obligation to pay principal, premium and interest on the applicable series of debt securities will also survive.

Upon the effectiveness of defeasance with respect to any series of guaranteed debt securities, each guarantor of the debt securities of such series shall be automatically and unconditionally released and discharged from all of its obligations under its guarantee of the debt securities of such series and all of its other obligations under the applicable indenture in respect of the debt securities of that series, without any action by the Company, any guarantor or the trustee and without the consent of the holders of any debt securities.

We will be required to deliver to the trustee an opinion of counsel that the deposit and related defeasance would not cause the holders of the applicable series of debt securities to recognize gain or loss for federal income tax purposes. If we elect legal defeasance, that opinion of counsel must be based upon a ruling from the United States Internal Revenue Service or a change in law to that effect.

In addition, we may satisfy and discharge all our obligations under the indenture with respect to debt securities of any series, other than our obligation to register the transfer of and exchange debt securities of that series, provided that we:

- deliver all outstanding debt securities of that series to the trustee for cancellation;
- redeem all such debt securities pursuant to the redemption provisions set forth in the applicable indenture; or
- all such debt securities not so delivered for cancellation have either become due and payable and, in the case of this bullet point, we have deposited with the trustee in trust an amount of cash sufficient to pay the entire indebtedness of such debt securities, including interest to the stated maturity.

Default, Remedies and Waiver of Default

You will have certain rights if an event of default with respect to your series of debt securities occurs and is continuing, as described in this subsection.

Events of Default

Unless the applicable prospectus supplement says otherwise, when we refer to an event of default with respect to any series of debt securities, we mean any of the following:

- we do not pay the principal or any premium on any debt security of that series on the due date;
- we do not pay interest on any debt security of that series within 30 days after the due date;
- we do not deposit a sinking fund payment with regard to any debt security of that series when due, but only if the payment is required under provisions described in the applicable prospectus supplement;
- we remain in breach of our covenants we make in the indenture for the benefit of the relevant series, for 60 days after we receive a notice of default stating that we are in breach and requiring us to remedy the breach. The notice must be sent by the trustee or the holders of at least 25% in principal amount of the relevant series of debt securities;
- we file for bankruptcy or other events of bankruptcy, insolvency or reorganization relating to the Company occur;

Table of Contents

- with respect to any series of debt securities that is guaranteed, such guarantee shall cease to be enforceable for any reason, except as contemplated or permitted in the indenture governing such debt security; or
- if the applicable prospectus supplement states that any additional event of default applies to the series, that event of default occurs.

We may change, eliminate, or add to the events of default with respect to any particular series or any particular debt security or debt securities within a series, as indicated in the applicable prospectus supplement.

Remedies if an Event of Default Occurs

If you are the holder of a subordinated debt security, all the remedies available upon the occurrence of an event of default under the subordinated debt indenture will be subject to the restrictions on the subordinated debt securities described above under “—Subordination Provisions.”

Except as otherwise specified in the applicable prospectus supplement, if an event of default has occurred with respect to any series of debt securities and has not been cured or waived, the trustee or the holders of not less than 25% in principal amount of all debt securities of that series then outstanding may declare the entire principal amount of the debt securities of that series to be due immediately.

Each of the situations described above is called an acceleration of the stated maturity of the affected series of debt securities. Except as otherwise specified in the applicable prospectus supplement, if the stated maturity of any series is accelerated and a judgment for payment has not yet been obtained, the holders of a majority in principal amount of the debt securities of that series may, in certain circumstances, cancel the acceleration for the entire series.

If an event of default occurs, the trustee will have certain duties under the indenture. In that situation, the trustee will be obligated to use those of its rights and powers under the relevant indenture, and to use the same degree of care and skill in doing so, that a prudent person would use in that situation in conducting his or her own affairs.

Except as described in the prior paragraph, the trustee is not required to take any action under the relevant indenture at the request of any holders unless the holders offer the trustee reasonable protection from expenses and liability. This is called an indemnity. If the trustee is provided with indemnity reasonably satisfactory to it, the holders of a majority in principal amount of all debt securities of the relevant series may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the trustee with respect to that series. These majority holders may also direct the trustee in performing any other action under the relevant indenture with respect to the debt securities of that series.

No holder of any debt securities will have any right to bypass the trustee and bring your own lawsuit or other formal legal action or take other steps to enforce your rights or protect your interests relating to any debt security, unless all of the following shall occur:

- the holder of your debt security must give the trustee written notice that an event of default has occurred with respect to the debt securities of your series, and the event of default must not have been cured or waived;
- the holders of at least a majority in principal amount of all debt securities of your series must make a written request that the trustee take action because of the default, and they or other holders must offer to the trustee indemnity reasonably satisfactory to the trustee against the cost and other liabilities of taking that action;
- the trustee must not have taken action for 60 days after the above steps have been taken; and

[Table of Contents](#)

- during those 60 days, the holders of a majority in principal amount of the debt securities of your series must not have given the trustee directions that are inconsistent with the written request of the holders of at least a majority in principal amount of the debt securities of your series.

You are entitled at any time, however, to bring a lawsuit for the payment of money due on your debt security on or after its stated maturity.

Book-entry and other indirect owners should consult their banks or brokers for information on how to give notice or direction to or make a request of the trustee and how to declare or cancel an acceleration of the maturity.

Waiver of Default

The holders of not less than a majority in principal amount of the debt securities of any series may waive a default for all debt securities of that series. If this happens, the default will be treated as if it has not occurred. No one can waive a payment default on your debt security, however, without the approval of the particular holder of that debt security.

Modifications and Waivers

Subject to certain exceptions, the indentures may be amended or supplemented with the consent (which may include consents obtained in connection with a tender offer or exchange offer for debt securities) of the holders of at least a majority in principal amount of the debt securities 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 debt securities) under, or compliance with any provision of, the indentures may be waived with the consent (which may include consents obtained in connection with a tender offer or exchange offer for debt securities) of the holders of a majority in principal amount of the debt securities then outstanding.

Changes Requiring Each Holder's Approval

Without the consent of each holder affected, we may not

- reduce the amount of debt securities whose holders must consent to an amendment, supplement or waiver;
- reduce the rate of or change the time for payment of interest, including default interest, on any debt security;
- reduce the principal of or change the fixed maturity of any debt security or alter the provisions with respect to redemption or with respect to mandatory offers to repurchase debt securities;
- make any debt security payable in money other than that stated in the debt security;
- 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;
- modify the ranking or priority of the debt securities or any guarantee;
- release any guarantor from any of its obligations under its guarantee or the relevant indenture otherwise than in accordance with the terms of such indenture; or
- waive a continuing default or event of default in the payment of principal of or interest on the debt securities.

The right of any holder to participate in any consent required or sought pursuant to any provision of the indentures (and the obligation of the Company to obtain any such consent otherwise required from such holder)

[Table of Contents](#)

may be subject to the requirement that such holder shall have been the holder of record of any debt securities 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.

Changes Not Requiring Approval of Holders

We may modify or amend the indentures without notice to or the approval of each of the holders affected in certain circumstances. These changes generally are limited to changes to cure any ambiguity, defect or inconsistency; to establish the terms of a new series of debt securities under the indentures; to provide for uncertificated debt securities in addition to certificated debt securities; to add additional covenants or events of default; to secure any debt securities; to evidence the successor of another corporation or entity to our obligations under the indentures; to make any change that does not adversely affect the legal rights under the indentures of any holder; to comply with or qualify the indentures under the Trust Indenture Act; or to reflect a guarantor ceasing to be liable on the guarantees because it is no longer a subsidiary of the Company.

Changes Requiring Majority Approval

Any other change to a particular indenture and the debt securities issued under that indenture would require approval of the holders of a majority in principal amount of holders affected, except as may otherwise be provided pursuant to such indenture for all or any particular debt securities of any series. This means that modification of terms with respect to certain securities of a series could be effectuated without obtaining the consent of the holders of a majority in principal amount of other securities of such series that are not affected by such modification.

Holders of debt securities held in book-entry and other indirect owners should consult their banks or brokers for information on how approval may be granted or denied if we seek to change an indenture or any debt securities.

Modification of Subordination Provisions

We may not amend the indenture related to subordinated debt securities to alter the subordination of any outstanding subordinated debt securities without the written consent of each holder of senior debt then outstanding who would be adversely affected (or the group or representative thereof authorized or required to consent thereto pursuant to the instrument creating or evidencing, or pursuant to which there is outstanding, such senior debt).

Form, Exchange and Transfer

If any debt securities cease to be issued in registered global form, they will be issued:

- only in fully registered form;
- without interest coupons; and
- unless we indicate otherwise in your prospectus supplement, in denominations of \$1,000 and integral multiples of \$1,000.

Holders may exchange their debt securities for debt securities of smaller denominations or combined into fewer debt securities of larger denominations, as long as the total principal amount is not changed. You may not exchange your debt securities for securities of a different series or having different terms, unless your prospectus supplement says you may.

Holders may exchange or transfer their debt securities at the corporate trust office of the trustee so designated for such purpose. They may also replace lost, stolen, destroyed or mutilated debt securities at that

[Table of Contents](#)

office. We have appointed the trustee to act as our agent for registering debt securities in the names of holders and transferring and replacing debt securities. We may appoint another entity to perform these functions or perform them ourselves.

Holders will not be required to pay a service charge to transfer or exchange their debt securities, but they may be required to pay for any tax or other governmental charge associated with the exchange or transfer. The transfer or exchange, and any replacement, will be made only if our transfer agent is satisfied with the holder's proof of legal ownership. The transfer agent may require an indemnity before replacing any debt securities.

If we have designated additional transfer agents for your debt security, they will be named in your prospectus supplement. We may appoint additional transfer agents or cancel the appointment of any particular transfer agent. We may also approve a change in the office through which any transfer agent acts.

If the debt securities of any series are redeemable and we redeem less than all those debt securities, we may block the transfer or exchange of those debt securities during the period beginning 15 days before the day we mail the notice of redemption and ending on the day of that mailing, in order to freeze the list of holders to prepare the mailing. We may also refuse to register transfers of or exchange any debt security selected for redemption, except that we will continue to permit transfers and exchanges of the unredeemed portion of any debt security being partially redeemed.

If a debt security is issued as a global debt security, only DTC or other depository will be entitled to transfer and exchange the debt security as described in this subsection, since the depository will be the sole holder of the debt security.

The rules for exchange described above apply to exchange of debt securities for other debt securities of the same series and kind. If a debt security is convertible, exercisable or exchangeable into or for a different kind of security, such as one that we have not issued, or for other property, the rules governing that type of conversion, exercise or exchange will be described in the applicable prospectus supplement.

Guarantees

The debt securities of any series may be guaranteed by one or more of our subsidiaries. However, the applicable indenture governing the debt securities will not require that any of our subsidiaries be a guarantor of any series of debt securities and, if guaranteed, it may not necessarily be guaranteed by all of our subsidiaries. As a result, a series of debt securities may not have any guarantors and the guarantors of any series of guaranteed debt securities may differ from the guarantors of any other series of guaranteed debt securities. If we issue a series of guaranteed debt securities, the identity of the specific guarantors of the debt securities of that series will be identified in the applicable prospectus supplement.

If we issue a series of guaranteed debt securities, a description of some of the terms of guarantees of those debt securities will be set forth in the applicable prospectus supplement. Unless otherwise provided in the prospectus supplement relating to a series of guaranteed debt securities, each guarantor of the debt securities of such series will unconditionally guarantee the due and punctual payment of the principal of, and premium, if any, and interest, if any, on each debt security of such series, all in accordance with the terms of such debt securities and the applicable indenture.

Notwithstanding the foregoing, unless otherwise provided in the prospectus supplement relating to a series of guaranteed debt securities, the applicable indenture will contain provisions to the effect that the obligations of each guarantor under its guarantees and such indenture shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such guarantor, result in the obligations of such guarantor under such guarantees and such indenture not constituting a fraudulent conveyance or fraudulent transfer under applicable law. However, there can be no assurance that, notwithstanding such limitation, a court

[Table of Contents](#)

would not determine that a guarantee constituted a fraudulent conveyance or fraudulent transfer under applicable law. If that were to occur, the court could void the applicable guarantor's obligations under that guarantee, subordinate that guarantee to other debt and other liabilities of that guarantor or take other action detrimental to holders of the debt securities of the applicable series, including directing the holders to return any payments received from the applicable guarantor.

A guarantor may be released from its guarantees in accordance with the terms of the applicable indenture.

The applicable prospectus supplement relating to any series of guaranteed debt securities will specify other terms of the applicable guarantees.

If the applicable prospectus supplement relating to a series of our senior debt securities provides that those senior debt securities will have the benefit of a guarantee by any or all of our subsidiaries, unless otherwise provided in the applicable prospectus supplement, each such guarantee will be the unsubordinated obligation of the applicable guarantor.

If the applicable prospectus supplement relating to a series of our subordinated debt securities provides that those subordinated debt securities will have the benefit of a guarantee by any or all of our subsidiaries, unless otherwise provided in the applicable prospectus supplement, each such guarantee will be the subordinated obligation of the applicable guarantor. See "—Subordination Provisions" above.

Paying Agents

We may appoint one or more financial institutions to act as our paying agents, at whose designated offices debt securities in non-global entry form may be surrendered for payment at their maturity. We call each of those offices a paying agent. Regions Bank will act as the initial paying agent under the indentures. We may add, replace or terminate paying agents from time to time. We may also choose to act as our own paying agent. We will specify in the prospectus supplement for your debt security the initial location of each paying agent for that debt security. We must notify the trustee of changes in the paying agents.

Notices

Notices to be given to holders of a global debt security will be given only to the depositary, in accordance with its applicable policies as in effect from time to time. Notices to be given to holders of debt securities not in global form will be sent by mail to the respective addresses of the holders as they appear in the trustee's records, and will be deemed given when mailed. Neither the failure to give any notice to a particular holder, nor any defect in a notice given to a particular holder, will affect the sufficiency of any notice given to another holder.

Book-entry and other indirect owners should consult their banks or brokers for information on how they will receive notices.

Our Relationship with the Trustee

The prospectus supplement for your debt security will describe any material relationships we may have with the trustee with respect to that debt security.

The same financial institution may initially serve as the trustee for our senior debt securities and subordinated debt securities. Consequently, if an actual or potential event of default occurs with respect to any of these securities, the trustee may be considered to have a conflicting interest for purposes of the Trust Indenture Act of 1939. In that case, the trustee may be required to resign under one or more of the indentures, and we would be required to appoint a successor trustee. For this purpose, a "potential" event of default means an event that would be an event of default if the requirements for giving us default notice or for the default having to exist for a specific period of time were disregarded.

DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock summarizes general terms and provisions that apply to our capital stock. Since this is only a summary, it does not contain all of the information that may be important to you. The summary is subject to and qualified in its entirety by reference to our Amended and Restated Certificate of Incorporation (“Charter”) and our Fourth Amended and Restated Bylaws (“Bylaws”), which are filed as exhibits to the registration statement of which this prospectus is a part and incorporated by reference into this prospectus. See “Where You Can Find More Information.”

Common Stock

General. Our Charter authorizes the issuance of 63,000,000 shares of our common stock, par value \$0.001 per share.

Voting rights. Holders of shares of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. Except as otherwise provided in our Charter or as required by law, our common stock is the only capital stock entitled to vote in the election of directors. Our common stock does not have cumulative voting rights.

Dividend rights. Holders of our common stock are entitled to receive dividends and distributions lawfully declared by our board of directors. If we liquidate, dissolve, or wind up our business, whether voluntarily or involuntarily, holders of our common stock will be entitled to receive any assets available for distribution to our stockholders after we have paid or set apart for payment the amounts necessary to satisfy any preferential or participating rights to which the holders of any outstanding series of preferred stock are entitled by the express terms of such series of preferred stock.

Other matters. Upon our dissolution or liquidation or the sale of all or substantially all of our assets, after payment in full of all amounts required to be paid to creditors, the holders of shares of our common stock will be entitled to receive pro rata our remaining assets available for distribution. Holders of shares of our common stock do not have preemptive, subscription, redemption, or conversion rights, no redemption or sinking fund provisions are applicable to our common stock. All outstanding shares of common stock are fully paid and nonassessable. We may issue additional shares of our authorized but unissued common stock as approved by our board of directors from time to time.

Preferred Stock

If we offer preferred stock, we will file the terms of the preferred stock with the SEC, and the prospectus supplement relating to that offering will include a description of the specific terms of the offerings. Our board of directors has been authorized to provide for the issuance of shares of our preferred stock in multiple series without the approval of stockholders. With respect to each series of our preferred stock, our board of directors has the authority to fix the following terms:

- the designation of the series;
- the number of shares within the series;
- whether dividends are cumulative;
- the rate of any dividends, any conditions upon which dividends are payable, and the dates of payment of dividends;
- whether there are any limitations on the declaration or payment of dividends on common stock while any series of preferred stock is outstanding;
- whether the shares are redeemable, the redemption price and the terms of redemption;

[Table of Contents](#)

- the amount payable to you for each share you own if we dissolve or liquidate;
- whether the shares are convertible or exchangeable, the price or rate of conversion or exchange, and the applicable terms and conditions;
- whether the shares will be subject to a purchase, retirement or sinking fund and the manner in which such fund shall be applied to the redemption of the shares;
- voting rights applicable to the series of preferred stock; and
- any other rights, preferences or limitations of such series.

Our ability to issue preferred stock, or rights to purchase such shares, could discourage an unsolicited acquisition proposal. For example, we could impede a business combination by issuing a series of preferred stock containing class voting rights that would enable the holders of such preferred stock to block a business combination transaction. Alternatively, we could facilitate a business combination transaction by issuing a series of preferred stock having sufficient voting rights to provide a required percentage vote of the stockholders. Additionally, under certain circumstances, our issuance of preferred stock could adversely affect the voting power of the holders of our common stock. Although our board of directors is required to make any determination to issue any preferred stock based on its judgment as to the best interests of our stockholders, our board of directors could act in a manner that would discourage an acquisition attempt or other transaction that some, or a majority, of our stockholders might believe to be in their best interests or in which stockholders might receive a premium for their stock over prevailing market prices of such stock. Our board of directors does not at present intend to seek stockholder approval prior to any issuance of currently authorized stock, unless otherwise required by law or applicable stock exchange requirements.

Anti-Takeover Provisions

Our Charter and Bylaws, as well as the Delaware General Corporation Law (“DGCL”), contain provisions that may delay, defer, or discourage another party from acquiring control of us. These provisions, which are summarized below, may discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor.

Section 203 of the DGCL. We are subject to Section 203 of the DGCL. Subject to certain exceptions, Section 203 prevents a publicly held Delaware corporation from engaging in a “business combination” with any “interested stockholder” for three years following the date that the person became an interested stockholder, unless the interested stockholder attained such status with the approval of our board of directors or unless the business combination is approved in a prescribed manner. A “business combination” includes, among other things, a merger or consolidation involving us and the “interested stockholder” and the sale of more than 10% of our assets. In general, an “interested stockholder” is any entity or person beneficially owning 15% or more of our outstanding voting stock and any entity or person affiliated with or controlling or controlled by such entity or person.

Protective Amendment and Section 382 Rights Agreement. In February 2011, our stockholders approved an amendment to our certificate of incorporation (the “Protective Amendment”) designed to preserve the value of certain tax assets associated with net operating loss (“NOL”) carryforwards under Section 382. In February 2013, our stockholders approved an extension of the term of the Protective Amendment and approved a Section 382 Rights Agreement that was adopted by our board of directors.

These instruments are intended to act as deterrents to any person or group, together with their affiliates and associates, from being or becoming the beneficial owner of 4.95% or more of our common stock. In February

[Table of Contents](#)

2016, our stockholders approved an extension of the Protective Amendment to November 12, 2019 and approved a new Section 382 Rights Agreement adopted by our board of directors with an expiration date of November 14, 2019. In February 2019, our stockholders approved an extension of the Protective Amendment to November 12, 2022 and approved a new Section 382 Rights Agreement adopted by our board of directors with an expiration date of November 14, 2022. In February 2022, our stockholders approved an extension of the Protective Amendment to November 12, 2025 and approved a new Section 382 Rights Agreement adopted by our board of directors with an expiration date of November 14, 2025.

Our board of directors has adopted a Rights Agreement pursuant to which holders of our common stock will be entitled to purchase from us one one-thousandth of a share of our Series A Junior Participating Preferred Stock if any Acquiring Person (as defined in the Rights Agreement) acquires beneficial ownership of 4.95% or more of our common stock or if a tender offer or exchange offer is commenced that would result in a person or group acquiring beneficial ownership of 4.95% or more of our common stock. The exercise price per right is \$50, subject to adjustment. These provisions of the Rights Agreement could have certain anti-takeover effects because the rights provided to holders of our common stock under the Rights Agreement will cause substantial dilution to a person or group that acquires our common stock or engages in other specified events without the rights under the agreement having been redeemed or in the event of an exchange of the rights for common stock as permitted in the agreement.

Authorized but Unissued Shares. The authorized but unissued shares of our common stock and our preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of the New York Stock Exchange. These additional shares may be used for a variety of corporate finance transactions, acquisitions, and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger, or otherwise.

Special Meetings of Stockholders. Our Bylaws also provide that, except as otherwise required by law, special meetings of the stockholders may only be called by our board of directors.

Advance Notice Requirements for Stockholder Proposals and Director Nominations. In addition, our Bylaws contain provisions requiring that advance notice be delivered to us of any business to be brought by a stockholder before an annual meeting of stockholders and providing for certain procedures to be followed by stockholders in nominating persons for election to our board of directors. Generally, such advance notice provisions provide that the stockholder must give written notice to our Secretary not less than 120 days nor more than 150 days prior to the first anniversary of the date of our notice of annual meeting for the preceding year's annual meeting; provided, however, that in the event that the date of the meeting is changed by more than 30 days from the anniversary date of the preceding year's annual meeting, notice by the stockholder to be timely must be received no later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made. The notice must set forth specific information regarding such stockholder and such business or director nominee, as described in our Bylaws. Such requirement is in addition to those set forth in the regulations adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Limitation on Liability and Indemnification of Officers and Directors

Our Charter and Bylaws provide indemnification for our directors and officers to the fullest extent permitted by the DGCL. In addition, as permitted by Delaware law, our Charter includes provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of these provisions is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director, except that a director will be personally liable for:

- any breach of his duty of loyalty to us or our stockholders;

[Table of Contents](#)

- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- any transaction from which the director derived an improper personal benefit; or
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL.

These provisions may be held not to be enforceable for violations of the federal securities laws of the United States.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

Stock Exchange Listing

Our common stock is listed on the New York Stock Exchange under the symbol “BZH.”

DESCRIPTION OF DEPOSITARY SHARES

General

We may offer fractional shares of preferred stock, rather than full shares of preferred stock. If we decide to offer fractional shares of preferred stock, we will issue receipts for depositary shares. Each depositary share will represent a fraction of a share of a particular series of preferred stock. An accompanying prospectus supplement will indicate that fraction. The shares of preferred stock represented by depositary shares will be deposited under a deposit agreement between us and a depositary that is a bank or trust company that meets certain requirements and is selected by us. Each owner of a depositary share will be entitled to all of the rights and preferences of the preferred stock represented by the depositary share. The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Depositary receipts will be distributed to those persons purchasing the fractional shares of preferred stock in accordance with the terms of the offering.

We have summarized selected provisions of the deposit agreement and the depositary receipts. The form of the depositary agreement and the depositary receipts relating to any particular issue of depositary shares will be filed with the SEC each time we issue depositary shares, and you should read those documents for provisions that may be important to you.

Dividends and Other Distributions

If we pay a cash distribution or dividend on a series of preferred stock represented by depositary shares, the depositary will distribute such dividends to the record holders of such depositary shares. If the distributions are in property other than cash, the depositary will distribute the property to the record holders of the depositary shares. If, however, the depositary determines that it is not feasible to make the distribution of property, the depositary may, with our approval, sell such property and distribute the net proceeds from such sale to the holders of the preferred stock.

Redemption of Depositary Shares

If we redeem a series of preferred stock represented by depositary shares, the depositary will redeem the depositary shares from the proceeds received by the depositary in connection with the redemption. The redemption price per depositary share will equal the applicable fraction of the redemption price per share of the preferred stock. If fewer than all the depositary shares are redeemed, the depositary shares to be redeemed will be selected by lot or pro rata as the depositary may determine.

Voting the Preferred Stock

Upon receipt of notice of any meeting at which the holders of the preferred stock represented by depositary shares are entitled to vote, the depositary will mail the notice to the record holders of the depositary shares relating to such preferred stock. Each record holder of these depositary shares on the record date, which will be the same date as the record date for the preferred stock, may instruct the depositary as to how to vote the preferred stock represented by such holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote the amount of the preferred stock represented by such depositary shares in accordance with such instructions, and we will take all action that the depositary deems necessary in order to enable the depositary to do so. The depositary will abstain from voting shares of the preferred stock to the extent it does not receive specific instructions from the holders of depositary shares representing such preferred stock.

Amendment and Termination of the Depositary Agreement

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between the depositary and us. Any amendment that materially and adversely

[Table of Contents](#)

alters the rights of the holders of depositary shares will not, however, be effective unless such amendment has been approved by the holders of at least a majority of the depositary shares then outstanding. The deposit agreement may be terminated by the depositary or us only if (a) all outstanding depositary shares have been redeemed or (b) there has been a final distribution in respect of the preferred stock in connection with any liquidation, dissolution or winding up of our company and such distribution has been distributed to the holders of depositary receipts.

Charges of Depositary

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary in connection with the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary receipts will pay other transfer and other taxes and governmental charges and any other charges, including a fee for the withdrawal of shares of preferred stock upon surrender of depositary receipts, as are expressly provided in the deposit agreement to be for their accounts.

Withdrawal of Preferred Stock

Upon surrender of depositary receipts at the principal office of the depositary, subject to the terms of the deposit agreement, the owner of the depositary shares may demand delivery of the number of whole shares of preferred stock and all money and other property, if any, represented by those depositary shares. Partial shares of preferred stock will not be issued. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to such holder at the same time a new depositary receipt evidencing the excess number of depositary shares. Holders of preferred stock thus withdrawn may not thereafter deposit those shares under the deposit agreement or receive depositary receipts evidencing depositary shares therefor.

Miscellaneous

The depositary will forward to holders of depositary receipts all reports and communications from us that are delivered to the depositary and that we are required to furnish to the holders of the preferred stock.

Neither we nor the depositary will be liable if we are prevented or delayed by law or any circumstance beyond our control in performing our obligations under the deposit agreement. The obligations of the depositary and us under the deposit agreement will be limited to performance in good faith of our duties thereunder, and we will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. We may rely upon written advice of counsel or accountants, or upon information provided by persons presenting preferred stock for deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

Resignation and Removal of Depositary

The depositary may resign at any time by delivering notice to us of its election to do so, and we may at any time remove the depositary. Any such resignation or removal will take effect upon the appointment of a successor depositary and its acceptance of such appointment. Such successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and meeting certain combined capital surplus requirements.

DESCRIPTION OF WARRANTS

We may issue warrants that entitle the holder to purchase debt securities, preferred stock, common stock or other securities. Warrants may be issued independently or together with debt securities, preferred stock or common stock offered by any prospectus supplement and may be attached to or separate from any such offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent, all as will be set forth in the prospectus supplement relating to the particular issue of warrants. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders of warrants or beneficial owners of warrants.

The following summary of certain provisions of the warrants does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all provisions of the warrant agreements.

Reference is made to the prospectus supplement relating to the particular issue of warrants offered pursuant to such prospectus supplement for the terms of and information relating to such warrants, including, where applicable:

- the designation, aggregate principal amount, currencies, denominations and terms of the series of debt securities purchasable upon exercise of warrants to purchase debt securities and the price at which such debt securities may be purchased upon such exercise;
- the number of shares of common stock purchasable upon the exercise of warrants to purchase common stock and the price at which such number of shares of common stock may be purchased upon such exercise;
- the number of shares and series of preferred stock purchasable upon the exercise of warrants to purchase preferred stock and the price at which such number of shares of such series of preferred stock may be purchased upon such exercise;
- the designation and number of units of other securities purchasable upon the exercise of warrants to purchase other securities and the price at which such number of units of such other securities may be purchased upon such exercise;
- the date on which the right to exercise such warrants shall commence and the date on which such right shall expire;
- United States federal income tax consequences applicable to such warrants;
- the amount of warrants outstanding as of the most recent practicable date; and
- any other terms of such warrants.

Warrants will be issued in registered form only. The exercise price for warrants will be subject to adjustment in accordance with the applicable prospectus supplement.

Each warrant will entitle the holder thereof to purchase such principal amount of debt securities or such number of shares of preferred stock, common stock or other securities at such exercise price as shall in each case be set forth in, or calculable from, the prospectus supplement relating to the warrants, which exercise price may be subject to adjustment upon the occurrence of certain events as set forth in such prospectus supplement. After the close of business on the expiration date, or such later date to which such expiration date may be extended by us, unexercised warrants will become void. The place or places where, and the manner in which, warrants may be exercised shall be specified in the prospectus supplement relating to such warrants.

Prior to the exercise of any warrants to purchase debt securities, preferred stock, common stock or other securities, holders of such warrants will not have any of the rights of holders of debt securities, preferred stock,

[Table of Contents](#)

common stock or other securities, as the case may be, purchasable upon such exercise, including the right to receive payments of principal of, premium, if any, or interest, if any, on the debt securities purchasable upon such exercise or to enforce covenants in the applicable Indenture, or to receive payments of dividends, if any, on the preferred stock, or common stock purchasable upon such exercise, or to exercise any applicable right to vote.

DESCRIPTION OF RIGHTS

We may issue rights to purchase common stock, preferred stock, depositary shares or debt securities that we may offer to our security holders. The rights may or may not be transferable by the persons purchasing or receiving the rights. In connection with any rights offering, we may enter into a standby underwriting or other arrangement with one or more underwriters or other persons pursuant to which such underwriters or other persons would purchase any offered securities remaining unsubscribed for after such rights offering. Each series of rights will be issued under a separate rights agent agreement to be entered into between us and a bank or trust company, as rights agent, that we will name in the applicable prospectus supplement. The rights agent will act solely as our agent in connection with the rights and will not assume any obligation or relationship of agency or trust for or with any holders of rights certificates or beneficial owners of rights.

The prospectus supplement relating to any rights that we offer will include specific terms relating to the offering, including, among other matters:

- the date of determining the security holders entitled to the rights distribution;
- the aggregate number of rights issued and the aggregate number of shares of common stock, preferred stock or depositary shares or aggregate principal amount of debt securities purchasable upon exercise of the rights;
- the exercise price;
- the conditions to completion of the rights offering;
- the date on which the right to exercise the rights will commence and the date on which the rights will expire; and
- any applicable federal income tax considerations.

Each right would entitle the holder of the rights to purchase for cash the principal amount of shares of common stock, preferred stock, depositary shares or debt securities at the exercise price set forth in the applicable prospectus supplement. Rights may be exercised at any time up to the close of business on the expiration date for the rights provided in the applicable prospectus supplement. After the close of business on the expiration date, all unexercised rights will become void.

If less than all of the rights issued in any rights offering are exercised, we may offer any unsubscribed securities directly to persons other than our security holders, to or through agents, underwriters or dealers or through a combination of such methods, including pursuant to standby arrangements, as described in the applicable prospectus supplement.

DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK PURCHASE UNITS

We may issue stock purchase contracts, including contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified number of shares of common stock or other securities at a future date or dates, which we refer to in this prospectus as “stock purchase contracts.” The price per share of the securities and the number of shares of the securities may be fixed at the time the stock purchase contracts are issued or may be determined by reference to a specific formula set forth in the stock purchase contracts. The stock purchase contracts may be issued separately or as part of units consisting of a stock purchase contract and debt securities, preferred securities, warrants, other securities or debt obligations of third parties, including U.S. treasury securities, securing the holders’ obligations to purchase the securities under the stock purchase contracts, which we refer to herein as “stock purchase units.” The stock purchase contracts may require holders to secure their obligations under the stock purchase contracts in a specified manner. The stock purchase contracts also may require us to make periodic payments to the holders of the stock purchase units or vice versa, and those payments may be unsecured or refunded on some basis.

The stock purchase contracts, and, if applicable, collateral or depositary arrangements, relating to the stock purchase contracts or stock purchase units, will be filed with the SEC in connection with the offering of stock purchase contracts or stock purchase units. The prospectus supplement relating to a particular issue of stock purchase contracts or stock purchase units will describe the terms of those stock purchase contracts or stock purchase units, including the following:

- if applicable, a discussion of material U.S. federal income tax considerations; and
- any other information we think is important about the stock purchase contracts or the stock purchase units.

DESCRIPTION OF UNITS

We may issue units comprised of one or more of the other securities that may be offered under this prospectus, in any combination, including, without limitation, the stock purchase units described above. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately at any time, or at any time before a specified date.

The prospectus supplement relating to a particular issue of units will describe, among other things:

- the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any material provisions related to the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units;
- if applicable, a discussion of any special U.S. federal income tax considerations; and
- any material provisions of the governing unit agreement that differ from those described above.

PLAN OF DISTRIBUTION

We may sell the offered securities in and outside the United States (1) through underwriters or dealers; (2) directly to purchasers, including our affiliates and shareholders, or in a rights offering; (3) through agents; or (4) through a combination of any of these methods. The prospectus supplement will include the following information:

- the terms of the offering;
- the names of any underwriters, dealers or agents;
- the name or names of any managing underwriter or underwriters;
- the purchase price of the securities;
- the net proceeds from the sale of the securities;
- any delayed delivery arrangements;
- any underwriting discounts, commissions and other items constituting underwriters' compensation;
- any discounts or concessions allowed or reallocated or paid to dealers; and
- any commissions paid to agents.

In addition, we may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately-negotiated transactions. If the applicable prospectus supplement indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement. If so, the third parties may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. The third parties in such sale transactions will be underwriters and, if not identified in this prospectus, will be identified in the applicable prospectus supplement (or a post-effective amendment). We or one of our affiliates may loan or pledge securities to a financial institution or other third party that in turn may sell the securities using this prospectus. Such financial institution or third party may transfer its short position to investors in our securities or in connection with a simultaneous offering of other securities offered by this prospectus or otherwise.

Underwriters and agents in any distribution contemplated hereby, including but not limited to at-the-market equity offerings, will be named in the applicable prospectus supplement. Underwriters or agents could make sales in privately-negotiated transactions and/or any other method permitted by law, including sales deemed to be an "at-the-market" offering as defined in Rule 415 promulgated under the Securities Act, which includes sales made directly on the New York Stock Exchange, the existing trading market for our common stock, or sales made to or through a market maker other than on an exchange.

Sale Through Underwriters or Dealers

If we use underwriters in the sale, the underwriters will acquire the securities for their own account for resale to the public. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all of the offered securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

[Table of Contents](#)

Representatives of the underwriters through whom the offered securities are sold for public offering and sale may engage in over-allotment, stabilizing transactions, syndicate short covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves syndicate sales in excess of the offering size, which creates a syndicate short position. Stabilizing transactions permit bids to purchase the offered securities so long as the stabilizing bids do not exceed a specified maximum. Syndicate covering transactions involve purchases of the offered securities in the open market after the distribution has been completed in order to cover syndicate short positions. Penalty bids permit the representative of the underwriters to reclaim a selling concession from a syndicate member when the offered securities originally sold by such syndicate member are purchased in a syndicate covering transaction to cover syndicate short positions. Such stabilizing transactions, syndicate covering transactions and penalty bids may cause the price of the offered securities to be higher than it would otherwise be in the absence of such transactions. These transactions may be effected on a national securities exchange and, if commenced, may be discontinued at any time.

Some or all of the securities that we offer through this prospectus may be new issues of securities with no established trading market. Any underwriters to whom we sell our securities for public offering and sale may make a market in those securities, but they will not be obligated to do so and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities that we offer.

If we use dealers in the sale of securities, we will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. If applicable, we will include in the prospectus supplement the names of the dealers and the terms of the transaction.

Direct Sales and Sales Through Agents

We may sell the securities directly. In this case, no underwriters or agents would be involved. We may also sell the securities through agents designated from time to time. In the prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement.

We may also make direct sales through subscription rights distributed to our existing stockholders on a pro rata basis that may or may not be transferable. In any distribution of subscription rights to our stockholders, if all of the underlying securities are not subscribed for, we may then sell the unsubscribed securities directly to third parties or we may engage the services of one or more underwriters, dealers or agents, including standby underwriters, to sell the unsubscribed securities to third parties.

Remarketing Arrangements

Offered securities also may be offered and sold, if so indicated in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for us. Any remarketing firm will be identified and the terms of its agreements, if any, with us and its compensation will be described in the applicable prospectus supplement. Remarketing firms may be deemed to be underwriters, as that term is defined in the Securities Act, in connection with the securities remarketed.

Delayed Delivery Arrangements

If we so indicate in the prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed

[Table of Contents](#)

delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

General Information

We may have agreements with the underwriters, dealers and agents to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments that the underwriters, dealers or agents may be required to make.

Underwriters, dealers and agents may engage in transactions with, or perform services for, us in the ordinary course of our business.

LEGAL MATTERS

Unless otherwise indicated in the applicable prospectus supplement, the validity of the securities being offered by this prospectus will be passed upon for us by King & Spalding LLP, Atlanta, Georgia. Additional legal matters may be passed on for us, or any underwriters, dealers or agents, by counsel we will name in the applicable prospectus supplement.

EXPERTS

The consolidated financial statements, incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K for the year ended September 30, 2022, and the effectiveness of Beazer Homes USA, Inc.'s internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such consolidated financial statements have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the expenses (all of which are estimated) to be borne by us in connection with a distribution of securities registered under this Registration Statement.

SEC registration fee ⁽¹⁾	\$	—
Printing fees and expenses		*
Accounting fees and expenses		*
Rating agency fees		*
Legal fees and expenses		*
Transfer Agent and Registrar, Trustee and Depository fees and expenses		*
Miscellaneous		*
Total	\$	*

⁽¹⁾ Pursuant to Rules 456(b) and 457(r) under the Securities Act, the registration fee will be paid at the time of any particular offering of securities under this registration statement.

* Estimated expenses are not presently known. The foregoing sets forth the general categories of expenses (other than underwriting discounts and commissions) that we anticipate we will incur in connection with the offering of securities under this registration statement. An estimate of the aggregate expenses in connection with the issuance and distribution of the securities being offered will be included in the applicable prospectus supplement.

Item 15. Indemnification of Directors and Officers.

Indemnification of the Officers and Directors of Beazer Homes USA, Inc., Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. under Delaware Law.

Beazer Homes USA, Inc., Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. are corporations organized under the laws of the State of Delaware.

Section 102(b)(7) of the Delaware General Corporation Law (the “DGCL”) enables a corporation incorporated in the State of Delaware to eliminate or limit, through provisions in its original or amended certificate of incorporation, the personal liability of a director for violations of the director’s fiduciary duties, except (i) for any breach of the director’s duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) any liability imposed pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

Section 145 of the DGCL provides that a corporation incorporated in the State of Delaware may indemnify any person or persons, including officers and directors, who are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer,

[Table of Contents](#)

director, employee, or agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, for criminal proceedings, had no reasonable cause to believe that the challenged conduct was unlawful. A corporation incorporated in the State of Delaware may indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must provide indemnification against the expenses that such officer or director actually and reasonably incurred.

Section 145(g) of the DGCL authorizes a corporation incorporated in the State of Delaware to provide liability insurance for directors and officers for certain losses arising from claims or charges made against them while acting in their capacities as directors or officers of the corporation.

The certificates of incorporation of Beazer Homes USA, Inc., Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. provide that no director shall be personally liable to the corporation or its stockholders for violations of the director's fiduciary duties, except to the extent that a director's liability may not be limited as described above in the discussion of Section 102(b)(7) of the DGCL.

Indemnification of the Officers and Directors of Beazer Homes USA, Inc.

The bylaws of Beazer Homes USA, Inc., provide that the corporation shall indemnify and hold harmless to the fullest extent authorized by Delaware law or by other applicable law as then in effect, any person who was or is a party to or is threatened to be made a party to or is involved in (including, without limitation, as a witness) any proceeding, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director, officer, or employee of the corporation or, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation as a director, officer, employee, agent or manager of another corporation, partnership, limited liability company, joint venture, trust or other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter, an "Indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or manager or in any other capacity while serving as a director, officer, employee, agent or manager, against all expense, liability and loss (including attorneys' and other professionals' fees, judgments, fines, ERISA taxes or penalties and amounts to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith.

Furthermore, the bylaws of Beazer Homes USA, Inc., provide that the corporation shall, to the fullest extent authorized by Delaware law, advance (or if previously paid by any Indemnitee who serves or served as a director or executive officer of the corporation on or after June 30, 2008 (each a "Class 1 Indemnitee"), reimburse) to any Class 1 Indemnitee funds sufficient for the payment of all expenses (including attorneys' and other professionals' fees and disbursements and court costs) actually and reasonably incurred by such Class 1 Indemnitee in connection with the investigation of, response to, defense (including any appeal) of or settlement of any proceeding, in the case of each such proceeding upon receipt of an undertaking by or on behalf of such Class 1 Indemnitee to repay such amount if it shall ultimately be determined that such Class 1 Indemnitee is not entitled to be indemnified by the corporation against such expenses. No collateral securing or other assurance of performance of such undertaking shall be required of such Class 1 Indemnitee by the corporation.

The bylaws of Beazer Homes USA, Inc., also provide that the corporation may, by action of its Board of Directors, grant rights to advancement of expenses to any Indemnitee who is not a Class 1 Indemnitee and rights to indemnification and advancement of expenses to any agents of the corporation with the same scope and effect as the provisions with respect to the indemnification of and advancement of expenses to Class 1 Indemnitees. By resolution adopted by affirmative vote of a majority of the Board of Directors, the Board of Directors may delegate to the appropriate officers of the corporation the decision to grant from time to time rights to advancement of expenses to any Indemnitee who is not a Class 1 Indemnitee and rights to indemnification and advancement of expenses to any agents of the corporation.

[Table of Contents](#)

Under the bylaws of Beazer Homes USA, Inc., no Indemnitee shall be entitled to any advance or reimbursement by the corporation of expenses, or to indemnification from or to be held harmless by the corporation against expenses, incurred by him or her in asserting any claim or commencing or prosecuting any suit, action or proceeding (or part thereof) against the corporation (except as provided below) or any subsidiary of the corporation or any current or former director, officer, employee or agent of the corporation or of any subsidiary of the corporation, but such advancement (or reimbursement) and indemnification and hold harmless rights may be provided by the corporation in any specific instance as permitted by the bylaws, or in any specific instance in which the Board shall first authorize the commencement or prosecution of such a suit, action or proceeding (or part thereof) or the assertion of such a claim.

Notwithstanding the above, if a claim is not timely paid in full by Beazer Homes USA, Inc. after a written claim has been received by the corporation, an Indemnitee or Class 1 Indemnitee (as appropriate) may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the Indemnitee or Class 1 Indemnitee (as appropriate) shall be entitled to be paid also the expense of prosecuting such suit. The Indemnitee or Class 1 Indemnitee (as appropriate) shall be presumed to be entitled to indemnification and advancement of expenses under upon submission of a written claim (and, in an action brought to enforce a claim for an advancement of expenses where the required undertaking, if any is required, has been tendered to the corporation), and thereafter the corporation shall have the burden of proof to overcome the presumption that the Indemnitee or Class 1 Indemnitee (as appropriate) is not so entitled. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the Indemnitee is not entitled to indemnification shall be a defense to the suit or create a presumption that the Indemnitee is not so entitled. These rights to indemnification and advancement (or reimbursement) of expenses shall be enforceable by any person entitled to such indemnification or advancement (or reimbursement) of expenses in any court of competent jurisdiction. Notice of any application to a court by an Indemnitee shall be given to the corporation promptly upon the filing of such application; *provided, however*, that such notice shall not be a requirement for an award of or a determination of entitlement to indemnification or advancement (or reimbursement) of expenses.

The indemnification and advancement of expenses provided in the Beazer Homes USA, Inc. bylaws shall be deemed independent of, and shall not be deemed exclusive of or a limitation on, any other rights to which any person seeking indemnification or advancement of expenses may be entitled or acquired under any statute, provision of the certificate of incorporation, bylaw, agreement, vote of stockholders or of disinterested directors or otherwise, both as to such person's official capacity and as to action in another capacity while holding such office.

In addition, the bylaws of Beazer Homes USA, Inc., provide that the corporation may purchase and maintain liability insurance for directors and officers for certain losses arising from claims or charges made against them while acting in their capacities as directors or officers of the corporation.

Beazer Homes USA, Inc. has also entered into indemnification agreements with each of its executive officers and directors providing such officers and directors indemnification and expense advancement and for the continued coverage of such person under its directors' and officers' insurance programs.

Indemnification of the Officers and Directors of Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc.

The bylaws of Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. provide that the corporation shall indemnify each person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is

[Table of Contents](#)

or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (an “Indemnitee”), against expenses (including attorneys’ and other professionals’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Indemnitee in connection with such action, suit or proceeding, if the Indemnitee acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The corporation shall indemnify an Indemnitee in an action by or in the right of the corporation under the same conditions, except that no indemnification shall be made in respect of any claim, issue or matter as to which the Indemnitee shall have been adjudged liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The bylaws of Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. provide that any indemnification pursuant to the bylaws (except indemnification ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination the indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct described above. However, to the extent that an Indemnitee is successful on the merits or otherwise in the defense of any action, suit or proceeding described above, or in the defense of any claim, issue or matter therein, the Indemnitee shall be indemnified against reasonable expenses (including attorneys’ and other professionals’ fees) actually and reasonably incurred by the Indemnitee in connection therewith, without the necessity of authorization in the specific case.

Furthermore, the bylaws of Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. provide that the expenses (including attorney’s and other professionals’ fees) incurred by an officer or director in defending any threatened or pending civil, criminal, administrative or investigative action, suit or proceeding may, but shall not be required to, be paid by the corporation in advance of the final disposition of the suit, action or proceeding upon receipt of an undertaking by or on behalf of such officer or director to repay such amount if it shall ultimately be determined that such person is not entitled to indemnification by the corporation pursuant to the bylaws.

The bylaws of Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. also provide that the indemnification and advancement of expenses provided in the bylaws shall not be deemed to be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any other provision of the bylaws, agreement or contract, by vote of the stockholders or of the disinterested directors or pursuant to the direction of any court of competent jurisdiction.

In addition, the bylaws of Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. provide that the corporation may purchase and maintain liability insurance for directors and officers for certain losses arising from claims or charges made against them while acting in their capacities as directors or officers of the corporation.

Indemnification of the Officers and Directors of Beazer Homes Indiana Holdings Corp., Beazer General Services, Inc., Beazer Realty Los Angeles, Inc. and BH Procurement Services, Inc.

Beazer Homes Indiana Holdings Corp., Beazer General Services, Inc., Beazer Realty Los Angeles, Inc. and BH Procurement Services, Inc. are corporations organized under the laws of the State of Delaware. For a description of the provisions of the DGCL addressing the indemnification of directors and officers see the discussion in “Indemnification of Officers and Directors of Beazer Homes USA, Inc., Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. under Delaware Law” above.

[Table of Contents](#)

The certificates of incorporation of Beazer Homes Indiana Holdings Corp., Beazer General Services, Inc., Beazer Realty Los Angeles, Inc. and BH Procurement Services, Inc. provide that no director shall be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability thereof is not permitted under the DGCL. The bylaws of these entities provide that the corporation shall indemnify members of the board of directors to the fullest extent permitted by the DGCL and that the corporation may, if authorized by the board of directors, indemnify its officers, employees, agents and any and all other persons who may be indemnified by the corporation against any and all expenses and liabilities.

Indemnification of the General Partners of Beazer Homes Texas, L.P. and BH Building Products, LP

Beazer Homes Texas, L.P. and BH Building Products, LP are limited partnerships organized under the laws of the State of Delaware. Pursuant to Section 17-108 of the Delaware Revised Uniform Limited Partnership Act (the "Act"), a limited partnership may, subject to the standards set forth in the partnership agreement, indemnify and hold harmless any partner or other person from and against any and all claims and demands.

Pursuant to the agreements of limited partnership of Beazer Homes Texas, L.P. and BH Building Products, LP, neither their respective general partners nor any affiliate of the general partners shall have any liability to the limited partnership or any partner for any loss suffered by the applicable limited partnership which arises out of any action or inaction of the applicable general partner, so long as such general partner or its affiliates in good faith has determined that such action or inaction did not constitute fraud or misconduct. Further, pursuant to such agreements of limited partnership, each general partner and its affiliates shall be indemnified by the limited partnership to the fullest extent permitted by law against any losses, judgments, liabilities, damages, expenses and amounts paid in settlement of any claims sustained in connection with acts performed or omissions that are within the scope of the applicable limited partnership agreement, provided that such claims are not the result of fraud or willful misconduct. The limited partnerships may advance to their respective general partners or their affiliates any amounts required to defend any claim for which they may be entitled to indemnification. If it is ultimately determined that their respective general partners or their affiliates are not entitled to indemnification, then such person must repay any amounts advanced by the limited partnership.

Indemnification of the Officers and Directors of Beazer Realty Corp.

Beazer Realty Corp. is a corporation organized under the laws of the State of Georgia. Sections 14-2-850 through 14-2-859 of the Georgia Business Corporation Code ("GBCC") provides for the indemnification of officers and directors by the corporation under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been an officer or director of the corporation. Under the GBCC, a corporation may purchase insurance on behalf of an officer or director of the corporation incurred in his or her capacity as an officer or director regardless of whether the person could be indemnified under the GBCC. The bylaws of Beazer Realty Corp. ("Realty") provide that Realty shall indemnify each officer and director to the fullest extent allowed by Georgia law and that Realty may obtain insurance on behalf of such officers and directors against any liabilities asserted against such persons whether or not Realty would have the power to indemnify them.

Indemnification of the Partners of Beazer Homes Indiana LLP

Beazer Homes Indiana LLP is a limited liability partnership under the laws of the State of Indiana. Section 23-4-1-18 of the Indiana Uniform Partnership Act provides that a partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him or her in the ordinary and proper conduct of its business, or for the preservation of its business or property. The partnership agreement of Beazer Homes Indiana LLP provides that it shall indemnify the managing partner and hold it harmless against liability to third parties for acts or omissions within the scope of authority as managing partner under the partnership agreement.

[Table of Contents](#)

Indemnification of the Members and Managers of Ballard Green Utility Company, LLC, Beazer Clarksburg, LLC, Clarksburg Arora LLC and Clarksburg Skylark, LLC

Ballard Green Utility Company, LLC, Beazer Clarksburg, LLC, Clarksburg Arora LLC and Clarksburg Skylark, LLC are limited liability companies organized under the laws of the State of Maryland. Md. Code Ann., Corps. & Ass'ns., Section 4A-203 permits a limited liability company to indemnify and hold harmless any member, agent or employee from and against all claims and demands, except in the case of action or failure to act by the member, agent or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any set forth in the articles of organization or operating agreement. Neither the articles of organization nor the operating agreement of Ballard Green Utility Company, LLC address indemnification of members or managers.

The operating agreement of Beazer Clarksburg, LLC provides that no member or manager shall be liable, responsible or accountable in damages or otherwise to any other member or to the company for any act or omission performed or omitted by such person except for acts of gross negligence or intentional wrongdoing. The operating agreement also provides that the company shall endeavor to obtain liability or other insurance payable to the company (or as otherwise agreed by the members) to protect the company and the members from the acts or omissions of each of the members.

The operating agreements of Clarksburg Arora LLC and Clarksburg Skylark, LLC provide that to the fullest extent not prohibited by applicable law, each company shall indemnify the member, the manager and each officer for all costs and expenses (including attorneys' fees and disbursements), losses, liabilities, and damages paid or accrued by such member, manager or officer in connection with any act or omission performed by such person in good faith on behalf of the company. To the fullest extent not prohibited by applicable law, expenses (including attorneys' fees and disbursements) incurred by any such member, manager or officer, in defending any claim, demand, action, suit or proceeding may, from time to time, upon approval by the member, be advanced by the company prior to the final disposition of such claim, demand, action, suit or proceeding, subject to recapture by the company following a later determination that such member, manager or officer was not entitled to indemnification hereunder. Notwithstanding the foregoing, none of the member, the manager or the officers shall be indemnified against liability for any intentional misconduct, any knowing violation of law or any transaction in which such member, manager or officer receives a personal benefit in violation or breach of law or the applicable operating agreement.

Indemnification of the Members and Managers of Beazer Fundamental, LLC, Beazer Homes Holdings, LLC, Beazer Homes, LLC, Beazer Homes Investments, LLC, Beazer Realty Services, LLC, Dove Barrington Development LLC, Beazer Gain, LLC, BH Investment Holdings, LLC, BH Materials, LLC and Marshfield Land, LLC

Beazer Fundamental, LLC, Beazer Homes Holdings, LLC, Beazer Homes, LLC, Beazer Homes Investments, LLC, Beazer Realty Services, LLC, Dove Barrington Development LLC, Beazer Gain, LLC, BH Investment Holdings, LLC, BH Materials, LLC and Marshfield Land, LLC are limited liability companies organized under the laws of the State of Delaware. Section 18-108 of the Delaware Limited Liability Company Act provides that, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever. Neither the certificate of formation nor the operating agreement of any of Beazer Homes Investments, LLC, or Beazer Realty Services, LLC address indemnification of members or managers.

The operating agreement of Beazer Fundamental, LLC provides that no member or affiliate of the member will be liable to the company or any other party bound by the company's operating agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such member or affiliate of such member in good faith on behalf of the company and in a manner reasonably believed to be within the scope

[Table of Contents](#)

of the authority conferred on such member or affiliate of such member by the operating agreement, except that such member or affiliate of such member shall be liable for any such loss, damage, or claim incurred by reason of such member's or affiliate of such member's gross negligence or willful misconduct. Further, members or affiliates of members shall be entitled to indemnification from the company for any loss, damage or claim incurred by such member or affiliate of such member and in a manner reasonably believed to be within the scope of authority conferred upon such member of affiliate of such member pursuant to the company's operating agreement, except that no member or affiliate of such member shall be entitled to indemnification in respect of any loss, damage or claim incurred by such member or affiliate of such member by reason of such member's or affiliate of such member's gross negligence or willful misconduct with respect to such acts or omissions, provided that such indemnity by the company shall be provided out of and to the extent of company assets only, and the member shall not have personal liability on account thereof. The company shall advance, to the fullest extent permitted by applicable law, expenses (including reasonable legal fees and expenses) incurred by a member or affiliate of such member defending any claim, demand, action, suit or proceeding, prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the company of an undertaking by or on behalf of the member or affiliate of such member to repay such amount if it is determined that the member or affiliate of such member is not entitled to be indemnified.

Furthermore, the operating agreement of Beazer Fundamental, LLC provides that a member or affiliate of a member shall be fully protected in relying in good faith upon the records of the company and upon such information, opinions, reports or statements provided to the company by any person as to matters the company reasonably believes are within the professional or expert competence of such person and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities or any other facts pertinent to the existence and amount of assets from which distributions to the member might properly be paid. To the extent, at law or in equity, a member or affiliate of a member has duties (including financial duties) or liabilities relating thereto to the company or to any employee, officer or agent of the company, or to any employee, officer, representative, agent or affiliate of any member, such member or affiliate of a member shall not be liable to the company or any of the individuals or persons listed above for its good faith reliance on the provisions of the company's operating agreement or any approval or authorization granted by the company or any of the individuals or persons listed above.

The operating agreement of Dove Barrington Development LLC provides that no member will be liable as such for the liabilities of the company. The failure of the company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the operating agreement or applicable law will not be grounds for imposing personal liability on the members for liabilities of the company.

The operating agreements of BH Investment Holdings, LLC, BH Materials, LLC, Marshfield Land, LLC Beazer Homes Holdings, LLC, Beazer Homes, LLC, and Beazer Gain, LLC provide that the company will, to the fullest extent authorized by the Delaware Limited Liability Company Act, indemnify and hold harmless the member, manager and officers of the company from and against any and all claims and demands arising by reason of the fact that such person is, or was, a member, manager or officer of the company. Such indemnification shall include all reasonable expenses and fees incurred, including, without limitation, reasonable legal fees and other professional fees and expenses.

[Table of Contents](#)

Item 16. Exhibits.

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement.
3.1(a)	Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. — incorporated herein by reference to Exhibit 3.1 of the Company’s Form 10-K for the year ended September 30, 2008 (File No. 001-12822).
3.1(b)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. as of April 13, 2010 — incorporated herein by reference to Exhibit 3.1 of the Company’s Form 10-Q for the quarter ended March 31, 2010 (File No. 001-12822).
3.1(c)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. as of February 3, 2011 — incorporated herein by reference to Exhibit 3.1 of the Company’s Form 8-K filed on February 8, 2011 (File No. 001-12822).
3.1(d)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. as of October 11, 2012 — incorporated herein by reference to Exhibit 3.1 of the Company’s Form 8-K filed on October 12, 2012 (File No. 001-12822).
3.1(e)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. as of February 2, 2013 — incorporated herein by reference to Exhibit 3.1 of the Company’s Form 8-K filed on February 5, 2013 (File No. 001-12822).
3.1(f)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. as of November 6, 2013 — incorporated herein by reference to Exhibit 3.1 of the Company’s Form 8-K filed on November 7, 2013 (File No. 001-12822).
3.1(g)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. — incorporated herein by reference to Exhibit 3.8 of the Company’s Form 10-K for the year ended September 30, 2016 (File No. 001-12822).
3.1(h)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. — incorporated herein by reference to Exhibit 3.8 of the Company’s Form 10-K for the year ended September 30, 2019 (File No. 001-12822).
3.1(i)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. — incorporated herein by reference to Exhibit 3.1 of the Company’s Form 8-K filed on November 14, 2022 (File No. 001-12822).
3.2	Fourth Amended and Restated Bylaws of Beazer Homes USA, Inc. — incorporated herein by reference to Exhibit 3.3 of the Company’s Form 10-K for the year ended September 30, 2010 (File No. 001-12822).
4.1	Section 382 Rights Agreement, dated as of December 7, 2021, and effective as of November 14, 2022, between Beazer Homes USA, Inc. and American Stock Transfer & Trust Company, LLC, as Rights Agent — incorporated herein by reference to Exhibit 4.1 of the Company’s Form 8-K filed on November 14, 2022 (File No. 001-12822).
4.2(a)**	Form of Indenture for Senior Debt Securities.
4.2(b)*	Form of Senior Debt Security.
4.3(a)**	Form of Indenture for Subordinated Debt Securities.
4.3(b)*	Form of Subordinated Debt Security.

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
4.4*	Form of Warrant Agreement.
4.5*	Form of Warrant Certificate.
4.6*	Form of Rights Certificate.
4.7*	Form of Rights Agent Agreement.
4.8*	Certificate of Designation for Preferred Stock.
4.9*	Form of Preferred Stock Certificate.
4.10*	Form of Depositary Agreement.
4.11*	Form of Depositary Receipt.
4.12*	Form of Stock Purchase Contract.
4.13*	Form of Stock Purchase Unit.
5.1**	Opinion of King & Spalding LLP.
5.2**	Opinion of Barnes & Thornburg LLP.
5.3**	Opinion of Walsh, Colucci, Lubeley & Walsh P.C.
23.1**	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.
23.2**	Consent of King & Spalding LLP (included in Exhibit 5.1 hereto).
23.3**	Consent of Barnes & Thornburg LLP (included in Exhibit 5.2 hereto).
23.4**	Consent of Walsh, Colucci, Lubeley & Walsh P.C. (included in Exhibit 5.3 hereto).
24.1**	Powers of Attorney (included on the signature pages hereto).
25.1**	Form T-1 Statement of Eligibility and Qualification of the Trustee under the Indenture with respect to the Senior Debt Securities.
25.2**	Form T-1 Statement of Eligibility and Qualification of the Trustee under the Indenture with respect to the Subordinated Debt Securities.
107**	Filing Fee Table

* To be filed by amendment or as an exhibit to a current report on Form 8-K of the registrant in connection with the issuance of securities.

** Filed herewith.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(a) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(b) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated

Table of Contents

maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(c) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

Provided, however, that paragraphs (a), (b) and (c) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

4. That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(a) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(b) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

5. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser: (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424; (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant; (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

Table of Contents

6. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

7. If and when applicable, the undersigned registrant, hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

8. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, and will be governed by the final adjudication of such issue.

9. That, for purposes of determining any liability under the Securities Act of 1933:

(a) The information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(b) Each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER HOMES USA, INC.

By: /s/ Allan P. Merrill

Allan P. Merrill
Chairman, President and
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his or her true and lawful attorney-in-fact and agent, with full power of substitution, for him or her and on his or her behalf and in his or her name, place and stead, in any and all capacities, to sign, execute and file this Registration Statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he or she himself or herself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	Chairman, President, and Chief Executive Officer (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023
<u>/s/ Elizabeth S. Acton</u> Elizabeth S. Acton	Director	August 10, 2023
<u>/s/ Lloyd E. Johnson</u> Lloyd E. Johnson	Director	August 10, 2023
<u>/s/ Peter M. Orser</u> Peter M. Orser	Director	August 10, 2023
<u>/s/ Norma A. Provencio</u> Norma A. Provencio	Director	August 10, 2023

[Table of Contents](#)

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Danny R. Shepherd</u> Danny R. Shepherd	Director	August 10, 2023
<u>/s/ David J. Spitz</u> David J. Spitz	Director	August 10, 2023
<u>/s/ C. Christian Winkle</u> C. Christian Winkle	Director	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, each of the following registrants has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BH INVESTMENT HOLDINGS, LLC

By: /s/ Allan P. Merrill

Allan P. Merrill
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President Chief Financial Officer and Manager (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023
<u>/s/ Keith L. Belknap</u> Keith L. Belknap	Executive Vice President, Secretary and Manager	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, each of the following registrants has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER HOMES HOLDINGS, LLC

By: /s/ Allan P. Merrill

Allan P. Merrill
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President Chief Financial Officer and Manager (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023
<u>/s/ Keith L. Belknap</u> Keith L. Belknap	Executive Vice President, Secretary and Manager	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, each of the following registrants has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER HOMES, LLC

By: /s/ Allan P. Merrill

Allan P. Merrill
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President, Chief Financial Officer and Manager (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023
<u>/s/ Keith L. Belknap</u> Keith L. Belknap	Executive Vice President, Secretary and Manager	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, each of the following registrants has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER GENERAL SERVICES, INC.
BEAZER HOMES INDIANA HOLDINGS CORP.
BEAZER HOMES SALES, INC.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER REALTY CORP.
BEAZER REALTY LOS ANGELES, INC.
BH PROCUREMENT SERVICES, INC.

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Sole Director (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER MORTGAGE CORPORATION

By: /s/ David I. Goldberg

David I. Goldberg
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	Sole Director	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	President and Chief Executive Officer (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER FUNDAMENTAL, LLC

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its Sole Member

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Sole Director of Beazer Homes Texas Holdings, Inc. (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President of Beazer Homes Texas Holdings, Inc. (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER HOMES INDIANA LLP

By: BEAZER HOMES INVESTMENTS, LLC,
its Managing Partner

By: BEAZER HOMES, LLC,
its Sole Member

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager of Beazer Homes, LLC (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President, Chief Financial Officer and Manager of Beazer Homes, LLC (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, each of the following registrants has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

**BALLARD GREEN UTILITY COMPANY, LLC
BEAZER CLARKSBURG, LLC DOVE BARRINGTON
DEVELOPMENT LLC
BEAZER HOMES INVESTMENTS, LLC BEAZER
GAIN, LLC
BH MATERIALS, LLC
MARSHFIELD LAND, LLC**

By: BEAZER HOMES, LLC
its Sole Member

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager of Beazer Homes, LLC (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President, Chief Financial Officer and Manager of Beazer Homes, LLC (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER HOMES TEXAS, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its General Partner

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Sole Director of Beazer Homes Texas Holdings, Inc. (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President of Beazer Homes Texas Holdings, Inc. (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BEAZER REALTY SERVICES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member

By: BEAZER HOMES, LLC
its Sole Member

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> <u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager of Beazer Homes, LLC (Principal Executive Officer)	August 10, 2023
<hr/> <u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President, Chief Financial Officer and Manager of Beazer Homes, LLC (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

BH BUILDING PRODUCTS, LP

By: BH PROCUREMENT SERVICES, INC.
its General Partner

By: BEAZER HOMES TEXAS, L.P.,
its Sole Member

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its General Partner

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Sole Director of Beazer Homes Texas Holdings, Inc. (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President of Beazer Homes Texas Holdings, Inc. (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

CLARKSBURG ARORA LLC

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES, LLC
its Sole Member

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager of Beazer Homes, LLC (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President, Chief Financial Officer and Manager of Beazer Homes, LLC (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on August 10, 2023.

CLARKSBURG SKYLARK, LLC

By: CLARKSBURG ARORA LLC,
its Sole Member

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES, LLC
its Sole Member

By: /s/ David I. Goldberg

David I. Goldberg
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Allan P. Merrill, David I. Goldberg and Keith L. Belknap his true and lawful attorney-in-fact and agent, with full power of substitution, for him and on his behalf and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments), with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same, as fully to all intents and purposes as he himself might or could do, if personally present, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Allan P. Merrill</u> Allan P. Merrill	President, Chief Executive Officer and Manager of Beazer Homes, LLC (Principal Executive Officer)	August 10, 2023
<u>/s/ David I. Goldberg</u> David I. Goldberg	Senior Vice President, Chief Financial Officer and Manager of Beazer Homes, LLC (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023

Indenture

DATED AS OF [], 20[]

AMONG

Beazer Homes USA, Inc.,

The Subsidiary Guarantors Named on Schedule I Hereto,

AND

Regions Bank,

AS TRUSTEE

[]% SENIOR NOTES DUE []

CROSS-REFERENCE TABLE*

<u>Trust Indenture Act Section</u>	<u>Indenture Section</u>
310 (a)(1)	6.10
(a)(2)	6.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	6.10
(b)	6.10
(c)	N.A.
311 (a)	6.11
(b)	6.11
(c)	N.A.
312 (a)	2.05
(b)	11.03
(c)	11.03
313 (a)	6.06
(b)(1)	N.A.
(b)(2)	6.06; 6.07
(c)	6.06; 11.02
(d)	6.06
314 (a)	4.03
(b)	N.A.
(c)(1)	11.04
(c)(2)	11.04
(c)(3)	N.A.
(d)	N.A.
(e)	11.05
(f)	N.A.
315 (a)	6.01
(b)	6.05; 11.02
(c)	6.01
(d)	6.01
(e)	5.12
316 (a)(last sentence)	2.09
(a)(1)(A)	5.05
(a)(1)(B)	5.04
(a)(2)	N.A.
(b)	5.08
(c)	1.05(e); 8.04
317 (a)(1)	5.08
(a)(2)	5.10
(b)	2.04
318 (a)	11.01
(b)	N.A.
(c)	11.01

N.A. means not applicable.

TABLE OF CONTENTS

	Page
Article I. DEFINITIONS AND INCORPORATION BY REFERENCE	1
Section 1.01 Definitions	1
Section 1.02 Other Definitions	10
Section 1.03 Incorporation by Reference of Trust Indenture Act	10
Section 1.04 Rules of Construction	10
Section 1.05 Acts of Holders	11
Article II. THE NOTES	12
Section 2.01 Form and Dating; Terms	12
Section 2.02 Execution and Authentication	13
Section 2.03 Registrar and Paying Agent	14
Section 2.04 Paying Agent to Hold Money in Trust	14
Section 2.05 Holder Lists	14
Section 2.06 Transfer and Exchange	15
Section 2.07 Replacement Notes	18
Section 2.08 Outstanding Notes	18
Section 2.09 Treasury Notes	18
Section 2.10 Temporary Notes	19
Section 2.11 Cancellation	19
Section 2.12 Defaulted Cash Interest	19
Section 2.13 CUSIP and ISIN Numbers	20
Article III. REDEMPTION	20
Section 3.01 Notices to Trustee	20
Section 3.02 Selection of Notes to Be Redeemed or Purchased	20
Section 3.03 Notice of Redemption	21
Section 3.04 Effect of Notice of Redemption	22
Section 3.05 Deposit of Redemption or Purchase Price	22
Section 3.06 Notes Redeemed or Purchased in Part	23
Article IV. COVENANTS	23
Section 4.01 Payment of Notes	23
Section 4.02 Maintenance of Office or Agency	23
Section 4.03 Reports and Other Information	24
Section 4.04 Compliance Certificate	24
Section 4.05 Taxes	25
Section 4.06 Stay, Extension and Usury Laws	25
Section 4.07 Subsidiary Guarantees by Restricted Subsidiaries	25
Section 4.08 Maintenance of Corporate Existence; Maintenance of Properties	25
Section 4.09 Further Instruments and Acts	26

Article V. DEFAULTS AND REMEDIES	26	
Section 5.01	Events of Default	26
Section 5.02	Acceleration	28
Section 5.03	Other Remedies	28
Section 5.04	Waiver of Existing Defaults	28
Section 5.05	Control by Majority	29
Section 5.06	Limitation on Suits	29
Section 5.07	Rights of Holders of Notes to Receive Payment	29
Section 5.08	Collection Suit by Trustee	30
Section 5.09	Restoration of Rights and Remedies	30
Section 5.10	Trustee May File Proofs of Claim	30
Section 5.11	Priorities	31
Section 5.12	Undertaking for Costs	31
Article VI. TRUSTEE	31	
Section 6.01	Duties of Trustee	31
Section 6.02	Rights of Trustee	32
Section 6.03	Individual Rights of Trustee	34
Section 6.04	Trustee's Disclaimer	34
Section 6.05	Notice of Defaults	34
Section 6.06	Reports by Trustee to Holders of the Notes	34
Section 6.07	Compensation and Indemnity	35
Section 6.08	Replacement of Trustee	36
Section 6.09	Successor Trustee by Merger, etc.	36
Section 6.10	Eligibility; Disqualification	37
Section 6.11	Preferential Collection of Claims Against Company	37
Article VII. LEGAL DEFEASANCE AND COVENANT DEFEASANCE	37	
Section 7.01	Defeasance Upon Deposit of Moneys or U.S. Government Obligations	37
Section 7.02	Survival of the Company's Obligations	39
Section 7.03	Application of Trust Money	39
Section 7.04	Repayment to the Company	40
Section 7.05	Reinstatement	40
Article VIII. AMENDMENTS, SUPPLEMENTS AND WAIVERS	40	
Section 8.01	With Consent of Majority; Without Consent of Holders	40
Section 8.02	With Consent of all Affected Holders	41
Section 8.03	Compliance with Trust Indenture Act	42

Section 8.04	Revocation and Effect of Consents	42
Section 8.05	Notation on or Exchange of Notes	43
Section 8.06	Trustee to Sign Amendments	43
Article IX. SUBSIDIARY GUARANTEES; RELEASE OF SUBSIDIARY GUARANTORS		43
Section 9.01	Subsidiary Guarantee	43
Section 9.02	Execution and Delivery of Subsidiary Guarantee	45
Section 9.03	Additional Subsidiary Guarantors	45
Section 9.04	Release of a Subsidiary Guarantor	46
Section 9.05	Waiver of Subrogation; Right of Contribution	46
Article X. SATISFACTION AND DISCHARGE		47
Section 10.01	Satisfaction and Discharge	47
Section 10.02	Application of Trust Money	48
Article XI. MISCELLANEOUS		48
Section 11.01	Trust Indenture Act Controls	48
Section 11.02	Notices	49
Section 11.03	Communication by Holders of Notes with Other Holders of Notes	50
Section 11.04	Certificate and Opinion as to Conditions Precedent	50
Section 11.05	Statements Required in Certificate or Opinion	50
Section 11.06	Rules by Trustee and Agents	50
Section 11.07	No Personal Liability of Incorporators, Shareholders, Officers, Directors or Employees	51
Section 11.08	Governing Law	51
Section 11.09	Waiver of Jury Trial	51
Section 11.10	Force Majeure	51
Section 11.11	No Adverse Interpretation of Other Agreements	51
Section 11.12	Successors	51
Section 11.13	Severability	52
Section 11.14	Counterpart Originals	52
Section 11.15	Table of Contents, Headings, etc.	52
Section 11.16	Qualification of Indenture	52

SCHEDULES

Schedule 1 Subsidiary Guarantors

EXHIBITS

[Exhibit A Form of Notes]

[Exhibit B Form of Certificate of Transfer]

[Exhibit C Form of Certificate of Exchange]

[Exhibit D Form of Supplemental Indenture to Be Delivered by Subsequent Guarantors]

INDENTURE, dated as of [], 20[], among Beazer Homes USA, Inc., a Delaware corporation (the "Company"), the Subsidiary Guarantors (as defined herein) listed on the signature pages hereto and Regions Bank, as trustee (the "Trustee").

WITNESSETH

WHEREAS, the Company has duly authorized the creation of an issue of \$[] aggregate principal amount of []% Senior Notes due []; and

WHEREAS, the Company and each of the Subsidiary Guarantors has duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, in consideration of the promises and the purchase and acceptance of the Notes by the Holders thereof, the Company, the Subsidiary Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

Article I.

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

"Additional Notes" means Notes (other than the Notes issued on the Issue Date and Notes issued in replacement or exchange thereof) issued pursuant to Article II hereof and otherwise in compliance with the provisions of this Indenture.

"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 of this Indenture, 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 of this Indenture, 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 or Paying Agent.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and/or Clearstream that apply to such transfer or exchange.

“Authentication Order” means a written request or order signed on behalf of the Company by an Officer of the Company and delivered to the Trustee.

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

“Book Value” means, with respect to any asset of the Company or any of its Subsidiaries, the book value thereof as reflected in the most recent consolidated financial statements of the Company filed with the SEC (or if such asset has been acquired after the date of such financial statements, the then-current book value thereof as reasonably determined by the Company consistent with recent practices).

“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 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.

“Clearstream” means Clearstream Banking, société anonyme, or any successor securities clearance agency.

“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.

“Company Order” means a written order signed in the name of the Company by an Officer of the Company.

“Corporate Trust Office of the Trustee” shall be at the address of the Trustee specified in Section 11.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Company or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“Credit Facilities” means, with respect to the Company or any of its Restricted Subsidiaries, one or more debt facilities or other financing arrangements (including, without limitation, commercial paper or letter of credit facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other Indebtedness (including the Revolving Credit Facility), including any notes, mortgages, deeds of trust, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements,

modifications, extensions, renewals, restatements or refundings thereof and any indentures, credit facilities, letter of credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

“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.

“Depository” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as Depository hereunder and having become such pursuant to the applicable provision of this Indenture.

“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.

“Euroclear” means Euroclear S.A./N.V., as operator of the Euroclear system or any successor securities clearance agency.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Fair Market Value” means with respect to any asset or property 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) or an officers’ certificate of the principal financial officer 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 from time to time. At any time after the Issue Date, the Company may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided herein); provided that any such election, once made, shall be

irrevocable; *provided, further*, any calculation or determination herein that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Company shall give notice of any such election made in accordance with this definition to the Trustee and the Holders of Notes.

"Global Note Legend" means the legend set forth in Section 2.06(c) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"Global Notes" means, individually and collectively, each of the Notes, substantially in the form of Exhibit A hereto.

"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.

"IFRS" means International Financial Reporting Standards, as adopted by the International Accounting Standards Board.

"Incur" (and derivatives thereof) 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 (including a purchase money obligation) given in connection with the acquisition of any businesses, properties or assets of any kind or with services incurred in connection with capital expenditures (other than any obligation to pay a contingent purchase price which, as of the date of incurrence thereof, is not required to be recorded as a liability in accordance with GAAP);
- (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 or similar instruments issued for the benefit of, or surety, performance, completion or payment bonds, earnest money notes or similar purpose undertakings or indemnifications issued by, such Person in the ordinary course of business (as determined in good faith by the Company));
- (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 by this Indenture or that fix the exchange rate in connection with Indebtedness denominated in a foreign currency and otherwise permitted by this Indenture);

-
- (v) all Capitalized Lease Obligations of such Person;
 - (vi) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;
 - (vii) all Indebtedness of others guaranteed by, or otherwise the liability of, such Person to the extent of such guarantee or liability; and
 - (viii) 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); *provided*, that Indebtedness shall not include accrued expenses, trade payables, liabilities related to inventory not owned, customer deposits or deferred income taxes arising in the ordinary course of business (as determined in good faith by the Company). 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 (vii) above; and
 - (C) in the case of clause (vi) (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.

“Indenture” means this Indenture, as amended or supplemented from time to time.

“Indirect Participant” means a Person who holds a beneficial interest in a Global Note through a Participant.

“Interest Payment Date” means [] and [] of each year to stated maturity, commencing [].

“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 would be classified as investments on a balance sheet of such Person determined in accordance with GAAP. For all purposes of this Indenture, the amount of any such Investment shall be the fair market value thereof (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value). The making of any payment in accordance with the terms of a guarantee or other contingent obligation permitted under this Indenture shall not be considered an Investment.

“Issue Date” means [], the initial date of issuance of the Notes under this Indenture.

“Legal Holiday” means Saturday, Sunday or a day on which banking institutions in New York, New York, Atlanta, Georgia 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, deed of trust, 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).

“Material Subsidiary” means [] for the fiscal year ending immediately prior to any Default or Event of Default.

“Moody’s” means Moody’s Investors Service, Inc. or any successor to its debt rating business.

“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 (directly or indirectly, including through the purchase of Capital Stock of the Person owning such property) with the proceeds of such Indebtedness or such Indebtedness was Incurred within 90 days after the acquisition (directly or indirectly, including through the purchase of Capital Stock of the Person owning such property) of such property and (ii) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness. Indebtedness which is otherwise Non-Recourse Indebtedness will not lose its character as Non-Recourse Indebtedness because there is recourse to the borrower, any guarantor or any other Person for (a) environmental warranties, covenants and indemnities, (b) indemnities for and liabilities arising from fraud, misrepresentation, misapplication or non-payment of rents, profits, deposits, insurance and condemnation proceeds and other sums actually received by the borrower from secured assets to be paid to the lender, waste and mechanics’ liens, breach of separateness covenants, and other customary exceptions or (c) in the case of the borrower thereof only, other obligations in respect of such Indebtedness that are payable solely as a result of a voluntary or collusive non-voluntary bankruptcy filing (or similar filing or action) by such borrower.

“Notes” means the Notes as set forth in the recitals and more particularly means any Notes authenticated and delivered under this Indenture, including any Additional Notes. Unless the context requires otherwise, references to “Notes” for all purposes of this Indenture include any Additional Notes that are actually issued.

“Obligations” means, with respect to any Indebtedness, all obligations (whether in existence on the Issue Date or arising afterwards, absolute or contingent, direct or indirect) for or in respect of principal (when due, upon acceleration, upon redemption, upon mandatory repayment or repurchase pursuant to a mandatory offer to purchase, or otherwise), premium, interest, penalties, fees, indemnification, reimbursement and other amounts payable and liabilities with respect to such Indebtedness, including all interest accrued or accruing after the commencement of any bankruptcy, insolvency or reorganization or similar case or proceeding at the contract rate (including, without limitation, any contract rate applicable upon default) specified in the relevant documentation, whether or not the claim for such interest is allowed as a claim in such case or proceeding.

“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.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“Participant” means, with respect to the Depository, Euroclear or Clearstream, a Person who has an account with the Depository, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

“Paying Agent” means any Person authorized by the Company to pay the principal of or interest on the Notes at the office or agency where Notes and the Subsidiary Guarantees may be presented for payment.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization, 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.

“Record Date” for the interest, if any, payable on any applicable Interest Payment Date means [] or [] (whether or not a Business Day) next preceding such Interest Payment Date.

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

“Restricted Subsidiary” means each of the Subsidiaries of the Company which is not an Unrestricted Subsidiary.

“Revolving Credit Facility” means the Credit Agreement, dated as of October 13, 2022, among the Company, the several lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as an issuing lender and administrative agent, and as such facility may be amended, restated, supplemented or otherwise modified from time to time.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“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; *provided* that in each of case (i) and (ii), such Person is required to consolidate such entity in accordance with GAAP.

“Subsidiary Guarantee” means the guarantee of the Notes by each Subsidiary Guarantor under this Indenture.

“Subsidiary Guarantors” means (i) each of the Company’s Restricted Subsidiaries in existence on the Issue Date and (ii) each of the Company’s Subsidiaries that becomes a guarantor of the Notes pursuant to the provisions of this Indenture, in each case until released from its Subsidiary Guarantee pursuant to the terms of this Indenture.

“Trust Indenture Act” or “TIA” means the Trust Indenture Act of 1939, as amended.

“Trustee” means the party named as the “Trustee” in the first paragraph of this Indenture until a successor replaces such party in accordance with the applicable provisions of this Indenture and thereafter means the successor trustee serving under this Indenture.

“Unrestricted Subsidiary” means each of the Subsidiaries of the Company (including any newly formed or acquired Subsidiary) 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 or the Capital Stock of 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.

Subject to the foregoing, the Board of Directors of the Company also may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (a) the Restricted Subsidiary to be so designated has total consolidated assets of \$1,000 or less at the time of designation, or (b) with respect to any other Restricted Subsidiary, at the time of such designation:

- (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 Investments at the time of such designation and such Investments must be permitted at such time under this Indenture; and
- (ii) no Default or Event of Default shall have occurred or be continuing.

Any such designation 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 and an Officers' Certificate certifying that such designation complied with the foregoing conditions and setting forth the underlying calculations.

"U.S. Government Obligations" means securities which are (i) direct obligations of the United States of America, 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, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, 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 U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. 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 U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

"Wholly Owned Subsidiary" of any Person means (i) a Subsidiary of which 100% 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.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Covenant Defeasance”	7.01
“DTC”	2.03
“Event of Default”	5.01
“Legal Defeasance”	7.01
“Note Register”	2.03

Section 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture.

The following Trust Indenture Act terms used in this Indenture have the following meanings:

“indenture securities” means the Notes;

“indenture security Holder” means a Holder of a Note;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and “obligor” on the Notes and the Subsidiary Guarantees means the Company and the Subsidiary Guarantors, respectively, and any successor obligor upon the Notes and the Subsidiary Guarantees, respectively.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by SEC rule under the Trust Indenture Act have the meanings so assigned to them.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;

-
- (d) words in the singular include the plural, and in the plural include the singular;
- (e) “will” shall be interpreted to express a command;
- (f) provisions apply to successive events and transactions;
- (g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;
- (h) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture; and
- (i) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

Section 1.05 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 may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.05.
- (b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. 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 manner that the Trustee deems sufficient.
- (c) The ownership of Notes shall be proved by the Note Register.
- (d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Company may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders, but shall have no obligation to do so.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including the Depositary that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and the Depositary that is the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such depositary's standing instructions and customary practices.

(h) The Company may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by the Depositary entitled under the procedures of such depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, but shall have no obligation to do so. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 180 days after such record date.

Article II.

THE NOTES

Section 2.01 Form and Dating; Terms.

(a) **General.** The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions and transfers of interests. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Trustee, as custodian with respect to the Notes in global form or any successor entity thereof, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company, the Subsidiary Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Additional Notes ranking *pari passu* with the Notes may be created and issued from time to time by the Company without notice to or consent of the Holders and shall be consolidated with and form a single class with the Notes and shall have the same terms as to status, waivers, amendments, offers to purchase, redemption or otherwise as the Notes; *provided* that the Company’s ability to issue Additional Notes shall be subject to the Company’s compliance with the terms of this Indenture. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture.

Section 2.02 Execution and Authentication.

At least one Officer shall execute the Notes on behalf of the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form provided for in Exhibit A attached hereto, as the case may be, by the manual or facsimile signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver the Notes.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

Section 2.03 Registrar and Paying Agent.

The Company shall maintain a Registrar and a Paying Agent with respect to each series of Notes. The Registrar shall keep a register of the Notes ("Note Register") and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints The Depository Trust Company ("DTC") to act as Depository with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Paying Agent and Registrar for the Notes and to act as custodian with respect to the Global Notes. The Company may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent; and the Registrar or Paying Agent may resign at any time upon written notice to the Company, all in accordance with the terms of Section 6.08 hereof.

Section 2.04 Paying Agent to Hold Money in Trust.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with Trust Indenture Act Section 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least two Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Company shall otherwise comply with Trust Indenture Act Section 312(a).

Section 2.06 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor Depositary or a nominee of such successor Depositary *provided, however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b).

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Transfers of beneficial interests in the Global Notes also shall require the transferor of such beneficial interest to deliver to the Registrar (A) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(d) hereof.

(c) Legends. The following legend shall appear on the face of all Global Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

“THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(d) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY (OR A NOMINEE THEREOF) WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE

DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (“DTC”) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE 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 IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

(d) Cancellation or Adjustment of Global Notes. At such time as a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(e) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar’s request.

(ii) No service charge shall be made to a Holder of a beneficial interest in a Global Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06 and 8.05 hereof).

(iii) Neither the Registrar nor the Company shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

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

(v) The Company shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Company designated pursuant to Section 4.02 hereof, the Company shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile or by electronic means.

(x) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Notes other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, the Registrar or the Company and the Trustee and Company receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, and in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note of the same series and of like tenor and principal amount. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Affiliate of the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not the Company or any obligor upon the Notes or any Affiliate of the Company or of such other obligor.

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Notes in exchange for temporary Notes.

Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy cancelled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall be delivered to the Company as requested in writing by the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Cash Interest.

If the Company defaults in a payment of cash interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company shall notify the Trustee in writing of the amount of defaulted cash interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Company of such special record date. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall send to each Holder a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13 CUSIP and ISIN Numbers.

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

Article III.

REDEMPTION

Section 3.01 Notices to Trustee.

If the Company elects to redeem Notes pursuant to Section [], it shall furnish to the Trustee, at least 2 Business Days, unless a shorter period shall be agreed to by the Trustee, before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to Section 3.03 hereof but not more than 60 days before a redemption date, an Officers' Certificate setting forth (i) the paragraph or subparagraph of such Note or Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of the Notes, as the case may be, to be redeemed and (iv) the redemption price.

Section 3.02 Selection of Notes to Be Redeemed or Purchased.

In the event less than all of the Notes, are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed, (b) on a *pro rata* basis or (c) by lot or by any other method the Trustee considers fair and appropriate, unless otherwise required by law or regulatory requirements. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 15 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of \$2,000 or whole multiples of \$1,000 in excess thereof; no Notes of \$2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not \$2,000 or a multiple of \$1,000 in excess thereof, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

The Company shall send notices of redemption at least 15 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed in accordance with the procedures of the Depositary.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same Indebtedness to the extent not redeemed will be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph or subparagraph of the Notes or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(h) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes.

Notice of any redemption pursuant to this Section 3.03 upon any corporate transaction or other event may be given prior to the completion thereof. In addition, any redemption pursuant to this Article III or notice thereof may, at the Company's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a corporate transaction or other event. If any redemption is so subject to the satisfaction of one or more conditions precedent, the notice thereof shall describe each such condition and, if applicable, shall state that, in the Company's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied (or waived by the Company in its sole discretion), and/or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date as so delayed, and/or that such notice may be rescinded at any time by the Company if the Company determines in its sole discretion that any or all of such conditions will not be satisfied (or waived). In addition, the Company may provide in such notice that payment of the redemption price and performance of the Company's obligations with respect to such redemption may be performed by another Person.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided* that the Company shall have delivered to the Trustee, at least 2 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions thereof called for redemption.

Section 3.05 Deposit of Redemption or Purchase Price.

Prior to 10:00 a.m. (New York City time) on the redemption or purchase date, the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly as practicable return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to such Interest Payment Date shall be paid, on such Interest Payment Date, to the Person in whose name such Note was registered at the close of business on such Record Date (and the Holder entitled to the related redemption price shall not be entitled to such accrued and unpaid interest, unless such Holder is such Person). If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Company shall issue and the Trustee shall authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same Indebtedness to the extent not redeemed or purchased; *provided* that each new Note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officers' Certificate is required for the Trustee to authenticate such new Note.

Article IV.

COVENANTS

Section 4.01 Payment of Notes.

The Company shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and cash interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary, holds as of noon Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest at the same rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency.

The Company shall maintain in the Borough of Manhattan in the City of New York an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of 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 Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan in the City of New York for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

Section 4.03 Reports and Other Information.

(a) 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 SEC 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 SEC 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 SEC 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 SEC as aforementioned in this paragraph is not permitted under the Exchange Act, the Company shall promptly upon written request 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. For the avoidance of doubt, this Section 4.03 shall not require the Company to file any such reports, information or documents with the SEC within any specified time period and the obligation to deliver such reports, information or documents to the Trustee and Holders shall only arise after (and only to the extent) such reports, information or documents are filed with the SEC.

(b) The Company shall furnish to the Trustee, with respect to the Company or any Subsidiary Guarantor, written notice of any change (within 10 days following such change) in such Person's (i) legal name, (ii) jurisdiction of organization or formation, (iii) identity or corporate structure, or (iv) organizational identification number.

Section 4.04 Compliance Certificate.

The Company shall deliver to the Trustee a quarterly statement regarding compliance with the provisions under this Indenture, and include in such statement, if any Officer of the Company is aware of any Default or Event of Default, a statement specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto. In addition, the Company shall deliver to the Trustee prompt written notice of the occurrence of any Default or Event of Default and any other development, financial or otherwise, which might materially affect its business, properties or affairs or the ability of the Company to perform its obligations under this Indenture.

Section 4.05 Taxes.

The Company shall pay or discharge, and shall cause each of its Restricted Subsidiaries to pay or discharge, prior to delinquency, all taxes, assessments, and governmental charges levied or imposed upon it or any Restricted Subsidiary or upon the income, profits or property of the Company or any Restricted Subsidiary; *provided, however*, that the Company or any Restricted Subsidiary 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 4.06 Stay, Extension and Usury Laws.

The Company and each of the Subsidiary Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company or any Subsidiary Guarantor from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Subsidiary Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 Subsidiary Guarantees by Restricted Subsidiaries.

The Company is permitted to cause any Unrestricted Subsidiary to be a Subsidiary Guarantor. If the Company or any of its Restricted Subsidiaries acquires or creates 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 \$[] million) after the Issue Date, such Restricted Subsidiary shall execute a guarantee substantially in the form included in Exhibit A, execute a supplemental indenture in the form of Exhibit D, and deliver an Officers' Certificate and an Opinion of Counsel to the Trustee to the effect that the supplemental indenture has been duly authorized, executed and delivered by the new Restricted Subsidiary and constitutes a valid and binding obligation of the new Restricted Subsidiary, enforceable against the new Restricted Subsidiary in accordance with its terms (subject to customary exceptions).

Section 4.08 Maintenance of Corporate Existence; Maintenance of Properties.

(a) The Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary and (ii) the rights (charter and statutory), licenses and franchises of the Company and its Restricted Subsidiaries; *provided* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

(b) 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 4.09 Further Instruments and Acts.

Upon request of the Trustee, the Company will execute and deliver to the Trustee such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

[Include additional covenants as applicable.]

Article V.

DEFAULTS AND REMEDIES

Section 5.01 Events of Default.

(a) An “Event of Default” wherever used herein, means any one of the following events:

(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, redemption or otherwise;

(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 \$[] million 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 \$[]

million 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); *provided*, that if such failure to pay shall be remedied, waived or extended, then the Event of Default hereunder shall be deemed likewise to be remedied, waived or extended without further action by the Company;

(vi) a final judgment or judgments that exceed \$[] million 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;

(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 of a Material Subsidiary 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 that is a Material Subsidiary 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) 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% 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 of a Default under Section 5.01(a)(iii). 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.

(c) The Trustee may withhold from the Holders notice of any continuing Default or Event of Default (except any Default or Event of Default in payment of principal or interest on the Notes) if the Trustee determines that withholding such notice is in the Holders' interest.

Section 5.02 Acceleration.

(a) If an Event of Default (other than an Event of Default specified in sub-clauses (vii) and (viii) of Section 5.01(a) above) shall have occurred and be continuing under this Indenture, the Trustee by notice to the Company, or the Holders of at least 25% 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 pursuant to this Section 5.02, will be due and payable immediately. If an Event of Default with respect to the Company specified in sub-clauses (vii) and (viii) of Section 5.01(a) above 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.

(b) In the event that the maturity of the Notes is accelerated pursuant to Section 5.02(a) hereof, 100% of the principal amount of the Notes will become due and payable plus accrued interest, if any, to the date of payment.

Section 5.03 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All remedies are cumulative to the extent permitted by law.

Section 5.04 Waiver of Existing Defaults.

Subject to Section 8.02, the Holders of a majority in principal amount of then-outstanding Notes on behalf of all the Holders of the Notes by written notice to the Trustee and the Company may waive any 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 consequence (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. 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 impair any right consequent thereon.

Section 5.05 Control by Majority.

The Holders of a majority in principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or in its exercise of any trust or power conferred on the Trustee; provided, however, that such direction does not conflict with the terms of this Indenture. The Holders may not enforce the provisions of this Indenture, the Notes or the Subsidiary Guarantees except as provided in this Indenture. The Trustee, however, may refuse to follow any direction (i) that conflicts with law or this Indenture; (ii) that, subject to Section 6.01, the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or (iii) that would involve the Trustee in personal liability. The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all costs, losses, liabilities and expenses caused by taking or not taking such action.

Section 5.06 Limitation on Suits.

Subject to Section 5.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

- (a) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (b) Holders of at least a majority in principal amount of the total outstanding Notes make a written request to the Trustee to pursue the remedy;
- (c) Holders of the Notes have offered the Trustee reasonable security or indemnity against any loss, liability or expense;
- (d) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (e) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such use of this Indenture prejudices the rights of such Holder or obtains a preference or priority over such Holder).

Section 5.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of such Holder.

Section 5.08 Collection Suit by Trustee.

If an Event of Default specified in Section 5.01(a)(i) or (ii) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and 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 Trustee, its agents, counsel, accountants and experts.

Section 5.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 5.10 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents, counsel, accountants and experts) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes including the Subsidiary Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents, counsel, accountants and experts, and any other amounts due the Trustee under Section 6.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents, counsel, accountants and experts, and any other amounts due the Trustee under Section 6.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 5.11 Priorities.

If the Trustee collects any money pursuant to this Article V, it shall pay out the money in the following order:

- (a) to the Trustee, its agents and attorneys for amounts due under Section 6.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;
- (b) to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and
- (c) to the Company or to such party as a court of competent jurisdiction shall direct including a Subsidiary Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 5.11.

Section 5.12 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.12 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 5.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

Article VI.

TRUSTEE

Section 6.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any such opinion or certificates, including mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 6.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (e) of this Section 6.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request of any Holder, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to the Trustee.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 6.02 Rights of Trustee.

(a) The Trustee may conclusively rely upon and shall be protected in acting or refraining from acting upon any certificate, notice, order, instrument or document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, 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 indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, punitive, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order.

Section 6.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (if this Indenture has been qualified under the TIA) or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 6.10 and 6.11 hereof.

Section 6.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes of any series it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than the Trustee's certificate of authentication.

Section 6.05 Notice of Defaults.

If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice of the Default within 90 days after it occurs. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is not opposed to the interests of the Holders of the Notes. The Trustee shall not be deemed to know of any Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is such a Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee and such notice refers to the Notes and this Indenture.

Section 6.06 Reports by Trustee to Holders of the Notes.

Within 60 days after each May 15, beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with Trust Indenture Act Section 313(a) (but if no event described in Trust Indenture Act Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with Trust Indenture Act Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by Trust Indenture Act Section 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to the Company and filed with the SEC and each stock exchange on which the Notes are listed in accordance with Trust Indenture Act Section 313(d). The Company shall promptly notify the Trustee whenever the Notes become listed or cease to be listed on any stock exchange.

Section 6.07 Compensation and Indemnity.

The Company and the Subsidiary Guarantors, jointly and severally, shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company and the Subsidiary Guarantors, jointly and severally, shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents, counsel, accountants and experts.

The Company and the Subsidiary Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, suit, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Company or any of the Subsidiary Guarantors (including this Section 6.07) or defending itself against any claim whether asserted by any Holder, the Company or any Subsidiary Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith.

The obligations of the Company under this Section 6.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Company and the Subsidiary Guarantors in this Section 6.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.01(a)(vii) or (viii) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents, counsel, accountants and experts) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of Trust Indenture Act Section 313(b)(2) to the extent applicable.

Section 6.08 Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 6.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (a) the Trustee fails to comply with Section 6.10 hereof;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a Custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 6.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 6.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 6.08, the Company's obligations under Section 6.07 hereof shall continue for the benefit of the retiring Trustee.

Section 6.09 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 6.10 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5). The Trustee is subject to Trust Indenture Act Section 310(b).

Section 6.11 Preferential Collection of Claims Against Company.

The Trustee is subject to Trust Indenture Act Section 311(a), excluding any creditor relationship listed in Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to Trust Indenture Act Section 311(a) to the extent indicated therein.

Article VII.

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 7.01 Defeasance Upon Deposit of Moneys or U.S. Government Obligations.

(a) The Company may, at its option and at any time, elect to have either paragraph (b) or paragraph (c) below be applied to the outstanding Notes upon compliance with the applicable conditions set forth in paragraph (d).

(b) Upon the Company's exercise under Section 7.01(a) of the option applicable to this clause (b), the Company and the Subsidiary Guarantors shall be deemed to have been released and discharged from their respective obligations with respect to the outstanding Notes and Subsidiary Guarantees on the date the applicable conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of the Sections and matters under this Indenture referred to in (i) and (ii) below, and to have satisfied all its other obligations under the Notes and this Indenture, except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Notes to receive solely from the trust fund described in paragraph (d) below and as more fully set forth in such paragraph, payments in respect of the principal of and interest on such Notes when such payments are due and (ii) obligations listed in Section 7.02, subject to compliance with this Section 7.01. The Company may exercise its option under this paragraph (b) notwithstanding the prior exercise of its option under paragraph below with respect to such Notes.

(c) Upon the Company's exercise under Section 7.01(a) of the option applicable to this clause (c), the Company and the Subsidiary Guarantors shall be released and discharged from the obligations under any covenant contained in Sections [] on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed to be not "outstanding" for the purpose of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall

continue to be deemed “outstanding” for all other purposes hereunder. For this purpose, such Covenant Defeasance means that, with respect to the outstanding Notes, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such 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(a)(iii), but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company’s exercise of under Section 7.01(a) of the option applicable to this Section 7.01(c), subject to the satisfaction of the conditions set forth in Section 7.01(d), Sections 5.01(a)(iii), (iv), and (vi) hereof shall not constitute Events of Default.

(d) The following shall be the conditions to application of either paragraph (b) or paragraph (c) above to the outstanding Notes:

(i) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.10 who shall agree to comply with the provisions of this Article VII 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 Notes, (1) cash in U.S. dollars, or (2) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment of principal of (and premium, if any) and interest, if any, on such Notes, 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 Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium, if any) and interest, if any, on such Notes on the maturity date of such principal or installment of principal or interest and (ii) any mandatory sinking fund payments or analogous payments applicable to such Notes on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Notes.

(ii) 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.

(iii) 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 Notes shall have occurred and be continuing on the date of such deposit or, insofar as Section 5.01(a)(vi) and Section 5.01(a)(vii) 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).

(iv) In the case of an election under Section 7.01(b), the Company shall have delivered to the 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 Notes 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.

(v) In the case of an election under Section 7.01(c), the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Notes 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.

(vi) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under Section 7.01(b) or the covenant defeasance under Section 7.01(c) (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 7.01(b) or Section 7.01(c) (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 Trustee for such trust funds or (ii) all necessary registrations under said Act have been effected.

(vii) Notwithstanding any other provisions of this Section 7.01, such Legal Defeasance or Covenant Defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.01.

In the event all or any portion of the Notes are to be redeemed through such irrevocable trust, the Company must make arrangements satisfactory to the Trustee, at the time of such deposit, for the giving of the notice of such redemption or redemptions by the Trustee in the name and at the expense of the Company.

Section 7.02 Survival of the Company's Obligations.

Notwithstanding any Legal Defeasance, Covenant Defeasance or the satisfaction and discharge of this Indenture under Section 10.01, the Company's obligations under Sections 2.03 through 2.07, 4.01, 6.07, 6.08, 7.04 and 7.05, however, shall survive until no Notes are outstanding. Thereafter, the Company's obligations under Sections 6.07, 7.04 and 7.05 shall survive.

Section 7.03 Application of Trust Money.

The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to Section 7.01. It shall apply the deposited money and the money from U.S. Government Obligations in accordance with this Indenture to the payment of principal of and interest on the Notes.

Section 7.04 Repayment to the Company.

The Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or securities held by them at any time. The Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years, *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once in a newspaper of general circulation in the City of New York or mail to each such Holder 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 or mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Holders of Notes entitled to the money must look to the Company or any Subsidiary Guarantor for payment as general creditors unless applicable abandoned property law designates another person and all liability of the Trustee or such Paying Agent with respect to such money shall cease.

Section 7.05 Reinstatement.

If the Trustee is unable to apply any money or U.S. Government Obligations in accordance with Section 7.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and each Subsidiary Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.01 until such time as the Trustee is permitted to apply all such money or U.S. Government Obligations in accordance with Section 7.01; *provided, however*, that (a) if the Company has made any payment of interest on or principal of any Notes because of the reinstatement of their obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee and (b) unless otherwise required by any legal proceeding or any order or judgment of any court or governmental authority, the Trustee shall return all such money or U.S. Government Obligations to the Company promptly after receiving a written request therefor at any time, if such reinstatement of the Company's obligations has occurred and continues to be in effect.

Article VIII.

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01 With Consent of Majority; Without Consent of Holders.

Subject to Section 8.02, this Indenture 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 at least 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

with any provision of, this Indenture 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. The Company, the Subsidiary Guarantors and the Trustee may amend or supplement this Indenture or the Notes or waive any provisions hereof or thereof without notice to or consent of any Holder of Notes:

(a) to cure any ambiguity, defect or inconsistency in this Indenture, the Notes or the Guarantees;

(b) to provide for uncertificated Notes in addition to, or in place of, certificated Notes;

(c) to provide for any Subsidiary Guarantee of the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination or discharge of any Subsidiary Guarantee of the Notes when such release, termination or discharge is permitted by this Indenture;

(d) to add covenants or new events of default for the protection of the Holders of the Notes;

(e) to make any change that does not adversely affect in any material respect the legal rights under this Indenture of any Holder; or

(f) to comply with or qualify this Indenture under the Trust Indenture Act.

After an amendment under this Section 8.01 becomes effective, the Company shall mail notice of such amendment to the affected Holders of Notes. The failure to give such notice to all Holders or any defect therein, shall not impair or affect the validity of an amendment under this Section 8.01.

Section 8.02 With Consent of all Affected Holders.

Without the consent of each Holder of Notes affected, an amendment, supplement or waiver, including a waiver pursuant to Section 5.04 of this Indenture or the Notes, may not:

(a) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(b) reduce the rate of, or change the time for payment of, interest, including default interest, on any Note;

(c) reduce the principal of, or change the fixed maturity of, any Note or alter the provisions with respect to redemption under Section [] hereof;

(d) make any Note payable in money other than that stated in the Note;

(e) make any change in Sections 5.04, 4.01 or 8.02;

(f) modify the ranking or priority of the Notes or any Subsidiary Guarantee;

(g) release any Subsidiary Guarantor from any of its obligations under its Subsidiary Guarantee or this Indenture otherwise than in accordance with the terms contained herein, or

(h) waive a continuing Default or Event of Default in the payment of principal of or interest on the Notes.

It shall not be necessary for the consent of the Holders under this Section 8.02 to approve the particular form of any proposed supplement, but it shall be sufficient if such consent approves the substance thereof.

The right of any Holder to participate in any consent required or sought pursuant to any provision of this 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 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 this Indenture.

Section 8.03 Compliance with Trust Indenture Act.

Every amendment to or supplement of this Indenture or the Notes shall comply with the TIA as then in effect.

Section 8.04 Revocation and Effect of Consents.

A consent to an amendment, supplement or waiver by a Holder shall bind the Holder and every subsequent Holder of Notes or portion of Notes that evidences the same debt as the consenting Holders' Notes, even if notation of the consent is not made on any Note. Subject to the following paragraph, any such Holder or subsequent Holder, however, may revoke the consent as to his Notes or portion of Notes. Such revocation shall be effective only if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders of Notes entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it makes a change described in any of clauses of Section 8.02, in which case, the amendment, supplement or waiver shall bind only each Holder of Notes who has consented to it and every subsequent Holder of Notes or portion of Notes that evidences the same debt as the consenting Holder's Notes; *provided* that any such waiver shall not impair or affect the right of any Holder to receive payment of principal of and interest on the Notes, on or after the respective due dates expressed in such Notes, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

Section 8.05 Notation on or Exchange of Notes.

If an amendment, supplement or waiver changes the terms of the Notes, the Company may require the Holder of the Notes to deliver it to the Trustee, at which time the Trustee shall place an appropriate notation on the Notes about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Notes shall issue and the Trustee shall authenticate a new Note that reflects the changed terms.

Section 8.06 Trustee to Sign Amendments.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be entitled to receive and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment or supplemental indenture is authorized or permitted by this Indenture, that it is not inconsistent herewith, and that it will be valid and binding upon the Company in accordance with its terms.

Article IX.

SUBSIDIARY GUARANTEES; RELEASE OF SUBSIDIARY GUARANTORS

Section 9.01 Subsidiary Guarantee.

(a) Subject to the provisions of this Article IX, each Subsidiary Guarantor hereby jointly and severally unconditionally guarantees to each Holder 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 Guarantor to the Holders or the Trustee hereunder or thereunder, that: (i) 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 and this Indenture will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) 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, jointly and severally with each other Subsidiary Guarantor, to pay, or to perform or cause the performance of, the same immediately. An Event of Default under this Indenture or the Notes shall constitute an event of default under this Article IX, 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.

(b) Each of the Subsidiary Guarantors hereby agrees that its obligations hereunder shall be continuing, absolute and unconditional, irrespective of, and shall be unaffected by, the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder or the Trustee 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 Article IX. 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 Article IX, 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, (i) subject to this Article IX, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article V hereof for the purposes of this Article IX, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (ii) in the event of any acceleration of such obligations as provided in Article V hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Article IX.

(c) This Article IX 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.

(d) 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 which, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under this Indenture, will result in the obligations of such Subsidiary Guarantor and its Subsidiary Guarantee not constituting a fraudulent conveyance or fraudulent transfer or obligation under federal or state law.

Section 9.02 Execution and Delivery of Subsidiary Guarantee.

(a) To further evidence the Subsidiary Guarantee set forth in Section 9.01, each of the Subsidiary Guarantors hereby agrees that a notation of such Subsidiary Guarantee, substantially in the form included in Exhibit A 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.

(b) Each of the Subsidiary Guarantors hereby agrees that its Subsidiary Guarantee set forth in Section 9.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

(c) 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.

(d) 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 9.03 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 Officers' Certificate certifying such supplemental indenture complies with all conditions precedent under this indenture and 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 9.04 Release of a Subsidiary Guarantor.

(a) If all or substantially all of the assets of any Subsidiary Guarantor or all (or a portion sufficient to cause such Subsidiary Guarantor to no longer be a Subsidiary of the Company) of the Capital Stock of any Subsidiary Guarantor is sold (including by consolidation, merger, issuance or otherwise) or disposed of (including by liquidation, dissolution or otherwise) by the Company or any of its Subsidiaries, or, unless the Company elects otherwise, if any Subsidiary Guarantor is designated an Unrestricted Subsidiary in accordance with the terms of this Indenture, then such Subsidiary Guarantor (in the event of a sale or other disposition of all of the Capital Stock of such Subsidiary Guarantor or a designation as an Unrestricted Subsidiary) or the Person 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 any of its obligations under this Indenture without any further action on the part of the Trustee or any Holder of the Notes.

(b) The Trustee shall deliver an appropriate instrument evidencing the release of a Subsidiary Guarantor upon receipt of a written request of the Company accompanied by an Officers' Certificate and Opinion of Counsel each certifying as to the compliance with this Section 9.04. 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 IX.

(c) 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 IX.

(d) Except as set forth in Article IV hereof and this Section 9.04, 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 9.05 Waiver of Subrogation; Right of Contribution.

(a) Except as set forth in Section 9.05(b) below, 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 Article IX 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 9.05 is knowingly made in contemplation of such benefits.

(b) Notwithstanding Section 9.05(a), each Subsidiary Guarantor that makes a payment or distribution under a Subsidiary Guarantee shall be entitled to a contribution from each other Subsidiary Guarantor in an amount *pro rata*, based on the net assets of each Subsidiary Guarantor, determined in accordance with GAAP.

Article X.

SATISFACTION AND DISCHARGE

Section 10.01 Satisfaction and Discharge.

This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(a) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (i) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, shall become due and payable within one year or may be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(ii) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, the Credit Facilities or any other material agreement or instrument (other than this Indenture) to which the Company or any Subsidiary Guarantor is a party or by which the Company or any Subsidiary Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and in each case, the granting of Liens in connection therewith);

(iii) the Company has paid or caused to be paid all sums payable by it under this Indenture; and

(iv) if applicable, the Company has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to this Section 10.01(b), the provisions of Sections 4.01, 4.02 and 10.02 hereof shall survive.

Section 10.02 Application of Trust Money.

Subject to the provisions of Section 7.05 hereof, all money deposited with the Trustee pursuant to Section 10.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 10.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Subsidiary Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

Article XI.

MISCELLANEOUS

Section 11.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Trust Indenture Act, the imposed duties shall control.

Section 11.02 Notices.

Any notice or communication by the Company, any Subsidiary Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company or any Subsidiary Guarantor:

c/o Beazer Homes USA, Inc.
2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia 30319
Attention: Keith L. Belknap
Email: keith.belknap@beazer.com

If to the Trustee:

Regions Bank
10245 Centurion Parkway, 2nd Floor
Jacksonville, FL 32256
Attention: Shawn Bednasek
Email: shawn.bednasek@regions.com

The Company, any Subsidiary Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; provided that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in Trust Indenture Act Section 313(c), to the extent required by the Trust Indenture Act. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Section 11.03 Communication by Holders of Notes with Other Holders of Notes.

Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of Trust Indenture Act Section 312(c).

Section 11.04 Certificate and Opinion as to Conditions Precedent.

(a) Upon any written request or application by the Company or any of the Subsidiary Guarantors to the Trustee to take any action under this Indenture, the Company or such Subsidiary Guarantor, as the case may be, shall furnish to the Trustee:

(i) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 11.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(ii) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 11.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 11.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof or Trust Indenture Act Section 314(a)(4)) shall comply with the provisions of Trust Indenture Act Section 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) 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;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officers' Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 11.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 11.07 No Personal Liability of Incorporators, Shareholders, Officers, Directors or Employees.

No recourse for the payment of the principal of, premium, if any, or interest on any of the Notes, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company or any Subsidiary Guarantor in this Indenture or in any of the Notes or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, shareholder, officer, director, employee or controlling person of the Company, any Subsidiary Guarantor or any successor Person thereof. Each Holder, by accepting such Notes waives and releases all such liability.

Section 11.08 Governing Law.

THIS INDENTURE, THE NOTES AND THE SUBSIDIARY GUARANTEES WILL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 11.09 Waiver of Jury Trial.

EACH OF THE COMPANY, THE SUBSIDIARY GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.10 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 11.11 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 11.12 Successors.

All agreements of the Company in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Subsidiary Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 9.04 hereof.

Section 11.13 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 11.14 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 11.15 Table of Contents, Headings, etc.

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 11.16 Qualification of Indenture.

The Company and the Subsidiary Guarantors shall qualify this Indenture under the Trust Indenture Act and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Company, the Subsidiary Guarantors and the Trustee) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and printing this Indenture and the Notes. The Trustee shall be entitled to receive from the Company and the Subsidiary Guarantors any such Officers' Certificates, Opinions of Counsel or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the Trust Indenture Act.

[Signature pages follow]

BEAZER HOMES USA, INC.

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BH INVESTMENT HOLDINGS, LLC

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BEAZER HOMES HOLDINGS, LLC

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BEAZER HOMES, LLC

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BEAZER GENERAL SERVICES, INC.
BEAZER HOMES INDIANA HOLDINGS CORP.
BEAZER HOMES SALES, INC.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER REALTY CORP.
BEAZER REALTY LOS ANGELES, INC.
BH PROCUREMENT SERVICES, INC.

By: _____
Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

BEAZER MORTGAGE CORPORATION

By: _____
Name: David I. Goldberg
Title: Senior Vice President

BEAZER FUNDAMENTAL, LLC

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

BEAZER HOMES INDIANA LLP

By: BEAZER HOMES INVESTMENTS, LLC,
its Managing Partner

By: BEAZER HOMES, LLC,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

BALLARD GREEN UTILITY COMPANY, LLC

BEAZER CLARKSBURG, LLC

DOVE BARRINGTON DEVELOPMENT LLC

BEAZER HOMES INVESTMENTS, LLC

BEAZER GAIN, LLC

BH MATERIALS, LLC

MARSHFIELD LAND, LLC

By: BEAZER HOMES, LLC,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

BEAZER HOMES TEXAS, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its General Partner

By: _____
Name: David I. Goldberg
Title: Senior Vice President

BEAZER REALTY SERVICES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member

By: BEAZER HOMES, LLC,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

BH BUILDING PRODUCTS, LP

By: BH PROCUREMENT SERVICES, INC.,
its General Partner

By: BEAZER HOMES TEXAS, L.P.,
its Sole Member

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its General Partner

By: _____
Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

CLARKSBURG ARORA LLC

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES, LLC,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

CLARKSBURG SKYLARK, LLC

By: CLARKSBURG ARORA LLC,
its Sole Member

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES, LLC.,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

REGIONS BANK,
as Trustee

By: _____
Name:
Title:

[Signature Page to Indenture]

Subsidiary Guarantors

Ballard Green Utility Company, LLC
Beazer Clarksburg, LLC
Beazer Fundamental, LLC
Beazer Gain, LLC
Beazer General Services, Inc.
Beazer Homes Holdings, LLC
Beazer Homes Indiana Holdings Corp.
Beazer Homes Indiana LLP
Beazer Homes Investments, LLC
Beazer Homes Sales, Inc.
Beazer Homes Texas Holdings, Inc.
Beazer Homes Texas, L.P.
Beazer Homes, LLC
Beazer Mortgage Corporation
Beazer Realty Corp.
Beazer Realty Los Angeles, Inc.
Beazer Realty Services, LLC
BH Building Products, LP
BH Investment Holdings, LLC
BH Materials, LLC
BH Procurement Services, Inc.
Clarksburg Arora LLC
Clarksburg Skylark, LLC
Dove Barrington Development LLC
Marshfield Land, LLC

Indenture

DATED AS OF [], 20[]

AMONG

Beazer Homes USA, Inc.,

The Subsidiary Guarantors Named on Schedule I Hereto,

AND

Regions Bank,

AS TRUSTEE

[]% SENIOR SUBORDINATED NOTES DUE []

CROSS-REFERENCE TABLE*

<u>Trust Indenture Act Section</u>	<u>Indenture Section</u>
310 (a)(1)	6.10
(a)(2)	6.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	6.10
(b)	6.10
(c)	N.A.
311 (a)	6.11
(b)	6.11
(c)	N.A.
312 (a)	2.05
(b)	11.03
(c)	11.03
313 (a)	6.06
(b)(1)	N.A.
(b)(2)	6.06; 6.07
(c)	6.06; 11.02
(d)	6.06
314 (a)	4.03
(b)	N.A.
(c)(1)	11.04
(c)(2)	11.04
(c)(3)	N.A.
(d)	N.A.
(e)	11.05
(f)	N.A.
315 (a)	6.01
(b)	6.05; 11.02
(c)	6.01
(d)	6.01
(e)	5.12
316 (a)(last sentence)	2.09
(a)(1)(A)	5.05
(a)(1)(B)	5.04
(a)(2)	N.A.
(b)	5.08
(c)	1.05(e); 8.04
317 (a)(1)	5.08
(a)(2)	5.10
(b)	2.04
318 (a)	11.01
(b)	N.A.
(c)	11.01

N.A. means not applicable.

TABLE OF CONTENTS

	Page
Article I. DEFINITIONS AND INCORPORATION BY REFERENCE	1
Section 1.01 Definitions	1
Section 1.02 Other Definitions	10
Section 1.03 Incorporation by Reference of Trust Indenture Act	10
Section 1.04 Rules of Construction	10
Section 1.05 Acts of Holders	11
Article II. THE NOTES	12
Section 2.01 Form and Dating; Terms	12
Section 2.02 Execution and Authentication	13
Section 2.03 Registrar and Paying Agent	14
Section 2.04 Paying Agent to Hold Money in Trust	14
Section 2.05 Holder Lists	15
Section 2.06 Transfer and Exchange	15
Section 2.07 Replacement Notes	18
Section 2.08 Outstanding Notes	18
Section 2.09 Treasury Notes	18
Section 2.10 Temporary Notes	19
Section 2.11 Cancellation	19
Section 2.12 Defaulted Cash Interest	19
Section 2.13 CUSIP and ISIN Numbers	20
Article III. REDEMPTION	20
Section 3.01 Notices to Trustee	20
Section 3.02 Selection of Notes to Be Redeemed or Purchased	20
Section 3.03 Notice of Redemption	21
Section 3.04 Effect of Notice of Redemption	22
Section 3.05 Deposit of Redemption or Purchase Price	22
Section 3.06 Notes Redeemed or Purchased in Part	23
Article IV. COVENANTS	23
Section 4.01 Payment of Notes	23
Section 4.02 Maintenance of Office or Agency	23
Section 4.03 Reports and Other Information	24
Section 4.04 Compliance Certificate	24
Section 4.05 Taxes	25
Section 4.06 Stay, Extension and Usury Laws	25
Section 4.07 Subsidiary Guarantees by Restricted Subsidiaries	25
Section 4.08 Maintenance of Corporate Existence; Maintenance of Properties	25
Section 4.09 Further Instruments and Acts	26

Article V. DEFAULTS AND REMEDIES	26
Section 5.01 Events of Default	26
Section 5.02 Acceleration	28
Section 5.03 Other Remedies	28
Section 5.04 Waiver of Existing Defaults	28
Section 5.05 Control by Majority	29
Section 5.06 Limitation on Suits	29
Section 5.07 Rights of Holders of Notes to Receive Payment	29
Section 5.08 Collection Suit by Trustee	30
Section 5.09 Restoration of Rights and Remedies	30
Section 5.10 Trustee May File Proofs of Claim	30
Section 5.11 Priorities	31
Section 5.12 Undertaking for Costs	31
Article VI. TRUSTEE	31
Section 6.01 Duties of Trustee	31
Section 6.02 Rights of Trustee	32
Section 6.03 Individual Rights of Trustee	34
Section 6.04 Trustee’s Disclaimer	34
Section 6.05 Notice of Defaults	34
Section 6.06 Reports by Trustee to Holders of the Notes	34
Section 6.07 Compensation and Indemnity	35
Section 6.08 Replacement of Trustee	36
Section 6.09 Successor Trustee by Merger, etc.	36
Section 6.10 Eligibility; Disqualification	37
Section 6.11 Preferential Collection of Claims Against Company	37
Article VII. LEGAL DEFEASANCE AND COVENANT DEFEASANCE	37
Section 7.01 Defeasance Upon Deposit of Moneys or U.S. Government Obligations	37
Section 7.02 Survival of the Company’s Obligations	39
Section 7.03 Application of Trust Money	40
Section 7.04 Repayment to the Company	40
Section 7.05 Reinstatement	40
Article VIII. AMENDMENTS, SUPPLEMENTS AND WAIVERS	41
Section 8.01 With Consent of Majority; Without Consent of Holders	41
Section 8.02 With Consent of all Affected Holders	41
Section 8.03 Compliance with Trust Indenture Act	42

Section 8.04	Revocation and Effect of Consents	42
Section 8.05	Notation on or Exchange of Notes	43
Section 8.06	Trustee to Sign Amendments	43
Article IX. SUBSIDIARY GUARANTEES; RELEASE OF SUBSIDIARY GUARANTORS		44
Section 9.01	Subsidiary Guarantee.	44
Section 9.02	Execution and Delivery of Subsidiary Guarantee	45
Section 9.03	Additional Subsidiary Guarantors	46
Section 9.04	Release of a Subsidiary Guarantor	46
Section 9.05	Waiver of Subrogation; Right of Contribution	47
Article X. SATISFACTION AND DISCHARGE		48
Section 10.01	Satisfaction and Discharge	48
Section 10.02	Application of Trust Money	49
Article XI. SUBORDINATION OF NOTES		49
Section 11.01	Subordination Provisions	49
Article XII. MISCELLANEOUS		49
Section 12.01	Trust Indenture Act Controls	49
Section 12.02	Notices	50
Section 12.03	Communication by Holders of Notes with Other Holders of Notes	51
Section 12.04	Certificate and Opinion as to Conditions Precedent	51
Section 12.05	Statements Required in Certificate or Opinion	51
Section 12.06	Rules by Trustee and Agents	51
Section 12.07	No Personal Liability of Incorporators, Shareholders, Officers, Directors or Employees	52
Section 12.08	Governing Law	52
Section 12.09	Waiver of Jury Trial	52
Section 12.10	Force Majeure	52
Section 12.11	No Adverse Interpretation of Other Agreements	52
Section 12.12	Successors	52
Section 12.13	Severability	53
Section 12.14	Counterpart Originals	53
Section 12.15	Table of Contents, Headings, etc.	53
Section 12.16	Qualification of Indenture	53

SCHEDULES

Schedule 1 Subsidiary Guarantors

EXHIBITS

[Exhibit A Form of Notes]

[Exhibit B Form of Certificate of Transfer]

[Exhibit C Form of Certificate of Exchange]

[Exhibit D Form of Supplemental Indenture to Be Delivered by Subsequent Guarantors]

INDENTURE, dated as of [], 20[], among Beazer Homes USA, Inc., a Delaware corporation (the “Company”), the Subsidiary Guarantors (as defined herein) listed on the signature pages hereto and Regions Bank, as trustee (the “Trustee”).

WITNESSETH

WHEREAS, the Company has duly authorized the creation of an issue of \$[] aggregate principal amount of []% Senior Subordinated Notes due []; and

WHEREAS, the Company and each of the Subsidiary Guarantors has duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, in consideration of the promises and the purchase and acceptance of the Notes by the Holders thereof, the Company, the Subsidiary Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

Article I.

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

“Additional Notes” means Notes (other than the Notes issued on the Issue Date and Notes issued in replacement or exchange thereof) issued pursuant to Article II hereof and otherwise in compliance with the provisions of this Indenture.

“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 of this Indenture, 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 of this Indenture, 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 or Paying Agent.

“Applicable Procedures” means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and/or Clearstream that apply to such transfer or exchange.

“Authentication Order” means a written request or order signed on behalf of the Company by an Officer of the Company and delivered to the Trustee.

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

“Book Value” means, with respect to any asset of the Company or any of its Subsidiaries, the book value thereof as reflected in the most recent consolidated financial statements of the Company filed with the SEC (or if such asset has been acquired after the date of such financial statements, the then-current book value thereof as reasonably determined by the Company consistent with recent practices).

“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 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.

“Clearstream” means Clearstream Banking, société anonyme, or any successor securities clearance agency.

“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.

“Company Order” means a written order signed in the name of the Company by an Officer of the Company.

“Corporate Trust Office of the Trustee” shall be at the address of the Trustee specified in Section 11.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Company or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“Credit Facilities” means, with respect to the Company or any of its Restricted Subsidiaries, one or more debt facilities or other financing arrangements (including, without limitation, commercial paper or letter of credit facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other Indebtedness (including the Revolving Credit Facility), including any notes, mortgages, deeds of trust, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements,

modifications, extensions, renewals, restatements or refundings thereof and any indentures, credit facilities, letter of credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

“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.

“Depository” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as Depository hereunder and having become such pursuant to the applicable provision of this Indenture.

“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.

“Euroclear” means Euroclear S.A./N.V., as operator of the Euroclear system or any successor securities clearance agency.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Fair Market Value” means with respect to any asset or property 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) or an officer’s certificate of the principal financial officer 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 from time to time. At any time after the Issue Date, the Company may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided herein); *provided* that any such election, once made, shall be

irrevocable; *provided, further*, any calculation or determination herein that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Company shall give notice of any such election made in accordance with this definition to the Trustee and the Holders of Notes.

"Global Note Legend" means the legend set forth in Section 2.06(c) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"Global Notes" means, individually and collectively, each of the Notes, substantially in the form of Exhibit A hereto.

"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.

"IFRS" means International Financial Reporting Standards, as adopted by the International Accounting Standards Board.

"Incur" (and derivatives thereof) 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 (including a purchase money obligation) given in connection with the acquisition of any businesses, properties or assets of any kind or with services incurred in connection with capital expenditures (other than any obligation to pay a contingent purchase price which, as of the date of incurrence thereof, is not required to be recorded as a liability in accordance with GAAP);
- (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 or similar instruments issued for the benefit of, or surety, performance, completion or payment bonds, earnest money notes or similar purpose undertakings or indemnifications issued by, such Person in the ordinary course of business (as determined in good faith by the Company));
- (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 by this Indenture or that fix the exchange rate in connection with Indebtedness denominated in a foreign currency and otherwise permitted by this Indenture);

-
- (v) all Capitalized Lease Obligations of such Person;
 - (vi) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;
 - (vii) all Indebtedness of others guaranteed by, or otherwise the liability of, such Person to the extent of such guarantee or liability; and
 - (viii) 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); *provided*, that Indebtedness shall not include accrued expenses, trade payables, liabilities related to inventory not owned, customer deposits or deferred income taxes arising in the ordinary course of business (as determined in good faith by the Company). 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 (vii) above; and
 - (C) in the case of clause (vi) (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.

“Indenture” means this Indenture, as amended or supplemented from time to time.

“Indirect Participant” means a Person who holds a beneficial interest in a Global Note through a Participant.

“Interest Payment Date” means [] and [] of each year to stated maturity, commencing [].

“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 would be classified as investments on a balance sheet of such Person determined in accordance with GAAP. For all purposes of this Indenture, the amount of any such Investment shall be the fair market value thereof (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value). The making of any payment in accordance with the terms of a guarantee or other contingent obligation permitted under this Indenture shall not be considered an Investment.

“Issue Date” means [], the initial date of issuance of the Notes under this Indenture.

“Legal Holiday” means Saturday, Sunday or a day on which banking institutions in New York, New York, Atlanta, Georgia 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, deed of trust, 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).

“Material Subsidiary” means [] for the fiscal year ending immediately prior to any Default or Event of Default.

“Moody’s” means Moody’s Investors Service, Inc. or any successor to its debt rating business.

“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 (directly or indirectly, including through the purchase of Capital Stock of the Person owning such property) with the proceeds of such Indebtedness or such Indebtedness was Incurred within 90 days after the acquisition (directly or indirectly, including through the purchase of Capital Stock of the Person owning such property) of such property and (ii) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness. Indebtedness which is otherwise Non-Recourse Indebtedness will not lose its character as Non-Recourse Indebtedness because there is recourse to the borrower, any guarantor or any other Person for (a) environmental warranties, covenants and indemnities, (b) indemnities for and liabilities arising from fraud, misrepresentation, misapplication or non-payment of rents, profits, deposits, insurance and condemnation proceeds and other sums actually received by the borrower from secured assets to be paid to the lender, waste and mechanics’ liens, breach of separateness covenants, and other customary exceptions or (c) in the case of the borrower thereof only, other obligations in respect of such Indebtedness that are payable solely as a result of a voluntary or collusive non-voluntary bankruptcy filing (or similar filing or action) by such borrower.

“Notes” means the Notes as set forth in the recitals and more particularly means any Notes authenticated and delivered under this Indenture, including any Additional Notes. Unless the context requires otherwise, references to “Notes” for all purposes of this Indenture include any Additional Notes that are actually issued.

“Obligations” means, with respect to any Indebtedness, all obligations (whether in existence on the Issue Date or arising afterwards, absolute or contingent, direct or indirect) for or in respect of principal (when due, upon acceleration, upon redemption, upon mandatory repayment or repurchase pursuant to a mandatory offer to purchase, or otherwise), premium, interest,

penalties, fees, indemnification, reimbursement and other amounts payable and liabilities with respect to such Indebtedness, including all interest accrued or accruing after the commencement of any bankruptcy, insolvency or reorganization or similar case or proceeding at the contract rate (including, without limitation, any contract rate applicable upon default) specified in the relevant documentation, whether or not the claim for such interest is allowed as a claim in such case or proceeding.

“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.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“Participant” means, with respect to the Depository, Euroclear or Clearstream, a Person who has an account with the Depository, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

“Paying Agent” means any Person authorized by the Company to pay the principal of or interest on the Notes at the office or agency where Notes and the Subsidiary Guarantees may be presented for payment.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization, 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.

“Record Date” for the interest, if any, payable on any applicable Interest Payment Date means [] or [] (whether or not a Business Day) next preceding such Interest Payment Date.

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

“Restricted Subsidiary” means each of the Subsidiaries of the Company which is not an Unrestricted Subsidiary.

“Revolving Credit Facility” means the Credit Agreement, dated as of October 13, 2022, among the Company, the several lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as an issuing lender and administrative agent, and as such facility may be amended, restated, supplemented or otherwise modified from time to time.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

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

“Senior Indebtedness” means any Indebtedness which is senior in right of payment to the Notes or the Subsidiary Guarantees, as the case may be.

“Subordinated Indebtedness” means any Indebtedness which is subordinated in right of payment to the Notes or the Subsidiary Guarantees, as the case may be.

“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; *provided* that in each of case (i) and (ii), such Person is required to consolidate such entity in accordance with GAAP.

“Subsidiary Guarantee” means the guarantee of the Notes by each Subsidiary Guarantor under this Indenture.

“Subsidiary Guarantors” means (i) each of the Company’s Restricted Subsidiaries in existence on the Issue Date and (ii) each of the Company’s Subsidiaries that becomes a guarantor of the Notes pursuant to the provisions of this Indenture, in each case until released from its Subsidiary Guarantee pursuant to the terms of this Indenture.

“Trust Indenture Act” or “TIA” means the Trust Indenture Act of 1939, as amended.

“Trustee” means the party named as the “Trustee” in the first paragraph of this Indenture until a successor replaces such party in accordance with the applicable provisions of this Indenture and thereafter means the successor trustee serving under this Indenture.

“Unrestricted Subsidiary” means each of the Subsidiaries of the Company (including any newly formed or acquired Subsidiary) 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 or the Capital Stock of 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.

Subject to the foregoing, the Board of Directors of the Company also may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; provided that (a) the Restricted Subsidiary to be so designated has total consolidated assets of \$1,000 or less at the time of designation, or (b) with respect to any other Restricted Subsidiary, at the time of such designation:

- (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 Investments at the time of such designation and such Investments must be permitted at such time under this Indenture; and
- (ii) no Default or Event of Default shall have occurred or be continuing.

Any such designation 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 and an Officers' Certificate certifying that such designation complied with the foregoing conditions and setting forth the underlying calculations.

“U.S. Government Obligations” means securities which are (i) direct obligations of the United States of America, 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, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, 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 U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. 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 U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

“Wholly Owned Subsidiary” of any Person means (i) a Subsidiary of which 100% 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.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Covenant Defeasance”	7.01
“DTC”	2.03
“Event of Default”	5.01
“Legal Defeasance”	7.01
“Note Register”	2.03

Section 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture.

The following Trust Indenture Act terms used in this Indenture have the following meanings:

“indenture securities” means the Notes;

“indenture security Holder” means a Holder of a Note;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and “obligor” on the Notes and the Subsidiary Guarantees means the Company and the Subsidiary Guarantors, respectively, and any successor obligor upon the Notes and the Subsidiary Guarantees, respectively.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by SEC rule under the Trust Indenture Act have the meanings so assigned to them.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

-
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
 - (c) “or” is not exclusive;
 - (d) words in the singular include the plural, and in the plural include the singular;
 - (e) “will” shall be interpreted to express a command;
 - (f) provisions apply to successive events and transactions;
 - (g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;
 - (h) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture; and
 - (i) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

Section 1.05 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 may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. 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 manner that the Trustee deems sufficient.

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

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

(e) The Company may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders, but shall have no obligation to do so.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including the Depositary that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and the Depositary that is the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such depositary's standing instructions and customary practices.

(h) The Company may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by the Depositary entitled under the procedures of such depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, but shall have no obligation to do so. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 180 days after such record date.

Article II.

THE NOTES

Section 2.01 Form and Dating; Terms.

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions and transfers of interests. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Trustee, as custodian with respect to the Notes in global form or any successor entity thereof, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company, the Subsidiary Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Additional Notes ranking *pari passu* with the Notes may be created and issued from time to time by the Company without notice to or consent of the Holders and shall be consolidated with and form a single class with the Notes and shall have the same terms as to status, waivers, amendments, offers to purchase, redemption or otherwise as the Notes; provided that the Company’s ability to issue Additional Notes shall be subject to the Company’s compliance with the terms of this Indenture. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture.

Section 2.02 Execution and Authentication.

At least one Officer shall execute the Notes on behalf of the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form provided for in Exhibit A attached hereto, as the case may be, by the manual or facsimile signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver the Notes.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

Section 2.03 Registrar and Paying Agent.

The Company shall maintain a Registrar and a Paying Agent with respect to each series of Notes. The Registrar shall keep a register of the Notes (“Note Register”) and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrar and the term “Paying Agent” includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints The Depository Trust Company (“DTC”) to act as Depository with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Paying Agent and Registrar for the Notes and to act as custodian with respect to the Global Notes. The Company may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent; and the Registrar or Paying Agent may resign at any time upon written notice to the Company, all in accordance with the terms of Section 6.08 hereof.

Section 2.04 Paying Agent to Hold Money in Trust.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with Trust Indenture Act Section 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least two Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Company shall otherwise comply with Trust Indenture Act Section 312(a).

Section 2.06 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depository or to a successor Depository or a nominee of such successor Depository *provided, however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b).

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository, in accordance with the provisions of this Indenture and the Applicable Procedures. Transfers of beneficial interests in the Global Notes also shall require the transferor of such beneficial interest to deliver to the Registrar (A) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(d) hereof.

(c) Legends. The following legend shall appear on the face of all Global Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

“THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(d) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY (OR A NOMINEE THEREOF) WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED

EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (“DTC”) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE 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 IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

(d) Cancellation or Adjustment of Global Notes. At such time as a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(e) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar’s request.

(ii) No service charge shall be made to a Holder of a beneficial interest in a Global Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06 and 8.05 hereof).

(iii) Neither the Registrar nor the Company shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

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

(v) The Company shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Company designated pursuant to Section 4.02 hereof, the Company shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile or by electronic means.

(x) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Notes other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, the Registrar or the Company and the Trustee and Company receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, and in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note of the same series and of like tenor and principal amount. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Affiliate of the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not the Company or any obligor upon the Notes or any Affiliate of the Company or of such other obligor.

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Notes in exchange for temporary Notes.

Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy cancelled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall be delivered to the Company as requested in writing by the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Cash Interest.

If the Company defaults in a payment of cash interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company shall notify the Trustee in writing of the amount of defaulted cash interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Company of such special record date. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall send to each Holder a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13 CUSIP and ISIN Numbers.

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

Article III.

REDEMPTION

Section 3.01 Notices to Trustee.

If the Company elects to redeem Notes pursuant to Section [], it shall furnish to the Trustee, at least 2 Business Days, unless a shorter period shall be agreed to by the Trustee, before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to Section 3.03 hereof but not more than 60 days before a redemption date, an Officers' Certificate setting forth (i) the paragraph or subparagraph of such Note or Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of the Notes, as the case may be, to be redeemed and (iv) the redemption price.

Section 3.02 Selection of Notes to Be Redeemed or Purchased.

In the event less than all of the Notes, are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed, (b) on a *pro rata* basis or (c) by lot or by any other method the Trustee considers fair and appropriate, unless otherwise required by law or regulatory requirements. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 15 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of \$2,000 or whole multiples of \$1,000 in excess thereof; no Notes of \$2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not \$2,000 or a multiple of \$1,000 in excess thereof, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

The Company shall send notices of redemption at least 15 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed in accordance with the procedures of the Depositary.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same Indebtedness to the extent not redeemed will be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph or subparagraph of the Notes or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(h) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes.

Notice of any redemption pursuant to this Section 3.03 upon any corporate transaction or other event may be given prior to the completion thereof. In addition, any redemption pursuant to this Article III or notice thereof may, at the Company's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a corporate transaction or other event. If any redemption is so subject to the satisfaction of one or more conditions precedent, the notice thereof shall describe each such condition and, if applicable, shall state that, in the Company's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied (or waived by the Company in its sole discretion), and/or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date as so delayed, and/or that such notice may be rescinded at any time by the Company if the Company determines in its sole discretion that any or all of such conditions will not be satisfied (or waived). In addition, the Company may provide in such notice that payment of the redemption price and performance of the Company's obligations with respect to such redemption may be performed by another Person.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided* that the Company shall have delivered to the Trustee, at least 2 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions thereof called for redemption.

Section 3.05 Deposit of Redemption or Purchase Price.

Prior to 10:00 a.m. (New York City time) on the redemption or purchase date, the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly as practicable return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to such Interest Payment Date shall be paid, on such Interest Payment Date, to the Person in whose name such Note was registered at the close of business on such Record Date (and the Holder entitled to the related redemption price shall not be entitled to such accrued and unpaid interest, unless such Holder is such Person). If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Company shall issue and the Trustee shall authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same Indebtedness to the extent not redeemed or purchased; *provided* that each new Note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officers' Certificate is required for the Trustee to authenticate such new Note.

Article IV.

COVENANTS

Section 4.01 Payment of Notes.

The Company shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and cash interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary, holds as of noon Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due; *provided*, however, that money held by the Paying Agent for the benefit of holders of Senior Indebtedness pursuant to the provisions of Article XI shall not be considered paid within the meaning of this Section 4.01.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest at the same rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency.

The Company shall maintain in the Borough of Manhattan in the City of New York an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of 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 Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan in the City of New York for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

Section 4.03 Reports and Other Information.

(a) 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 SEC 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 SEC 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 SEC 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 SEC as aforementioned in this paragraph is not permitted under the Exchange Act, the Company shall promptly upon written request 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. For the avoidance of doubt, this Section 4.03 shall not require the Company to file any such reports, information or documents with the SEC within any specified time period and the obligation to deliver such reports, information or documents to the Trustee and Holders shall only arise after (and only to the extent) such reports, information or documents are filed with the SEC.

(b) The Company shall furnish to the Trustee, with respect to the Company or any Subsidiary Guarantor, written notice of any change (within 10 days following such change) in such Person's (i) legal name, (ii) jurisdiction of organization or formation, (iii) identity or corporate structure, or (iv) organizational identification number.

Section 4.04 Compliance Certificate.

The Company shall deliver to the Trustee a quarterly statement regarding compliance with the provisions under this Indenture, and include in such statement, if any Officer of the Company is aware of any Default or Event of Default, a statement specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto. In addition, the Company shall deliver to the Trustee prompt written notice of the occurrence of any Default or Event of Default and any other development, financial or otherwise, which might materially affect its business, properties or affairs or the ability of the Company to perform its obligations under this Indenture.

Section 4.05 Taxes.

The Company shall pay or discharge, and shall cause each of its Restricted Subsidiaries to pay or discharge, prior to delinquency, all taxes, assessments, and governmental charges levied or imposed upon it or any Restricted Subsidiary or upon the income, profits or property of the Company or any Restricted Subsidiary; *provided, however*, that the Company or any Restricted Subsidiary 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 4.06 Stay, Extension and Usury Laws.

The Company and each of the Subsidiary Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company or any Subsidiary Guarantor from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Subsidiary Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 Subsidiary Guarantees by Restricted Subsidiaries.

The Company is permitted to cause any Unrestricted Subsidiary to be a Subsidiary Guarantor. If the Company or any of its Restricted Subsidiaries acquires or creates 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 \$[] million) after the Issue Date, such Restricted Subsidiary shall execute a guarantee substantially in the form included in Exhibit A, execute a supplemental indenture in the form of Exhibit D, and deliver an Officers' Certificate and Opinion of Counsel to the Trustee to the effect that the supplemental indenture has been duly authorized, executed and delivered by the new Restricted Subsidiary and constitutes a valid and binding obligation of the new Restricted Subsidiary, enforceable against the new Restricted Subsidiary in accordance with its terms (subject to customary exceptions).

Section 4.08 Maintenance of Corporate Existence; Maintenance of Properties.

(a) The Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary and (ii) the rights (charter and statutory), licenses and franchises of the Company and its Restricted Subsidiaries; *provided* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

(b) 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 4.09 Further Instruments and Acts.

Upon request of the Trustee, the Company will execute and deliver to the Trustee such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

[Include additional covenants as applicable.]

Article V.

DEFAULTS AND REMEDIES

Section 5.01 Events of Default.

(a) An “Event of Default” wherever used herein, means any one of the following events:

(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, redemption or otherwise;

(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 \$[] million 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 \$[] million 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); *provided*, that if such failure to pay shall be remedied, waived or extended, then the Event of Default hereunder shall be deemed likewise to be remedied, waived or extended without further action by the Company;

(vi) a final judgment or judgments that exceed \$[] million 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;

(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 of a Material Subsidiary 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 that is a Material Subsidiary 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) 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% 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 of a Default under Section 5.01(a)(iii). 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.

(c) The Trustee may withhold from the Holders notice of any continuing Default or Event of Default (except any Default or Event of Default in payment of principal or interest on the Notes) if the Trustee determines that withholding such notice is in the Holders' interest.

Section 5.02 Acceleration.

(a) If an Event of Default (other than an Event of Default specified in sub-clauses (vii) and (viii) of Section 5.01(a) above) shall have occurred and be continuing under this Indenture, the Trustee by notice to the Company, or the Holders of at least 25% 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 pursuant to this Section 5.02, will be due and payable immediately. If an Event of Default with respect to the Company specified in sub-clauses (vii) and (viii) of Section 5.01(a) above 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.

(b) In the event that the maturity of the Notes is accelerated pursuant to Section 5.02(a) hereof, 100% of the principal amount of the Notes will become due and payable plus accrued interest, if any, to the date of payment.

Section 5.03 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All remedies are cumulative to the extent permitted by law.

Section 5.04 Waiver of Existing Defaults.

Subject to Section 8.02, the Holders of a majority in principal amount of then-outstanding Notes on behalf of all the Holders of the Notes by written notice to the Trustee and the Company may waive any 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 consequence (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. 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 impair any right consequent thereon.

Section 5.05 Control by Majority.

The Holders of a majority in principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or in its exercise of any trust or power conferred on the Trustee; *provided, however,* that such direction does not conflict with the terms of this Indenture. The Holders may not enforce the provisions of this Indenture, the Notes or the Subsidiary Guarantees except as provided in this Indenture. The Trustee, however, may refuse to follow any direction (i) that conflicts with law or this Indenture; (ii) that, subject to Section 6.01, the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or (iii) that would involve the Trustee in personal liability. The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all costs, losses, liabilities and expenses caused by taking or not taking such action.

Section 5.06 Limitation on Suits.

Subject to Section 5.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

- (a) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (b) Holders of at least a majority in principal amount of the total outstanding Notes make a written request to the Trustee to pursue the remedy;
- (c) Holders of the Notes have offered the Trustee reasonable security or indemnity against any loss, liability or expense;
- (d) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (e) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such use of this Indenture prejudices the rights of such Holder or obtains a preference or priority over such Holder).

Section 5.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, but subject to Article XI of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of such Holder.

Section 5.08 Collection Suit by Trustee.

If an Event of Default specified in Section 5.01(a)(i) or (ii) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and 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 Trustee, its agents, counsel, accountants and experts.

Section 5.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 5.10 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents, counsel, accountants and experts) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes including the Subsidiary Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents, counsel, accountants and experts, and any other amounts due the Trustee under Section 6.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents, counsel, accountants and experts, and any other amounts due the Trustee under Section 6.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 5.11 Priorities.

If the Trustee collects any money pursuant to this Article V, it shall pay out the money in the following order:

- (a) to the Trustee, its agents and attorneys for amounts due under Section 6.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;
- (b) to Holders of Senior Indebtedness to the extent required by Article XI;
- (c) to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and
- (d) to the Company or to such party as a court of competent jurisdiction shall direct including a Subsidiary Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 5.11.

Section 5.12 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.12 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 5.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

Article VI.

TRUSTEE

Section 6.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any such opinion or certificates, including mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 6.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (e) of this Section 6.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request of any Holder, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to the Trustee.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 6.02 Rights of Trustee.

(a) The Trustee may conclusively rely upon and shall be protected in acting or refraining from acting upon any certificate, notice, order, instrument or document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, 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 indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order.

Section 6.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (if this Indenture has been qualified under the TIA) or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 6.10 and 6.11 hereof.

Section 6.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes of any series, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than the Trustee's certificate of authentication.

Section 6.05 Notice of Defaults.

If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice of the Default within 90 days after it occurs. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is not opposed to the interests of the Holders of the Notes. The Trustee shall not be deemed to know of any Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is such a Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee and such notice refers to the Notes and this Indenture.

Section 6.06 Reports by Trustee to Holders of the Notes.

Within 60 days after each May 15, beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with Trust Indenture Act Section 313(a) (but if no event described in Trust Indenture Act Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with Trust Indenture Act Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by Trust Indenture Act Section 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to the Company and filed with the SEC and each stock exchange on which the Notes are listed in accordance with Trust Indenture Act Section 313(d). The Company shall promptly notify the Trustee whenever the Notes become listed or cease to be listed on any stock exchange.

Section 6.07 Compensation and Indemnity.

The Company and the Subsidiary Guarantors, jointly and severally, shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company and the Subsidiary Guarantors, jointly and severally, shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents, counsel, accountants and experts.

The Company and the Subsidiary Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, suit, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Company or any of the Subsidiary Guarantors (including this Section 6.07) or defending itself against any claim whether asserted by any Holder, the Company or any Subsidiary Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith.

The obligations of the Company under this Section 6.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Company and the Subsidiary Guarantors in this Section 6.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.01(a)(vii) or (viii) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents, counsel, accountants and experts) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of Trust Indenture Act Section 313(b)(2) to the extent applicable.

Section 6.08 Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 6.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (a) the Trustee fails to comply with Section 6.10 hereof;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a Custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 6.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 6.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 6.08, the Company's obligations under Section 6.07 hereof shall continue for the benefit of the retiring Trustee.

Section 6.09 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 6.10 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5). The Trustee is subject to Trust Indenture Act Section 310(b).

Section 6.11 Preferential Collection of Claims Against Company.

The Trustee is subject to Trust Indenture Act Section 311(a), excluding any creditor relationship listed in Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to Trust Indenture Act Section 311(a) to the extent indicated therein.

Article VII.

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 7.01 Defeasance Upon Deposit of Moneys or U.S. Government Obligations.

(a) The Company may, at its option and at any time, elect to have either paragraph (b) or paragraph (c) below be applied to the outstanding Notes upon compliance with the applicable conditions set forth in paragraph (d).

(b) Upon the Company's exercise under Section 7.01(a) of the option applicable to this clause (b), the Company and the Subsidiary Guarantors shall be deemed to have been released and discharged from their respective obligations, and the provisions of Article XI shall cease to be effective, with respect to the outstanding Notes and Subsidiary Guarantees on the date the applicable conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of the Sections and matters under this Indenture referred to in (i) and (ii) below, and to have satisfied all its other obligations under the Notes and this Indenture, except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Notes to receive solely from the trust fund described in paragraph (d) below and as more fully set forth in such paragraph, payments in respect of the principal of and interest on such Notes when such payments are due and (ii) obligations listed in Section 7.02, subject to compliance with this Section 7.01. The Company may exercise its option under this paragraph (b) notwithstanding the prior exercise of its option under paragraph below with respect to such Notes.

(c) Upon the Company's exercise under Section 7.01(a) of the option applicable to this clause (c), the Company and the Subsidiary Guarantors shall be released and discharged from the obligations under any covenant contained in Sections [], and the provisions of Article XI shall cease to be effective, on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed to be not "outstanding" for the purpose of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, such Covenant Defeasance means that, with respect to the outstanding Notes, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such 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(a)(iii), but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company's exercise of under Section 7.01(a) of the option applicable to this Section 7.01(c), subject to the satisfaction of the conditions set forth in Section 7.01(d), Sections 5.01(a)(iii), (iv), and (vi) hereof shall not constitute Events of Default.

(d) The following shall be the conditions to application of either paragraph (b) or paragraph (c) above to the outstanding Notes:

(i) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.10 who shall agree to comply with the provisions of this Article VII 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 Notes, (1) cash in U.S. dollars, or (2) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment of principal of (and premium, if any) and interest, if any, on such Notes, 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 Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium, if any) and interest, if any, on such Notes on the maturity date of such principal or installment of principal or interest and (ii) any mandatory sinking fund payments or analogous payments applicable to such Notes on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Notes.

(ii) 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.

(iii) 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 Notes shall have occurred and be continuing on the date of such deposit or, insofar as Section 5.01(a)(vi) and Section 5.01(a)(vii) 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).

(iv) In the case of an election under Section 7.01(b), the Company shall have delivered to the 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 Notes 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.

(v) In the case of an election under Section 7.01(c), the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Notes 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.

(vi) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under Section 7.01(b) or the covenant defeasance under Section 7.01(c) (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 7.01(b) or Section 7.01(c) (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 Trustee for such trust funds or (ii) all necessary registrations under said Act have been effected.

(vii) Notwithstanding any other provisions of this Section 7.01, such Legal Defeasance or Covenant Defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.01.

In the event all or any portion of the Notes are to be redeemed through such irrevocable trust, the Company must make arrangements satisfactory to the Trustee, at the time of such deposit, for the giving of the notice of such redemption or redemptions by the Trustee in the name and at the expense of the Company.

Section 7.02 Survival of the Company's Obligations.

Notwithstanding any Legal Defeasance, Covenant Defeasance or the satisfaction and discharge of this Indenture under Section 10.01, the Company's obligations under Sections 2.03 through 2.07, 4.01, 6.07, 6.08, 7.04 and 7.05, however, shall survive until no Notes are outstanding. Thereafter, the Company's obligations under Sections 6.07, 7.04 and 7.05 shall survive.

Section 7.03 Application of Trust Money.

The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to Section 7.01. It shall apply the deposited money and the money from U.S. Government Obligations in accordance with this Indenture to the payment of principal of and interest on the Notes. Money deposited pursuant to this Section 7.03 not in violation of this Indenture shall not be subject to claims of the Holders of Senior Indebtedness under Article XI.

Section 7.04 Repayment to the Company.

The Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or securities held by them at any time. The Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years, *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once in a newspaper of general circulation in the City of New York or mail to each such Holder 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 or mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Holders of Notes entitled to the money must look to the Company or any Subsidiary Guarantor for payment as general creditors unless applicable abandoned property law designates another person and all liability of the Trustee or such Paying Agent with respect to such money shall cease.

Section 7.05 Reinstatement.

If the Trustee is unable to apply any money or U.S. Government Obligations in accordance with Section 7.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and each Subsidiary Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.01 until such time as the Trustee is permitted to apply all such money or U.S. Government Obligations in accordance with Section 7.01; *provided, however*, that (a) if the Company has made any payment of interest on or principal of any Notes because of the reinstatement of their obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee and (b) unless otherwise required by any legal proceeding or any order or judgment of any court or governmental authority, the Trustee shall return all such money or U.S. Government Obligations to the Company promptly after receiving a written request therefor at any time, if such reinstatement of the Company's obligations has occurred and continues to be in effect.

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01 With Consent of Majority; Without Consent of Holders.

Subject to Section 8.02, this Indenture 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 at least 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 with any provision of, this Indenture 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. The Company, the Subsidiary Guarantors and the Trustee may amend or supplement this Indenture or the Notes or waive any provisions hereof or thereof without notice to or consent of any Holder of Notes:

(a) to cure any ambiguity, defect or inconsistency in this Indenture, the Notes or the Guarantees;

(b) to provide for uncertificated Notes in addition to, or in place of, certificated Notes;

(c) to provide for any Subsidiary Guarantee of the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination or discharge of any Subsidiary Guarantee of the Notes when such release, termination or discharge is permitted by this Indenture;

(d) to add covenants or new events of default for the protection of the Holders of the Notes;

(e) to make any change that does not adversely affect in any material respect the legal rights under this Indenture of any Holder; or

(f) to comply with or qualify this Indenture under the Trust Indenture Act.

After an amendment under this Section 8.01 becomes effective, the Company shall mail notice of such amendment to the affected Holders of Notes. The failure to give such notice to all Holders or any defect therein, shall not impair or affect the validity of an amendment under this Section 8.01.

Section 8.02 With Consent of all Affected Holders.

Without the consent of each Holder of Notes affected, an amendment, supplement or waiver, including a waiver pursuant to Section 5.04 of this Indenture or the Notes, may not:

(a) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver;

-
- (b) reduce the rate of, or change the time for payment of, interest, including default interest, on any Note;
 - (c) reduce the principal of, or change the fixed maturity of, any Note or alter the provisions with respect to redemption under Section [] hereof;
 - (d) make any Note payable in money other than that stated in the Note;
 - (e) make any change in Sections 5.04, 4.01 or 8.02;
 - (f) modify the ranking or priority of the Notes or any Subsidiary Guarantee;
 - (g) release any Subsidiary Guarantor from any of its obligations under its Subsidiary Guarantee or this Indenture otherwise than in accordance with the terms contained herein, or
 - (h) waive a continuing Default or Event of Default in the payment of principal of or interest on the Notes.

It shall not be necessary for the consent of the Holders under this Section 8.02 to approve the particular form of any proposed supplement, but it shall be sufficient if such consent approves the substance thereof.

After the issuance of any Notes, an amendment under this Section 8.02 or under Section 8.01 may not make any change that adversely affects in any material respect the rights under Article XI of the Holders of Senior Indebtedness, unless such Holders of Senior Indebtedness consent to the change.

The right of any Holder to participate in any consent required or sought pursuant to any provision of this 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 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 this Indenture.

Section 8.03 Compliance with Trust Indenture Act.

Every amendment to or supplement of this Indenture or the Notes shall comply with the TIA as then in effect.

Section 8.04 Revocation and Effect of Consents.

A consent to an amendment, supplement or waiver by a Holder shall bind the Holder and every subsequent Holder of Notes or portion of Notes that evidences the same debt as the consenting Holders' Notes, even if notation of the consent is not made on any Note. Subject to the following paragraph, any such Holder or subsequent Holder, however, may revoke the consent as to his Notes or portion of Notes. Such revocation shall be effective only if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders of Notes entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it makes a change described in any of clauses of Section 8.02, in which case, the amendment, supplement or waiver shall bind only each Holder of Notes who has consented to it and every subsequent Holder of Notes or portion of Notes that evidences the same debt as the consenting Holder's Notes; *provided* that any such waiver shall not impair or affect the right of any Holder to receive payment of principal of and interest on the Notes, on or after the respective due dates expressed in such Notes, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

Section 8.05 Notation on or Exchange of Notes.

If an amendment, supplement or waiver changes the terms of the Notes, the Company may require the Holder of the Notes to deliver it to the Trustee, at which time the Trustee shall place an appropriate notation on the Notes about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Notes shall issue and the Trustee shall authenticate a new Note that reflects the changed terms.

Section 8.06 Trustee to Sign Amendments.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be entitled to receive and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment or supplemental indenture is authorized or permitted by this Indenture, that it is not inconsistent herewith, and that it will be valid and binding upon the Company in accordance with its terms.

SUBSIDIARY GUARANTEES; RELEASE OF SUBSIDIARY GUARANTORS

Section 9.01 Subsidiary Guarantee.

(a) Subject to the provisions of this Article IX, each Subsidiary Guarantor hereby jointly and severally unconditionally guarantees to each Holder 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 Guarantor to the Holders or the Trustee hereunder or thereunder, that: (i) 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 and this Indenture will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) 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, jointly and severally with each other Subsidiary Guarantor, to pay, or to perform or cause the performance of, the same immediately. An Event of Default under this Indenture or the Notes shall constitute an event of default under this Article IX, 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.

(b) Each of the Subsidiary Guarantors hereby agrees that its obligations hereunder shall be continuing, absolute and unconditional, irrespective of, and shall be unaffected by, the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder or the Trustee 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 Article IX. 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 Article IX, 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, (i) subject to this Article IX, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article V hereof for the purposes of this Article IX, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (ii) in the event of any acceleration of such obligations as provided in Article V hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Article IX.

(c) This Article IX 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.

(d) 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 which, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under this Indenture, will result in the obligations of such Subsidiary Guarantor and its Subsidiary Guarantee not constituting a fraudulent conveyance or fraudulent transfer or obligation under federal or state law.

Section 9.02 Execution and Delivery of Subsidiary Guarantee.

(a) To further evidence the Subsidiary Guarantee set forth in Section 9.01, each of the Subsidiary Guarantors hereby agrees that a notation of such Subsidiary Guarantee, substantially in the form included in Exhibit A 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.

(b) Each of the Subsidiary Guarantors hereby agrees that its Subsidiary Guarantee set forth in Section 9.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

(c) 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.

(d) 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 9.03 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 Officers' Certificate certifying such supplemental indenture complies with all conditions precedent under this indenture and 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 9.04 Release of a Subsidiary Guarantor.

(a) If all or substantially all of the assets of any Subsidiary Guarantor or all (or a portion sufficient to cause such Subsidiary Guarantor to no longer be a Subsidiary of the Company) of the Capital Stock of any Subsidiary Guarantor is sold (including by consolidation, merger, issuance or otherwise) or disposed of (including by liquidation, dissolution or otherwise) by the Company or any of its Subsidiaries, or, unless the Company elects otherwise, if any Subsidiary Guarantor is designated an Unrestricted Subsidiary in accordance with the terms of this Indenture, then such Subsidiary Guarantor (in the event of a sale or other disposition of all of the Capital Stock of such Subsidiary Guarantor or a designation as an Unrestricted Subsidiary) or the Person 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 any of its obligations under this Indenture without any further action on the part of the Trustee or any Holder of the Notes.

(b) The Trustee shall deliver an appropriate instrument evidencing the release of a Subsidiary Guarantor upon receipt of a written request of the Company accompanied by an Officers' Certificate and Opinion of Counsel each certifying as to the compliance with this Section 9.04. 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 IX.

(c) 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 IX.

(d) Except as set forth in Article IV hereof and this Section 9.04, 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 9.05 Waiver of Subrogation; Right of Contribution.

(a) Except as set forth in Section 9.05(b) below, 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 Article IX 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 9.05 is knowingly made in contemplation of such benefits.

(b) Notwithstanding Section 9.05(a), each Subsidiary Guarantor that makes a payment or distribution under a Subsidiary Guarantee shall be entitled to a contribution from each other Subsidiary Guarantor in an amount *pro rata*, based on the net assets of each Subsidiary Guarantor, determined in accordance with GAAP.

(c) The obligations of each Guarantor pursuant to its Guarantee and this Article IX shall be (a) junior and subordinated in right of payment to the prior payment in full in cash of all Senior Indebtedness of such Guarantor and (b) senior in right of payment to all existing and future Subordinated Indebtedness of such Guarantor, in each case on the same basis as the Notes and the obligations of the Company hereunder are junior and subordinated to all Senior Indebtedness and senior in right of payment to all Subordinated Indebtedness. For the purposes of this Section 9.05, Article XI shall apply to the obligations of each Guarantor under its Guarantee, this Article IX and the other provisions of this Indenture as if references therein to the Company, the Notes, Senior Indebtedness and Subordinated Indebtedness were references to such Guarantor, such Guarantor's Guarantee, Senior Indebtedness of such Guarantor and Subordinated Indebtedness of such Guarantor, respectively.

SATISFACTION AND DISCHARGE

Section 10.01 Satisfaction and Discharge.

This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(a) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (i) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, shall become due and payable within one year or may be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(ii) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, the Credit Facilities or any other material agreement or instrument (other than this Indenture) to which the Company or any Subsidiary Guarantor is a party or by which the Company or any Subsidiary Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and in each case, the granting of Liens in connection therewith);

(iii) the Company has paid or caused to be paid all sums payable by it under this Indenture; and

(iv) if applicable, the Company has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to this Section 10.01(b), the provisions of Sections 4.01, 4.02 and 10.02 hereof shall survive.

Section 10.02 Application of Trust Money.

Subject to the provisions of Section 7.05 hereof, all money deposited with the Trustee pursuant to Section 10.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 10.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Subsidiary Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

Article XI.

SUBORDINATION OF NOTES

Section 11.01 Subordination Provisions. [Subordination Provisions with respect to Subordinated Indebtedness to be provided here.]

Article XII.

MISCELLANEOUS

Section 12.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Trust Indenture Act, the imposed duties shall control.

Section 12.02 Notices.

Any notice or communication by the Company, any Subsidiary Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company or any Subsidiary Guarantor:

c/o Beazer Homes USA, Inc.
2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia 30319
Attention: Keith L. Belknap
Email: keith.belknap@beazer.com

If to the Trustee:

Regions Bank
10245 Centurion Parkway, 2nd Floor
Jacksonville, FL 32256
Attention: Shawn Bednasek
Email: shawn.bednasek@regions.com

The Company, any Subsidiary Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; *provided* that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in Trust Indenture Act Section 313(c), to the extent required by the Trust Indenture Act. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Section 12.03 Communication by Holders of Notes with Other Holders of Notes.

Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of Trust Indenture Act Section 312(c).

Section 12.04 Certificate and Opinion as to Conditions Precedent.

(a) Upon any written request or application by the Company or any of the Subsidiary Guarantors to the Trustee to take any action under this Indenture, the Company or such Subsidiary Guarantor, as the case may be, shall furnish to the Trustee:

(i) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 11.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(ii) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 11.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 12.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof or Trust Indenture Act Section 314(a)(4)) shall comply with the provisions of Trust Indenture Act Section 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) 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;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officers' Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 12.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.07 No Personal Liability of Incorporators, Shareholders, Officers, Directors or Employees.

No recourse for the payment of the principal of, premium, if any, or interest on any of the Notes, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company or any Subsidiary Guarantor in this Indenture or in any of the Notes or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, shareholder, officer, director, employee or controlling person of the Company, any Subsidiary Guarantor or any successor Person thereof. Each Holder, by accepting such Notes waives and releases all such liability.

Section 12.08 Governing Law.

THIS INDENTURE, THE NOTES AND THE SUBSIDIARY GUARANTEES WILL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 12.09 Waiver of Jury Trial.

EACH OF THE COMPANY, THE SUBSIDIARY GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.10 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 12.11 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.12 Successors.

All agreements of the Company in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Subsidiary Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 9.04 hereof.

Section 12.13 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.14 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 12.15 Table of Contents, Headings, etc.

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.16 Qualification of Indenture.

The Company and the Subsidiary Guarantors shall qualify this Indenture under the Trust Indenture Act and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Company, the Subsidiary Guarantors and the Trustee) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and printing this Indenture and the Notes. The Trustee shall be entitled to receive from the Company and the Subsidiary Guarantors any such Officers' Certificates, Opinions of Counsel or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the Trust Indenture Act.

[Signature pages follow]

BEAZER HOMES USA, INC.

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BH INVESTMENT HOLDINGS, LLC

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BEAZER HOMES HOLDINGS, LLC

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BEAZER HOMES, LLC

By: _____
Name: Allan P. Merrill
Title: President and Chief Executive Officer

BEAZER GENERAL SERVICES, INC.
BEAZER HOMES INDIANA HOLDINGS CORP.
BEAZER HOMES SALES, INC.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER REALTY CORP.
BEAZER REALTY LOS ANGELES, INC.
BH PROCUREMENT SERVICES, INC.

By: _____
Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

BEAZER MORTGAGE CORPORATION

By: _____

Name: David I. Goldberg
Title: Senior Vice President

BEAZER FUNDAMENTAL, LLC

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its Sole Member

By: _____

Name: David I. Goldberg
Title: Senior Vice President

BEAZER HOMES INDIANA LLP

By: BEAZER HOMES INVESTMENTS, LLC,
its Managing Partner

By: BEAZER HOMES, LLC,
its Sole Member

By: _____

Name: David I. Goldberg
Title: Senior Vice President

BALLARD GREEN UTILITY COMPANY, LLC

BEAZER CLARKSBURG, LLC

DOVE BARRINGTON DEVELOPMENT LLC

BEAZER HOMES INVESTMENTS, LLC

BEAZER GAIN, LLC

BH MATERIALS, LLC

MARSHFIELD LAND, LLC

By: BEAZER HOMES, LLC,
its Sole Member

By: _____

Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

BEAZER HOMES TEXAS, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its General Partner

By: _____
Name: David I. Goldberg
Title: Senior Vice President

BEAZER REALTY SERVICES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member

By: BEAZER HOMES, LLC,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

BH BUILDING PRODUCTS, LP

By: BH PROCUREMENT SERVICES, INC.,
its General Partner

By: BEAZER HOMES TEXAS, L.P.,
its Sole Member

By: BEAZER HOMES TEXAS HOLDINGS, INC.,
its General Partner

By: _____
Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

CLARKSBURG ARORA LLC

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES, LLC,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

CLARKSBURG SKYLARK, LLC

By: CLARKSBURG ARORA LLC,
its Sole Member

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES, LLC.,
its Sole Member

By: _____
Name: David I. Goldberg
Title: Senior Vice President

[Signature Page to Indenture]

REGIONS BANK,
as Trustee

By: _____
Name:
Title:

[Signature Page to Indenture]

Subsidiary Guarantors

Ballard Green Utility Company, LLC
Beazer Clarksburg, LLC
Beazer Fundamental, LLC
Beazer Gain, LLC
Beazer General Services, Inc.
Beazer Homes Holdings, LLC
Beazer Homes Indiana Holdings Corp.
Beazer Homes Indiana LLP
Beazer Homes Investments, LLC
Beazer Homes Sales, Inc.
Beazer Homes Texas Holdings, Inc.
Beazer Homes Texas, L.P.
Beazer Homes, LLC
Beazer Mortgage Corporation
Beazer Realty Corp.
Beazer Realty Los Angeles, Inc.
Beazer Realty Services, LLC
BH Building Products, LP
BH Investment Holdings, LLC
BH Materials, LLC
BH Procurement Services, Inc.
Clarksburg Arora LLC
Clarksburg Skylark, LLC
Dove Barrington Development LLC
Marshfield Land, LLC

August 10, 2023

Beazer Homes USA, Inc.
2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia 30319

Re: Beazer Homes USA, Inc. – Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel for Beazer Homes USA, Inc., a Delaware corporation (the “Company”), and the subsidiaries of the Company listed on Schedule I hereto (the “Covered Guarantors”), in connection with the preparation and filing of a Registration Statement on Form S-3 (the “Registration Statement”) under the Securities Act of 1933, as amended. The Registration Statement relates to the registration under the Securities Act of the offer and sale of an indeterminate amount of the following securities (collectively, the “Securities”):

- (i) shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), including associated preferred stock purchase rights (the “Preferred Stock Purchase Rights”) for shares of the Company’s Series A Junior Participating Preferred Stock;
- (ii) shares of the Company’s preferred stock, par value \$0.01 per share (the “Preferred Stock”);
- (iii) the Company’s senior debt securities (the “Senior Debt Securities”) to be issued pursuant to an indenture (the “Senior Indenture”), among the Company, the Subsidiary Guarantors (as defined below) and Regions Bank, as trustee (the “Trustee”);
- (iv) the Company’s subordinated debt securities (the “Subordinated Debt Securities” and, together with the Senior Debt Securities, the “Debt Securities”), to be issued pursuant to an indenture (the “Subordinated Indenture”), among the Company, the Subsidiary Guarantors and the Trustee;
- (v) guarantees (the “Guarantees”) of the Debt Securities by the subsidiaries (the “Subsidiary Guarantors”) listed on Schedule II attached hereto;
- (vi) the Company’s depository shares representing interests in fractional shares of Preferred Stock (the “Depository Shares”);

- (vii) the Company's warrants to purchase Common Stock, Preferred Stock, Debt Securities or other securities (the "Warrants");
- (viii) the Company's rights to purchase Common Stock, Preferred Stock, Depositary Shares or Debt Securities (the "Rights");
- (ix) the Company's stock purchase contracts to purchase Common Stock or other securities (the "Stock Purchase Contracts");
- (x) the Company's obligations under stock purchase units, each representing ownership of Stock Purchase Contracts and debt securities, preferred securities, warrants, other securities or debt obligations of third parties, including U.S. treasury securities, securing a holder's obligation to purchase the securities under such Stock Purchase Contracts (the "Stock Purchase Units"); and
- (xi) units issued by the Company comprised of any of the foregoing securities listed in (i) through (x) above (the "Units"), or any combination of the foregoing, each on the terms to be determined at the time of each offering.

In connection with this opinion, we have examined and relied upon the accuracy of original, certified, conformed or photographic copies of such records, agreements, certificates and other documents as we have deemed necessary or appropriate to enable us to render the opinions set forth below. In all such examinations, we have assumed the genuineness of signatures on original documents and the conformity to such original documents of all documents submitted to us as certified, conformed or photographic copies and, as to certificates of public officials, we have assumed the same to have been properly given and to be accurate. As to matters of fact material to this opinion, we have relied, without independent verification, upon certificates, statements and representations of public officials and representatives of the Company and the Subsidiary Guarantors.

We have also assumed that (i) the form of Senior Indenture and the form of Subordinated Indenture filed as exhibits to the Registration Statement, and any contract governing or establishing the terms of the Depositary Shares, Warrants, Rights, Stock Purchase Contracts, Stock Purchase Units or Units will be the valid and binding obligations of each party thereto (other than the Company and the Covered Guarantors, as applicable) enforceable against each party thereto (other than the Company and the Covered Guarantors, as applicable) in accordance with their respective terms, (ii) the Section 382 Rights Agreement related to the Preferred Stock Purchase Rights, dated December 7, 2021, between the Company and American Stock Transfer & Trust Company, LLC, as rights agent (the "382 Rights Agent") has been fully authorized and executed by the 382 Rights Agent and constitutes a valid and binding agreement of the 382 Rights Agent, enforceable against the 382 Rights Agent in accordance with its terms, (iii) the execution and delivery of, and performance by the Company and the Subsidiary Guarantors, as applicable, pursuant to, any Security (A) require no action by or in respect of, or filing with, any governmental body, agency or official and (B) do not contravene, or constitute a default under, any provision of applicable law or regulation or any judgment, injunction, order or decree or any agreement or other instrument binding upon the Company or the Subsidiary Guarantors, as applicable, (iv) any contract governing or establishing the terms of the Depositary Shares, Warrants, Rights, Stock Purchase Contracts, Stock Purchase Units or

Units will be governed by the laws of the State of New York, (v) any Securities issuable upon conversion, exchange or exercise of any Security being offered or issued will be duly authorized, created and, if appropriate, reserved for issuance upon such conversion, exchange or exercise and (vi) any securities issued by any third party that comprise part of any of the Securities, or that are issuable upon the conversion, exchange, exercise or otherwise pursuant to the terms of any of the Securities are valid and binding obligations of such third party enforceable against such third party in accordance with their respective terms.

Based upon and subject to the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, we are of the opinion that:

(1) Any shares of Common Stock, when (i) the terms of their issuance and sale, and all related matters, have been duly authorized and established by all necessary corporate action and (ii) such shares of Common Stock have been duly delivered to the purchasers thereof upon the payment of the consideration therefor (which consideration is not less than the par value of the Common Stock), will be validly issued, fully paid and non-assessable. The shares of Common Stock covered by the opinion in this paragraph include any shares of Common Stock that may be issued pursuant to or as part of any Stock Purchase Contracts or Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(2) Any shares of Preferred Stock, when (i) the terms of the series of such shares of Preferred Stock and of their issuance and sale, and all related matters, have been duly authorized and established by all necessary corporate action, (ii) a Certificate of Designations setting forth the powers, designations, preferences, rights, qualifications, limitations and restrictions of the series of such shares of Preferred Stock has been duly filed with the Secretary of State of the State of Delaware, and (iii) such shares of Preferred Stock have been duly delivered to the purchasers thereof upon the payment of the consideration therefore (which consideration is not less than the par value of the Preferred Stock), will be validly issued, fully paid and non-assessable. The shares of Preferred Stock covered by the opinion in this paragraph include any shares of Preferred Stock that may be represented by Depositary Shares or that may be issued pursuant to or as part of any Stock Purchase Contracts or Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(3) Any Senior Debt Securities, when (i) the terms of such series of Senior Debt Securities and of their issuance and sale, and all related matters, have been duly authorized and established by all necessary corporate action and (ii) such Senior Debt Securities have been duly executed by the Company and authenticated by the Trustee in accordance with the terms of the Senior Indenture and duly delivered to the purchasers thereof upon the payment of the consideration therefor, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Senior Debt Securities covered by the opinion in this paragraph include any Senior Debt Securities that may be issued as part of any Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(4) Any Guarantee, when (i) the terms of such Guarantee and the related series of Senior Debt Securities and of the issuance and sale of such Guarantee and such related series of Senior Debt Securities, and all related matters, have been duly authorized and established by all necessary corporate action and (ii) such Guarantee has been duly executed by the Subsidiary Guarantors, such Senior Debt Securities have been duly executed by the Company and such Guarantee and Senior Debt Securities have been authenticated by the Trustee in accordance with the terms of the Senior Indenture and duly delivered to the purchasers thereof upon the payment of the consideration therefor, will constitute valid and binding obligations of the Subsidiary Guarantors enforceable against the Subsidiary Guarantors in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Guarantees covered by the opinion in this paragraph include any Guarantees that may be issued as part of any Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(5) Any Subordinated Debt Securities, when (i) the Subordinated Indenture has been duly authorized, executed and delivered by the Company in the form attached to the Registration Statement, (ii) the terms of such series of Subordinated Debt Securities and of their issuance and sale, and all related matters, have been duly authorized and established by all necessary corporate action and (iii) such Subordinated Debt Securities have been duly executed by the Company and authenticated by the Trustee in accordance with the terms of the Subordinated Indenture and duly delivered to the purchasers thereof upon the payment of the consideration therefor, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Subordinated Debt Securities covered by the opinion in this paragraph include any Subordinated Debt Securities that may be issued as part of any Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(6) Any Depositary Shares, when (i) the terms of the Depositary Shares, of any contract governing or establishing the terms of the Depositary Shares, of the related series of Preferred Stock represented by the Depositary Shares and of the issuance and sale of such Depositary Shares and such related series of Preferred Stock, and all related matters, have been duly authorized and established by all necessary corporate action, (ii) any contract governing or establishing the terms of the Depositary Shares has been duly authorized, executed and delivered by the Company, (iii) a Certificate of Designations setting forth the powers, designations, preferences, rights, qualifications, limitations and restrictions of the related series of Preferred Stock represented by the Depositary Shares has been duly filed with the Secretary of State of the State of Delaware, (iv) the shares of the related series of Preferred Stock represented by the Depositary Shares have been duly delivered to the applicable depository, and (v) depository receipts evidencing the Depositary Shares have been duly executed by the Company and countersigned by the applicable depository against deposit of shares of the related series of Preferred Stock represented by the Depositary Shares in accordance with the terms of any contract governing or establishing the terms of the Depositary Shares and duly delivered to the purchasers thereof upon the payment of the consideration therefor, will constitute valid

and binding interests in shares of the related series of Preferred Stock represented by the Depositary Shares and will entitle the holders thereof to the rights specified in any contract governing or establishing the terms of the Depositary Shares, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Depositary Shares covered by the opinion in this paragraph include any Depositary Shares that may be issued pursuant to or as part of any Stock Purchase Contracts or Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(7) Any Warrants, when (i) the terms of such Warrants, of any contract governing or establishing the terms of such Warrants and of the issuance and sale of such Warrants, and all related matters have been duly authorized and established by all necessary corporate action, (ii) any contract governing or establishing the terms of such Warrants has been duly authorized, executed and delivered by the Company, (iii) the actions described in the applicable paragraph of this letter with regard to any Security to be issued upon exercise of such Warrants have been taken and (iv) such Warrants have been duly executed by the Company and countersigned in accordance with the terms of any contract governing or establishing the terms of such Warrants and duly delivered to the purchasers thereof upon the payment of the consideration therefor, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Warrants covered by the opinion in this paragraph include any Warrants that may be issued pursuant to or as part of any Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(8) Any Rights, when (i) the terms of such Rights, of any contract governing or establishing the terms of such Rights and of the issuance and sale of such Rights, and all related matters have been duly authorized and established by all necessary corporate action, (ii) any contract governing or establishing the terms of such Rights has been duly authorized, executed and delivered by the Company, (iii) the actions described in the applicable paragraph of this letter with regard to any Security to be issued upon exercise of such Rights have been taken and (iv) such Rights have been duly executed by the Company and countersigned in accordance with the terms of any contract governing or establishing the terms of such Rights and duly delivered to the purchasers thereof upon the payment of the consideration therefor, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Rights covered by the opinion in this paragraph include any Rights that may be issued pursuant to or as part of any Stock Purchase Contract or Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(9) Any Stock Purchase Contracts, when (i) the terms of such Stock Purchase Contracts, of any contract governing and establishing the terms of such Stock Purchase Contracts and of the issuance and sale of such Stock Purchase Contracts, and all related matters, have been duly authorized and established by all necessary corporate action, (ii) any contract governing and establishing the

terms of such Stock Purchase Contracts has been duly authorized, executed and delivered by the Company, (iii) the actions described in the applicable paragraph of this letter with regard to any Security issued as part of such Stock Purchase Contracts have been taken and (iv) such Stock Purchase Contracts have been duly executed by the Company and countersigned or authenticated (as applicable) in accordance with the terms of any contract governing or establishing the terms of such Stock Purchase Contracts and have been duly delivered to the purchasers thereof upon the payment of the consideration therefore, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Stock Purchase Contracts covered by the opinion in this paragraph include any Stock Purchase Contracts that may be issued as part of any Stock Purchase Units or otherwise pursuant to the terms of any other Securities.

(10) Any Stock Purchase Units, when (i) the terms of such Stock Purchase Units, of any contract governing and establishing the terms of such Stock Purchase Units and of the issuance and sale of such Stock Purchase Units, and all related matters, have been duly authorized and established by all necessary corporate action, (ii) any contract governing and establishing the terms of such Stock Purchase Units has been duly authorized, executed and delivered by the Company, (iii) the actions described in the applicable paragraph of this letter with regard to any Security issued as part of such Stock Purchase Units have been taken and (iv) such Stock Purchase Units have been duly executed by the Company and countersigned or authenticated (as applicable) in accordance with the terms of any contract governing or establishing the terms of such Stock Purchase Units and have been duly delivered to the purchasers thereof upon the payment of the consideration therefore, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Stock Purchase Units covered by the opinion in this paragraph include any Stock Purchase Units that may be issued upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

(11) Any Units, when (i) the terms of such Units, of any contract governing and establishing the terms of such Units and of the issuance and sale of such Units, and all related matters, have been duly authorized and established by all necessary corporate action, (ii) any contract governing and establishing the terms of such Units has been duly authorized, executed and delivered by the Company, (iii) the actions described in the applicable paragraph of this letter with regard to any Security issued as part of such Units have been taken and (iv) such Units have been duly executed by the Company and countersigned or authenticated (as applicable) in accordance with the terms of any contract governing or establishing the terms of such Units and have been duly delivered to the purchasers thereof upon the payment of the consideration therefore, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The Units covered by the opinion in this paragraph include any Units that may be issued

pursuant to or as part of any Stock Purchase Contract or Stock Purchase Units or upon the conversion, exchange, exercise or otherwise pursuant to the terms of any other Securities.

This opinion is limited in all respects to the laws of the States of Georgia and New York, the General Corporation Law of the State of Delaware and the Delaware Limited Liability Company Act, and no opinion is expressed with respect to the laws of any other jurisdiction or any effect that such laws may have on the opinions expressed herein. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

This opinion is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in law that occur, which could affect the opinions contained herein. This opinion is being rendered for the benefit of the Company in connection with the matters addressed herein.

We consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the caption "Legal Matters" in the prospectus that forms a part thereof. In giving such consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Sincerely,

/s/ King & Spalding LLP

Schedule I

Covered Guarantors

Name of Covered Guarantor	Jurisdiction of Incorporation
Beazer Fundamental, LLC	DE
Beazer Gain, LLC	DE
Beazer General Services, Inc.	DE
Beazer Homes Holdings, LLC	DE
Beazer Homes Indiana Holdings Corp.	DE
Beazer Homes Investments, LLC	DE
Beazer Homes Sales, Inc.	DE
Beazer Homes Texas Holdings, Inc.	DE
Beazer Homes Texas, L.P.	DE
Beazer Homes, LLC	DE
Beazer Mortgage Corporation	DE
Beazer Realty Corp.	GA
Beazer Realty Los Angeles, Inc.	DE
Beazer Realty Services, LLC	DE
BH Building Products, LP	DE
BH Investment Holdings, LLC	DE
BH Materials, LLC	DE
BH Procurement Services, Inc.	DE
Dove Barrington Development LLC	DE
Marshfield Land, LLC	DE

Schedule II

Subsidiary Guarantors

Ballard Green Utility Company, LLC
Beazer Clarksburg, LLC
Beazer Fundamental, LLC
Beazer Gain, LLC
Beazer General Services, Inc.
Beazer Homes Holdings, LLC
Beazer Homes Indiana Holdings Corp.
Beazer Homes Indiana LLP
Beazer Homes Investments, LLC
Beazer Homes Sales, Inc.
Beazer Homes Texas Holdings, Inc.
Beazer Homes Texas, L.P.
Beazer Homes, LLC
Beazer Mortgage Corporation
Beazer Realty Corp.
Beazer Realty Los Angeles, Inc. Beazer Realty Services, LLC
BH Building Products, LP
BH Investment Holdings, LLC
BH Materials, LLC
BH Procurement Services, Inc.
Clarksburg Arora LLC
Clarksburg Skylark, LLC
Dove Barrington Development LLC
Marshfield Land, LLC

August 10, 2023

Beazer Homes USA, Inc.
2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia 30319

Re: Beazer Homes USA, Inc.
Registration Statement on Form S-3ASR

Ladies and Gentlemen:

We have acted as special Indiana counsel to Beazer Homes Indiana LLP, an Indiana limited liability partnership (the "Indiana Guarantor"), which is an indirect subsidiary of Beazer Homes USA, Inc., a Delaware corporation ("Beazer"), in connection with an automatic shelf registration statement on Form S-3 (the "Registration Statement"), to be filed on August 10, 2023 by Beazer and the direct and indirect subsidiaries of Beazer listed in the Registration Statement, including the Indiana Guarantor, with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act").

The Registration Statement relates to the issuance by Beazer of an undetermined dollar amount (or its foreign currency equivalent) of securities, including (i) senior debt securities (the "Senior Debt Securities") and (ii) subordinated debt securities (the "Subordinated Debt Securities", and together with the Senior Debt Securities, the "Debt Securities"). All capitalized terms used and not otherwise defined shall have the meanings assigned to such terms in the Registration Statement.

In conjunction with any issuance of the Debt Securities, the Indiana Guarantor and certain other subsidiaries listed in the Registration Statement may issue guarantees with respect to (i) the Senior Debt Securities (collectively, the "Senior Guarantees") and (ii) the Subordinated Debt Securities (collectively, the "Subordinated Guarantees, and together with the Senior Guarantees, the "Guarantees").

For the purposes of this opinion letter, we have assumed that, at the time of the issuance, sale and delivery of each issue of Debt Securities and related Guarantees: (i) the Indiana Guarantor will remain validly existing under Indiana law; (ii) the Registration Statement and any additional required post-effective amendments thereto have all become effective under the Act, such effectiveness has not been terminated or rescinded, and comply with all applicable laws; (iii) any Debt Securities and Guarantees being offered will be issued and sold in compliance with applicable federal and state securities laws and as contemplated in the Registration Statement or the prospectus supplement relating thereto; (iv) any legally required consents, approvals, authorizations and other orders of the Commission and any other governmental or regulatory authorities have been obtained;

(v) the information, representations and warranties contained in the instruments, documents, certificates and records we have reviewed continue to be true, accurate and complete; and (vi) the governing documents of the Indiana Guarantor, as currently in effect, will not have been modified or amended and will be in full force and effect.

We have also assumed that, at the time of the issuance, sale and delivery of Debt Securities and related Guarantees: (i) the Senior Debt Securities and the Senior Guarantees will be issued pursuant to a senior indenture, by and among Beazer, Regions Bank, as trustee, the Indiana Guarantor and the other guarantors signatory thereto, as the same may be amended and supplemented from time to time (the "Senior Indenture"), which Senior Indenture will be filed as an exhibit to the Registration Statement; (ii) the Subordinated Debt Securities and the Subordinated Guarantees will be issued pursuant to a subordinated indenture, by and among Beazer, Regions Bank, as trustee, the Indiana Guarantor and the other guarantors signatory thereto, as the same may be amended and supplemented from time to time (the "Subordinated Indenture"), which Subordinated Indenture will be filed as an exhibit to the Registration Statement; (iii) all relevant actions will have been taken in the future for the issuance of the Guarantees, including, without limitation, that the execution and delivery by each of the Indiana Guarantor of the Senior Indenture or the Subordinated Indenture, as applicable, and any supplemental indentures, providing for the Guarantees and the Guarantees, themselves, and the performance of their obligations thereunder will have been, prior to issuance of the Guarantees, duly authorized by all necessary limited liability company or limited liability partnership or other action, as applicable, (iv) the substantive provisions of the Senior Guarantees, when issued, will be identical to the description of the Senior Guarantees set forth in the Senior Indenture, and (v) the substantive provisions of the Subordinated Guarantees, when issued, will be identical to the description of the Subordinated Guarantees set forth in the Subordinated Indenture.

We have further assumed that, at the time of the issuance, sale and delivery of Debt Securities and related Guarantees: (i) all Guarantees will constitute valid and legally binding obligations of the Indiana Guarantor, enforceable against the Indiana Guarantor in accordance with their terms; (ii) the execution, delivery and performance by the Indiana Guarantor of the Senior Indenture or the Subordinated Indenture, as applicable, and any agreements or other documents relating to the issuance of the Debt Securities and related Guarantees, as applicable, and all actions necessary for the issuance of the Debt Securities and related Guarantees, and the forms and terms thereof, will comply with all requirements and restrictions, if any, applicable to the Indiana Guarantor, whether imposed by any agreement or instrument to which the Indiana Guarantor is a party or by which it is bound or any court or other governmental or regulatory body having jurisdiction over the Indiana Guarantor; and (iii) there will not have occurred any change in law affecting the legally binding character or enforceability thereof.

As such counsel and for purposes of our opinions set forth below, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or appropriate as a basis for the opinions set forth herein, including, without limitation, the Registration Statement, the form of Senior Indenture and the form of Subordinated Indenture.

In such examination, we have assumed: (i) the due authorization of all agreements, instruments and other documents by all the parties thereto; (ii) the due execution and delivery of all agreements, instruments and other documents by all the parties thereto; (iii) the genuineness of all signatures on all documents submitted to us; (iv) the authenticity and completeness of all documents, corporate records, certificates and other instruments submitted to us; (v) that photocopy, electronic, certified, conformed, facsimile and other copies submitted to us of original documents, corporate records, certificates and other instruments conform to the original documents, records, certificates and other instruments, and that all such original documents were authentic and complete; (vi) the legal capacity of all individuals executing documents; and (viii) that the statements contained in the certificates and comparable documents of public officials, officers and representatives of the Company and the Indiana Guarantor and other persons on which we have relied for the purposes of this opinion are true and correct. As to all questions of fact material to this opinion and as to the materiality of any fact or other matter referred to herein, we have relied (without independent investigation) upon certificates or comparable documents of officers and representatives of the Company and the Indiana Guarantor, including without limitation those factual matters included in the Registration Statement, the form of Senior Indenture and the form of Subordinated Indenture.

Based on the foregoing and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth herein, we are of the opinion that:

1. The Indiana Guarantor is a general partnership subject to the Uniform Partnership Act of the State of Indiana and became registered as an Indiana limited liability partnership pursuant to a Registration to Qualify as a Limited Liability Partnership filed with the Indiana Secretary of State on December 29, 2004, as amended.
2. The Indiana Guarantor has all requisite partnership power and authority to execute, deliver and perform the Senior Guarantees and the Subordinated Guarantees, as applicable.

We are members of the Bar of the State of Indiana. In rendering the foregoing opinions we express no opinion as to the effect (if any) of laws of any jurisdiction except those of the State of Indiana. This opinion letter has been prepared for your use in connection with the Registration Statement and may not be relied upon for any other purpose. This opinion speaks as of the date hereof. We assume no obligation to advise you of any changes in the foregoing subsequent to the effectiveness of the Registration Statement even though the change may affect the legal analysis or a legal conclusion or other matters in this opinion letter.

Beazer Homes USA, Inc.

August 10, 2023

Page 4

We hereby consent to reliance on this opinion letter and the opinions provided herein by the law firm King & Spalding LLP in and in connection with the legal opinion provided by that law firm that is included as an exhibit to the Registration Statement. We hereby consent to the inclusion of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Barnes & Thornburg LLP

[Letterhead of Walsh, Colucci, Lubeley & Walsh. P.C.]

August 10, 2023

Beazer Homes USA, Inc.
2002 Summit Boulevard
15th Floor
Atlanta, Georgia 30319

Re: Beazer Homes USA, Inc.
Registration Statement on Form S-3ASR

Ladies and Gentlemen:

We have acted as special Maryland counsel to Beazer Clarksburg, LLC, a Maryland limited liability company, Clarksburg Arora, LLC, a Maryland limited liability company, Clarksburg Skylark, LLC, a Maryland limited liability company, and Ballard Green Utility Company, LLC, a Maryland limited liability company (each a “Guarantor” and, collectively, the “Guarantors”), each a subsidiary of Beazer Homes USA, Inc. (“Beazer”), in connection with the automatic shelf registration statement on Form S-3 (the “Registration Statement”) filed by Beazer and the subsidiaries of Beazer listed in the Registration Statement, including the Guarantors, with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”). The Registration Statement relates to the registration by Beazer of an indeterminate amount of securities, including senior debt securities, subordinated debt securities, common stock, preferred stock, depositary shares, warrants, rights, stock purchase contracts, stock purchase units or units. If issued, the senior debt securities (the “Senior Notes”) and the subordinated debt securities (the “Subordinated Notes”) may be guaranteed (the “Guarantees”) by one or more Guarantors (or all Guarantors). All capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Registration Statement.

It is our understanding that any Senior Notes may be issued pursuant to an indenture to be dated on or about the date of the first issuance of the Senior Notes, the form of which is filed as an exhibit to the Registration Statement (as amended or supplemented, the “Senior Indenture”), by and among Beazer, the Guarantors, the other guarantors signatory thereto, and Regions Bank, as trustee (the “Trustee”). It also is our understanding that any Subordinated Notes may be issued pursuant to an indenture to be dated on or about the date of the first issuance of the Subordinated Notes, the form of which is filed as an exhibit to the Registration Statement (the “Subordinated Indenture”), by and among Beazer, the Guarantors, the other guarantors signatory thereto, and the Trustee.

In rendering our opinions expressed below, we have examined such documents and have reviewed such questions of law as we have considered necessary and appropriate for the purposes of our opinions set forth below.

In connection with this opinion, we have examined copies or originals of such documents, resolutions, certificates and instruments of each of the Guarantors as we have deemed necessary to form a basis for the opinions hereinafter expressed. In addition, we have reviewed certificates of public officials, statutes, records and other instruments and documents as we have deemed necessary to form a basis for the opinion hereinafter expressed. In our examination of the foregoing, we have assumed, without independent investigation, (i) the genuineness of all signatures, (ii) the legal capacity of natural persons, (iii) the authenticity of all documents submitted to us as originals, (iv) the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies, and (v) the authenticity of the originals of such latter documents. With regard to certain factual matters, we have relied, without independent investigation or verification, upon statements and representations of representatives of each of the Guarantors.

As our opinions relate to the possible future issuance of Senior Notes and Subordinated Notes, we have made the following assumptions (collectively, the "Assumptions"):

1. The execution and delivery by each Guarantor of the Senior Indenture and/or the Subordinated Indenture, as applicable, and any Guarantees pursuant thereto, including the terms thereof, and the performance of each Guarantor's respective obligations thereunder have been or will be duly authorized by all necessary limited liability company or other action and any consent or approval of its members will have been obtained;
2. The Senior Notes and/or Subordinated Notes will have been duly executed, authenticated, issued and delivered in accordance with the provisions of the Senior Indenture and the Subordinated Indenture, as applicable.
3. The Guarantees will conform to the description thereof in the Registration Statement.

Based on the foregoing, we are of the opinion that:

Each of the Guarantors is validly existing as a limited liability company, and in good standing under the laws of the State of Maryland and has all requisite power and authority, limited liability company or otherwise, to conduct its business, to own its properties, and, based upon the Assumptions, to execute, deliver and perform all of its obligations under its respective Guarantees.

The opinions set forth above are subject to the following qualifications and exceptions:

1. Counsel is a member of the Bar of the State of Maryland. In rendering the foregoing opinions we express no opinion as to the effect (if any) of laws of any jurisdiction except those of the State of Maryland. The undersigned expresses no opinion as to any matter relating to any state or federal securities law or regulation. Our opinions are rendered only with respect to such laws, and the rules, regulations and orders thereunder, that are currently in effect, and we disclaim any obligation to advise you of any change in law or fact that occurs subsequent to the effectiveness of the Registration Statement.

2. The undersigned expresses no opinion as to any matter other than as expressly set forth above, and no opinion is or may be implied or inferred herefrom, and specifically we express no opinion as to (a) the financial ability of each of the Guarantors to meet its obligations under the Senior Indenture and the Subordinated Indenture, any Guarantees or any other document related thereto, (b) the truthfulness or accuracy of any applications, reports, plans, documents, financial statements or other matters furnished by or on behalf of each of the Guarantors in connection with the Senior Indenture and the Subordinated Indenture, any Guarantees or any other document related thereto, or (c) the truthfulness or accuracy of any representation or warranty as to matters of fact made by each of the Guarantors in any Guarantees or any other document.

We hereby consent to the inclusion of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act, or the rules and regulations of the Commission thereunder.

The opinions expressed in this letter are limited to the matters set forth herein and no other opinion should be inferred beyond the matters expressed as stated. This opinion letter has been prepared for your use in connection with the Registration Statement and may not be relied upon for any other purpose. This opinion speaks as of the date hereof. We assume no obligation to advise you of any changes in the foregoing subsequent to the effectiveness of the Registration Statement. King & Spalding LLP may rely on this opinion in connection with the issuance of its opinion to be given in connection with the Registration Statement.

Very truly yours,

WALSH, COLUCCI, LUBELEY
& WALSH, P.C.

/s/ Bryan H. Guidash

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our reports dated November 10, 2022 relating to the financial statements of Beazer Homes USA, Inc. and the effectiveness of Beazer Homes USA, Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Beazer Homes USA, Inc. for the year ended September 30, 2022. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ Deloitte & Touche LLP

Atlanta, Georgia

August 10, 2023

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

FORM T-1

**STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE**

- CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b) (2)**
-

REGIONS BANK

(Exact name of trustee as specified in its charter)

Alabama

(Jurisdiction of incorporation or
organization if not a U.S. national bank)

1900 Fifth Avenue North, Birmingham, Alabama
(Address of principal executive offices)

63-0371391

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

35203
(Zip code)

Shawn Bednasek

Regions Bank

3773 Richmond Avenue, Suite 1100

Houston, Texas 77046

(214) 220-6158

(Name, address and telephone number of agent for service)

BEAZER HOMES USA, INC.

(Exact name of obligor as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia
(Address of principal executive offices)

58-2086934

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

30319
(Zip code)

Senior Debt Securities

(Titles of the indenture securities)

Item 1. General Information. Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

State of Alabama State Banking Department
PO Box 4600
Montgomery, AL 36103-4600

Federal Deposit Insurance Corporation
Washington, D.C.

Federal Reserve Bank of Atlanta
Atlanta, Georgia 30309

- (b) Whether it is authorized to exercise corporate trust powers.

Yes.

Item 2. Affiliations with Obligor. If the obligor is an affiliate of the trustee, describe each such affiliation.

None with respect to the trustee.

Items 3-15. No responses are included for Items 3 through 15. Responses to those Items are not required because the obligor is not in default on any securities issued under indentures under which Regions Bank acts as trustee.

Item 16. List of Exhibits. List below all exhibits filed as a part of this Statement of Eligibility.

Exhibit 1. A copy of the Articles of Incorporation of the trustee now in effect.

Exhibit 2. The authority of Regions Bank to commence business was granted under the Articles of Incorporation for Regions Bank, incorporated herein by reference to Exhibit 1 of Form T-1.

Exhibit 3. The authorization to exercise corporate trust powers was granted under the Articles of Incorporation for Regions Bank, incorporated herein by reference to Exhibit 1 of Form T-1.

Exhibit 4. A copy of the bylaws of the trustee as now in effect.

Exhibit 5. Not applicable.

Exhibit 6. The consent of the trustee required by Section 321(b) of the Act.

Exhibit 7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

Exhibit 8. Not applicable.

Exhibit 9. Not applicable.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Regions Bank, a state chartered bank organized and existing under the laws of Alabama, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Houston, and State of Texas on August 10, 2023.

REGIONS BANK

/s/ Shawn Bednasek

Shawn Bednasek
Senior Vice President

**ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION
OF
REGIONS BANK
an Alabama banking corporation**

Pursuant to the provisions of Section 10A-1-3.13 and Sections 10A-2-10.01 through 10A-2-10.09 of the Alabama Business and Nonprofit Entities Code, as amended, (the "Law"), the undersigned banking corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the banking corporation is Regions Bank (the "Bank").

SECOND: The Bank is an Alabama banking corporation.

THIRD: The Restated Articles of Incorporation of the Bank were filed with the Office of the Judge of Probate of Jefferson County, Alabama on October 28, 2014. The Alabama Entity ID Number of the Bank is 006-854.

FOURTH: The Second Amended and Restated Certificate of Incorporation, attached hereto as Exhibit A and incorporated herein by this reference, is hereby adopted as the articles of incorporation of the Bank.

FIFTH: The Second Amended and Restated Certificate of Incorporation was adopted and approved by the Board of Directors of the Bank at a meeting duly called and held on July 22, 2020 and by the sole shareholder of the Bank pursuant to an action by written consent dated as of July 22, 2020.

SIXTH: The designation, number of outstanding shares, and number of votes entitled to be cast by the sole shareholder on the Second Amended and Restated Certificate of Incorporation were as follows:

<u>Shares</u>	<u>Outstanding</u>	<u>Entitled to Vote</u>
Common Stock, par value \$5.00	21,546	21,546

SEVENTH: The number of shares entitled to vote on the Second Amended and Restated Certificate of Incorporation that voted FOR the Second Amended and Restated Certificate of Incorporation and the number of shares entitled to vote on the Second Amended and Restated Certificate of Incorporation that voted AGAINST the Second Amended and Restated Certificate of Incorporation were as follows:

<u>Shares</u>	<u>Total Voted FOR</u>	<u>Total Voted AGAINST</u>
Common Stock	21,546	0

EIGHTH: The number of shares that voted FOR the Second Amended and Restated Certificate of Incorporation was sufficient for approval thereof by the sole shareholder of the Bank, as required by the Law and the Articles of Incorporation.

NINTH: The original written approval issued by the Superintendent of the Alabama State Banking Department with respect to the Second Amended and Restated Certificate of Incorporation is attached hereto as Exhibit B and recorded herewith.

IN WITNESS WHEREOF, the Bank has caused these Articles of Amendment to the Articles of Incorporation of the Bank to be executed in its name and on its behalf as of August 6, 2020.

BANK:

REGIONS BANK
an Alabama banking corporation

By: /s/ Hope D. Mehlman
Hope D. Mehlman
Executive Vice President, Corporate
Secretary, Chief Governance Officer, and Deputy
General Counsel

This instrument prepared by:

Andrew S. Nix
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203
(205) 254-1000

EXHIBIT A

Second Amended and Restated Certificate of Incorporation

(attached)

**SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
REGIONS BANK**

1. The name of this corporation shall be Regions Bank. The corporation is a domestic banking corporation.

2. The principal place of business of the corporation shall be 1900 Fifth Avenue North, Birmingham, Alabama 35203. The general business of Regions Bank (the "Bank") shall be conducted at its main office and its branches and other facilities.

3. The Bank shall have the following objects, purposes and powers:

a. To be and serve as an Alabama banking corporation pursuant to the Alabama Banking Code, Section 5-1A-1 *et seq.* of the Code of Alabama 1975, as amended (together with any act amendatory thereof, supplementary thereto or substituted therefor, hereinafter referred to as the "Banking Code"), with all the power and authority that may be exercised by an Alabama banking corporation.

b. To engage in any lawful business, act or activity for which a banking corporation may be organized under Alabama law, it being the purpose and intent of this section to invest the Bank with the broadest objects, purposes and powers lawfully permitted an Alabama banking corporation.

c. To engage in any lawful business, act or activity for which a corporation may be organized under the Alabama Business Corporation Law of 2019, Section 10A-2A1.01 *et seq.* of the Code of Alabama 1975, as amended (together with any act amendatory thereof, supplementary thereto or substituted therefor, hereinafter referred to as the "ABCL"), to the extent not inconsistent with the provisions of the Banking Code or any other regulation of a banking corporation in the State of Alabama.

d. Without limiting the scope and generality of the foregoing, the Bank shall have the following specific objects, purposes and powers:

- i. To conduct a general banking business through such means and at such places as the Board of Directors may deem proper.
- ii. To sue and be sued, complain and defend, in its corporate name.
- iii. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- iv. To purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

-
- v. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets, subject to the limitations hereinafter prescribed.
 - vi. To lend money and use its credit to assist its employees.
 - vii. To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof as may be permitted by law or appropriate regulations.
 - viii. To make contracts, guarantees and indemnity agreements and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge of or creation of security interests in, all or any of its property, franchises or income, or any interest therein.
 - ix. To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested.
 - x. To conduct its business, carry on its operations and have offices and exercise the powers granted by this section, within or without the State of Alabama.
 - xi. To elect or appoint and remove officers and agents of the Bank, define their duties and fix their compensation.
 - xii. To make and alter by its board of directors by-laws not inconsistent with its certificate of incorporation or with the laws of the State of Alabama for the administration and regulation of the affairs of the Bank.
 - xiii. To make donations for the public welfare or for charitable, scientific or educational purposes.
 - xiv. To transact any lawful business which the board of directors shall find will be in aid of governmental policy.
 - xv. To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.

-
- xvi. To be a promoter, incorporator, partner, member, trustee, associate or manager of any domestic or foreign corporation, partnership, joint venture, trust or other enterprise.
 - xvii. To consolidate or merge, before or after the completion of its works, with any other foreign or domestic corporation or corporations engaged in the business of banking or trust companies doing a banking business.
 - xviii. To discount bills, notes or other evidences of debt.
 - xix. To receive and pay out deposits, with or without interest, pay checks and impose charges for any services.
 - xx. To receive on special deposit money, bullion or foreign coins or bonds or other securities.
 - xxi. To buy and sell foreign and domestic exchanges, gold and silver bullion or foreign coins, bonds, bills of exchange, notes and other negotiable paper.
 - xxii. To lend money on personal security or upon pledges of bonds, stocks or other negotiable securities.
 - xxiii. To take and receive security by mortgage, security or otherwise on property, real and personal.
 - xxiv. To become trustee for any purpose and be appointed and act as executor, administrator, guardian, receiver or fiduciary.
 - xxv. To lease real and personal property upon specific request of a customer, provided that it complies with any applicable laws of the State of Alabama regulating leasing real property or improvements thereon to others.
 - xxvi. To perform computer, management and travel agency services for others.
 - xxvii. To subscribe to the capital stock and become a member of the Federal Reserve System and comply with rules and regulations thereof
 - xxviii. To do business and exercise directly or through operating subsidiaries any powers incident to the business of banks.

4. The duration of the corporation shall be perpetual.

5. The Board of Directors is expressly authorized from time to time to fix the number of Directors which shall constitute the entire Board, subject to the following:

a. The number of Directors constituting the entire Board shall be fixed from time to time by vote of a majority of the entire Board; provided, however, that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in office; provided further, that the number of Directors shall not be less than five (5) nor more than twenty-five (25). Each Director shall be the record owner of the requisite number of shares of common stock of the Bank's parent bank holding company fixed by the appropriate regulatory authorities.

b. Notwithstanding any other provisions of this Second Amended and Restated Certificate of Incorporation or the by-laws of the Bank (and notwithstanding the fact that some lesser percentage may be specified by law, this Second Amended and Restated Certificate of Incorporation or the by-laws of the Bank), any Director or the entire Board of Directors of the Bank may be removed at any time, with or without cause, by the affirmative vote of the holder(s) of ninety percent (90%) or more of the outstanding shares of capital stock of the Bank entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of stockholders called for that purpose.

6. The aggregate number of shares of capital stock which the Bank shall have authority to issue is thirty thousand five hundred forty-six (30,546) shares, which shall be common stock, par value five dollars (\$5.00) per share (the "Common Stock"). The Bank shall not issue fractional shares of stock, but shall pay in cash the fair value of fractions of a share as of the time when those otherwise entitled to receive such fractions are determined.

a. Stockholders shall not have pre-emptive rights to purchase shares of any class of capital stock of the Bank. The Bank, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the stockholders.

b. Authority is hereby expressly granted to the Board of Directors from time to time to issue any authorized but unissued shares of Common Stock for such consideration and on such terms as it may determine. Every share of Common Stock of the Bank shall have one vote at any meeting of stockholders and may be voted by the stockholders of record either in person or by proxy.

c. In the event of any liquidation, dissolution or winding up of the Bank, or upon the distribution of the assets of the Bank, the assets of the Bank remaining after satisfaction of all obligations and liabilities shall be divided and distributed ratably among the holders of the Common Stock. Neither the merger nor the consolidation of the Bank with another corporation, nor the sale or lease of all or substantially all of the assets of the Bank, shall be deemed to be a liquidation, dissolution or winding up of the Bank or a distribution of its assets.

7. The Chief Executive Officer, Secretary, Board of Directors or holder(s) of at least 90% of the issued and outstanding voting stock of the Bank may call a special meeting of stockholders at any time. The Bank shall notify stockholders of the place, if any, date and time of each annual and special meeting of stockholders no fewer than ten (10) nor more than sixty (60) days before the meeting date, such notice to be delivered to each stockholder of record at the address as shown upon the stock transfer book of the Bank. Notice of a special meeting of stockholders shall include a description of the purpose or purposes for which the meeting is called.

8. The Bank reserves the right to amend, alter, change or repeal any provision contained in this Second Amended and Restated Certificate of Incorporation, in the manner now or hereafter provided by law, at any regular or special meeting of stockholders, and all rights conferred upon officers, directors and stockholders of the Bank hereby are granted subject to this reservation.

9. The Bank shall indemnify its officers, directors, employees and agents in accordance with the indemnification provisions set forth in the by-laws of the Bank, as may be amended from time to time, and in all cases in accordance with applicable laws and regulations.

10. To the extent not inconsistent with the provisions of the Banking Code or the rules, regulations or orders of the Superintendent of the Alabama State Banking Department, and pursuant to Section 10A-2A-17.01 of the ABCL, the Bank hereby elects to be governed by the provisions of the ABCL, and all references in this Second Amended and Restated Certificate of Incorporation to the ABCL shall mean the Alabama Business Corporation Law of 2019.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned hereby certifies that, in accordance with applicable law, this Second Amended and Restated Certificate of Incorporation has been adopted by the Bank as of the 6th day of August, 2020.

By: /s/ Hope D. Mehlman

Hope D. Mehlman

Executive Vice President, Corporate Secretary, Chief
Governance Officer, and Deputy General Counsel

STATE OF ALABAMA

MONTGOMERY COUNTY

I, Mike Hill, as Superintendent of Banks for the State of Alabama, do hereby certify that I have fully and duly examined the foregoing Second Amended and Restated Certificate of Incorporation whereby the shareholder of Regions Bank, a banking corporation located at Birmingham, Alabama, proposes to Amend and Restate the Certificate of Incorporation.

See attached Articles of Amendment which Amend and Restate the Certificate of Incorporation of Regions Bank.

I do hereby certify that said Second Amended and Restated Certificate of Incorporation appear to be in substantial conformity with the requirements of law and they are hereby approved. Upon the filing of the same, together with this Certificate of Approval, with the proper agency as required by law, the Second Amended and Restated Certificate of Incorporation of said bank shall be effective.

Given under my hand and seal of office this the 3rd day of August, 2020.

By: /s/ Mike Hill
Mike Hill
Superintendent of Banks

BY-LAWS OF
REGIONS BANK

(As amended and restated July 21, 2021)

ARTICLE I. OFFICES

Section 1. Registered Office.

The registered office of Regions Bank (the "Bank") shall be maintained at the office of the Corporation Service Company, Inc., in the City of Montgomery, in the County of Montgomery, in the State of Alabama, or such other location as may be designated by the Board of Directors. Corporation Service Company, Inc. shall be the registered agent of the Bank unless and until a successor registered agent is appointed by the Board of Directors.

Section 2. Other Offices.

The Bank may have other offices at such places as the Board of Directors may from time to time appoint or the business of the Bank may require.

Section 3. Principal Place of Business.

The principal place of business of the Bank shall be in Birmingham, Alabama.

ARTICLE II. MEETINGS OF STOCKHOLDERS

Section 1. Annual Meeting.

Annual meetings of stockholders for the election of members of the Board of Directors ("Directors") and for such other business as the Board of Directors may determine, shall be held at such place, time and date as the Board of Directors, by resolution, shall determine.

Section 2. Special Meetings.

The Chief Executive Officer, Secretary, Board of Directors or holder(s) of at least ninety percent (90%) of the issued and outstanding voting stock of the Bank may call a special meeting of stockholders at any time. Special meetings of stockholders may be held at such place, time and date as shall be stated in the notice of the meeting.

Section 3. Voting.

The vote of a majority of the votes cast by the shares entitled to vote on any matter at a meeting of stockholders at which a quorum is present shall be the act of the stockholders on that matter, except as otherwise required by law or by the Certificate of Incorporation of the Bank.

Section 4. Quorum.

At each meeting of stockholders, except where otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the holders of a majority of the outstanding shares of the Bank entitled to vote on a matter at the meeting, represented in person or by proxy, shall constitute a quorum. If less than a majority of the outstanding shares are represented, a majority of the shares so represented may adjourn the meeting from time to time without further notice, but until a quorum is secured no other business may be transacted. The stockholders present at a duly organized meeting may continue to transact business until an adjournment notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 5. Notice of Meeting.

Written or printed notice stating the place, day and time of the meeting and, in case of a special meeting of stockholders, the purpose or purposes of the meeting, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting. The notice shall also include the record date for determining the stockholders entitled to vote at the meeting, if that date is different from the record date for determining stockholders entitled to notice of the meeting. Such notice may be communicated in person, by telephone, teletype, telecopier, facsimile transmission or other form of electronic communication, or by mail or private carrier. The notice shall be deemed to have been delivered (i) if mailed postage prepaid and correctly addressed to a stockholder, upon deposit in the United States mail; (ii) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a stockholder, the earliest of when it is actually received or (A) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee or (B) five (5) days after it is deposited in the United States mail; or (iii) if an electronic transmission, when (A) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission and (B) it is in a form capable of being processed by that system. The attendance of a stockholder at a meeting shall constitute a waiver of lack of notice or defective notice of such meeting, unless the stockholder expresses such objection at the beginning of the meeting, and shall constitute a waiver of any objection to the consideration of a particular matter that is not within the purpose or purposes described in the notice, unless the stockholder objects to considering the matter before action is taken thereon.

Section 6. Informal Action by Stockholders.

Any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting, and without prior notice, if one or more consents in writing setting forth the action so taken are signed by the holders of outstanding stock having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares of stock entitled to vote on the action were present and voted. The action must be evidenced by one or more written consents describing the action taken, signed by the stockholders approving the action and delivered to the Bank for filing by the Bank with the minutes or corporate records. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent is delivered to the Bank as required by this section, written consents signed by sufficient stockholders to take the action have been delivered to the Bank. A written consent may be revoked by a writing to that effect delivered to the Bank before unrevoked written consents sufficient in number to take the corporate action have been delivered to the Bank.

A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. The action taken by written consent shall be effective when written consents signed by sufficient stockholders to take the action have been delivered to the Bank.

If action is taken by less than unanimous written consent of the stockholders, the Bank shall give its nonconsenting stockholders written notice of the action not more than ten (10) days after written consents sufficient to take the action have been delivered to the Bank. The notice must reasonably describe the action taken and contain or be accompanied by the same material that would have been required to be sent to stockholders in a notice of a meeting at which the action would have been submitted to the stockholders for action.

ARTICLE III. DIRECTORS

Section 1. Number and Term.

The number of Directors that shall constitute the whole Board of Directors shall be fixed, from time to time, by resolutions adopted by the Board of Directors, but shall not be less than five (5) persons or more than twenty-five (25) persons. The number of Directors shall not be reduced so as to shorten the term of any Director in office at the time.

Directors elected at each annual or special meeting or appointed pursuant to Article III, Section 4 of these By-Laws shall hold office until the next annual meeting and until his or her successor shall have been elected and qualified, or until his or her earlier retirement, death, resignation or removal. Directors need not be residents of Alabama.

Section 2. Chair of the Board and Lead Independent Director.

The Board of Directors shall by majority vote designate from time to time from among its members a Chair of the Board of Directors. The Chair of the Board of Directors shall preside at all meetings of the stockholders and of the Board of Directors. He or she shall have and perform such duties as prescribed by these By-Laws and by the Board of Directors. The position of Chair of the Board of Directors is a Board position; provided, however, the position of Chair of the Board of Directors may be held by a person who is also an officer of the Bank.

In the absence of the Chair of the Board of Directors, or in the case he or she is unable to preside, the Lead Independent Director, if at the time a Director of the Bank has been designated by the Board of Directors as such, shall have and exercise all powers and duties of the Chair of the Board of Directors and shall preside at all meetings of the Board of Directors. If at any Board of Directors meeting neither of such persons is present or able to act, the Board of Directors shall select one of its members as acting chair of the meeting or any portion thereof.

Section 3. Resignations.

Any Director may resign at any time. All resignations shall be made in writing, and shall take effect at the time of receipt by the Chair of the Board of Directors, Chief Executive Officer, President or Secretary or at such other time as may be specified therein. The acceptance of a resignation shall not be necessary to make it effective.

Section 4. Vacancies.

If the office of any Director becomes vacant, including by reason of resignation or removal, or the size of the Board of Directors is increased, the remaining Directors in office, even if less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy or new position, and such person shall hold office for the unexpired term and until his or her successor shall be duly chosen.

Section 5. Removal.

Any Director may be removed at any time, with or without cause, by the affirmative vote of the holders of ninety percent (90%) or more of the outstanding shares of capital stock of the Bank entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of stockholders called for that purpose.

Section 6. Powers.

The business and affairs of the Bank shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by applicable law, the Certificate of Incorporation of the Bank or pursuant to these By-Laws.

Section 7. Meetings.

Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by the Board of Directors; provided, however, that such regular meetings shall be held at intervals in compliance with the Alabama Banking Code, Section 5-1A-1 *et seq.* of the Code of Alabama 1975, as amended (together with any act amendatory thereof, supplementary thereto or substituted therefor, hereinafter referred to as the "Banking Code").

Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, Lead Independent Director, Chief Executive Officer or President, or Secretary on the request of any two members of the Board of Directors, on at least two (2) days' notice to each Director and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the notice of such meeting.

Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone, video or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting. Notice of any special meeting of the Board of Directors need not be given personally, and may be given by United States mail, postage prepaid or by any form of electronic communication, and shall be deemed to have been given on the date such notice is transmitted by the Bank (which, if notice is mailed, shall be the date when such notice is deposited in the United States mail, postage prepaid, directed to the applicable Director at such Director's address as it appears on the records of the Bank).

Section 8. Quorum; Vote Required for Action.

A majority of the Directors shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned. The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Certificate of Incorporation or these By-Laws shall require a vote of a greater number.

Section 9. Compensation.

Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, the Board of Directors shall have the authority to fix the compensation of Directors. Nothing herein contained shall be construed to preclude any Director from serving the Bank in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

Section 10. Action Without Meeting.

Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board of Directors, or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or committee. Action taken under this section is the act of the Board of Directors when one or more consents signed by all of the Directors are delivered to the Bank. The consent may specify a later time as the time at which the action taken is to be

effective. A Director's consent may be withdrawn by a revocation signed by the Director and delivered to the Bank before delivery to the Bank of unrevoked written consents signed by all of the Directors. A consent signed under this section has the effect of action taken at a meeting of the Board of Directors and may be described as such in any document.

Section 11. Committees.

A majority of the Board of Directors shall have the authority to designate one or more committees, each committee to consist of one or more of the Directors of the Bank. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any committee of the Board of Directors, to the extent provided in the resolutions of the Board of Directors or in these By-Laws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Bank and may authorize the seal of the Bank to be affixed to all papers that may require it, in each case to the fullest extent permitted by applicable law. In the absence or disqualification of any member of a committee from voting at any meeting of such committee, the remaining member or members thereof present at such meeting and not disqualified from voting, whether or not the remaining member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at such meeting in the place of any such absent or disqualified member.

Section 12. Eligibility.

No person shall be eligible to serve as Director of the Bank unless such person shall be the owner of shares of stock of the parent holding company of the number and held in the manner sufficient to meet the requirements of any applicable law or regulation in effect requiring the ownership of Directors' qualifying shares.

Section 13. Directors Protected.

In accordance with the Alabama Business Corporation Law, Chapter 2A of Title 10A of the Code of Alabama (1975), or any statute amendatory or supplemental thereof (the "Corporation Law") and specifically Section 10A-2A-8.30, each Director shall, in the performance of his or her duties, be fully protected in relying in good faith upon information, opinions, reports or statements, including financial statements and other financial data, made to the Directors by the officers or employees of the Bank; legal counsel, public accountants, certified public accountants or other persons as to matters the Director reasonably believes are within the person's professional or expert competence; or a committee of the Board of Directors of which he or she is not a member if the Director reasonably believes the committee merits confidence, or in relying in good faith upon other records or books of account of the Bank.

ARTICLE IV. OFFICERS

Section 1. Officers, Elections, Terms.

The officers of the Bank shall be a Chief Executive Officer; a President; one or more vice presidents or directors (referring in this context to service in an officer capacity), who may be designated Senior Executive Vice Presidents, Executive Vice Presidents, Executive Managing Directors, Senior Vice Presidents, Managing Directors, Vice Presidents, Directors, and Assistant Vice Presidents; a Secretary; one or more Assistant Secretaries; a Chief Financial Officer; a Controller; an Auditor; and such other officers as may be deemed appropriate. All of such officers shall be appointed annually by the Board of Directors to serve for a term of one (1) year and until their respective successors are appointed and qualified or until such officer's earlier death, resignation, retirement or removal, except that the Board of Directors may delegate the authority to appoint officers holding the position of Senior Executive Vice President and below in accordance with procedures established or modified by the Board from time to time. None of the officers of the Bank need be Directors. More than one office may be held by the same person. The conduct of the business and affairs of the Bank by the officers shall be subject to the oversight of the Board of Directors and of any committee of the Board of Directors having authority over the subject matter.

Section 2. Chief Executive Officer.

The Board of Directors shall appoint a Chief Executive Officer of the Bank. The Chief Executive Officer is the most senior executive officer of the Bank, and shall be vested with authority to act for the Bank in all matters and shall have general supervision of the Bank and of its business affairs, including authority over the detailed operations of the Bank and over its personnel, with full power and authority during intervals between sessions of the Board of Directors to do and perform in the name of the Bank all acts and deeds necessary or proper, in his or her opinion, to be done and performed and to execute for and in the name of the Bank all instruments, agreements and deeds that may be authorized to be executed on behalf of the Bank or may be required by law. The Chief Executive Officer may, but need not, also hold the office of President.

Section 3. President.

The President shall have, and may exercise, the authority to act for the Bank in all ordinary matters and perform other such duties as directed by the By-Laws, the Board of Directors or the Chief Executive Officer. Among the officers of the Bank, the President is subordinate to only the Chief Executive Officer and is senior to the other officers of the Bank. The authority of the President shall include authority over the detailed operations of the Bank and over its personnel with full power and authority during intervals between sessions of the Board of Directors to do and perform in the name of the Bank all acts and deeds necessary or proper, in his or her opinion, to be done and performed and to execute for and in the name of the Bank all instruments, agreements and deeds that may be authorized to be executed on behalf of the Bank or may be required by law.

Section 4. Vice Presidents.

The vice presidents or directors, who may be designated as Senior Executive Vice Presidents, Executive Vice Presidents, Executive Managing Directors, Senior Vice Presidents, Managing Directors, Vice Presidents, Directors, and Assistant Vice Presidents, shall, subject to the control of the Chief Executive Officer or the President, have and may exercise the authority vested in them in all proper matters, including authority over the detailed operations of the Bank and over its personnel.

Section 5. Chief Financial Officer.

The Chief Financial Officer, or his or her designee, shall have and perform such duties as are incident to the office of Chief Financial Officer and such other duties as may from time to time be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President.

Section 6. Secretary and Assistant Secretary.

The Secretary shall keep minutes of all meetings of the stockholders and the Board of Directors unless otherwise directed by either of those bodies. The Secretary, or in his or her absence, any Assistant Secretary, shall attend to the giving and serving of all notices of the Bank. The Secretary shall perform all of the duties incident to the office of Secretary and shall do and perform such other duties as may from time to time be assigned by the Board of Directors, the Chair of the Board of Directors, the Chief Executive Officer or the President.

Section 7. Controller.

The Controller shall, under the direction of the Chief Executive Officer, the President, the Chief Financial Officer or other more senior officer, have general supervision and authority over all reports required of the Bank by law or by any public body or officer or regulatory authority pertaining to the condition of the Bank and its assets and liabilities. The Controller shall have general supervision of the books and accounts of the Bank and its methods and systems of recording and keeping accounts of its business transactions and of its assets and liabilities. The Controller shall be responsible for preparing statements showing the financial condition of the Bank and shall furnish such reports and financial records as may be required of him or her by the Board of Directors or by the Chief Executive Officer, the President, the Chief Financial Officer or other more senior officer.

Section 8. Auditor.

The Auditor's office may be filled by an employee of the Bank or his or her duties may be performed by an employee or committee of the parent company of the Bank. The Auditor shall have general supervision of the auditing of the books and accounts of the Bank, and shall continuously and from time to time check and verify the Bank's transactions, its assets and liabilities, and the accounts and doings of the officers, agents and employees of the Bank with respect thereto. The Auditor, whether an employee of the Bank or of its parent, shall be directly accountable to and under the jurisdiction of the Board of Directors and, if applicable, its designated committee, acting independently of all officers, agents and employees of the Bank. The Auditor shall render reports covering matters in his or her charge regularly and upon request to the Board and, if applicable, its designated committee.

Section 9. Other Officers and Agents.

The Board of Directors may appoint such other officers and agents as it may deem advisable, such as General Counsel, who shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. The functions of a cashier of the Bank may be performed by the Controller or any other officer of the Bank whose area of responsibility includes the function to be performed.

Section 10. Management Policymaking Committee.

Pursuant to the By-Laws of Regions Financial Corporation, the Chief Executive Officer shall establish and name (and may rename from time to time) an executive management committee to develop, publish and implement policies and procedures for the operation of Regions Financial Corporation and its subsidiaries and affiliates, including the Bank.

Section 11. Officer in Charge of Wealth Management.

The officer in charge of Wealth Management shall be designated as such by the Board of Directors and shall exercise general supervision and management over the affairs of Private Wealth Management, Institutional Services and Wealth Management Middle Office, which groups are responsible for exercise of the Bank's trust powers. Such officer is hereby empowered to appoint all necessary agents or attorneys; also to make, execute and acknowledge all checks, bonds, certificates, deeds, mortgages, notes, releases, leases, agreements, contracts, bills of sale, assignments, transfers, powers of attorney or of substitution, proxies to vote stock, or any other instrument in writing that may be necessary in the purchase, sale, mortgage, lease, assignment, transfer, management or handling, in any way of any property of any description held or controlled by the Bank in any fiduciary capacity. Said officer shall have such other duties and powers as shall be designated by the Board of Directors.

Section 12. Other Officers in Private Wealth Management, Institutional Services and Wealth Management Middle Office.

The officer in charge of Wealth Management shall appoint officers responsible for the activities of Private Wealth Management, Institutional Services and Wealth Management Middle Office. Various other officers as designated by the officers responsible for the activities of Private Wealth Management, Institutional Services and Wealth Management Middle Office are empowered and authorized to make, execute and acknowledge all checks, bonds, certificates, deeds, mortgages, notes, releases, leases, agreements, contracts, bills of sale, assignments, transfers, powers of attorney or substitution, proxies to vote stock or any other instrument in writing that may be necessary to the purchase, sale, mortgage, lease, assignments, transfer, management or handling in any way, of any property of any description held or controlled by the Bank in any fiduciary capacity.

Section 13. Removal and Resignation of Officers.

At its pleasure, the Board of Directors may remove any officer from office at any time by a majority vote of the Board of Directors; provided, however, that the terms of any employment or compensation contract shall be honored according to its terms. An individual's status as an officer will terminate without the necessity of any other action or ratification immediately upon termination for any reason of the individual's employment by the Bank. Any officer may resign at any time by delivering notice (whether written or verbal) to the Bank. Such resignation shall be effective immediately unless the notice of resignation specifies a later effective date.

ARTICLE V. MISCELLANEOUS

Section 1. Certificates of Stock.

Certificates of stock of the Bank shall be signed by the President and the Secretary of the Bank, which signatures may be represented by a facsimile signature. The certificate may be sealed with the seal of the Bank or an engraved or printed facsimile thereof. The certificate represents the number of shares of stock registered in certificate form owned by such holder.

Section 2. Lost Certificates.

In case of the loss or destruction of any certificate of stock, the holder or owner of same shall give notice thereof to the Chief Executive Officer, the President, any Senior Executive Vice President or the Secretary of the Bank and, if such holder or owner shall desire the issue of a new certificate in the place of the one lost or destroyed, he or she shall make an affidavit of such loss or destruction and deliver the same to any one of said officers and accompany the same with a bond with surety satisfactory to the Bank to indemnify the Bank and save it harmless against any loss, cost or damage in case such certificate should thereafter be presented to the Bank, which affidavit and bond shall be, at the discretion of the deciding party listed in this Section 2, unless so ordered by a court having jurisdiction over the matter, approved or rejected by the Board of Directors, the Chief Executive Officer, the President or a Senior Executive Vice President before the issue of any new certificate.

Section 3. Transfer of Shares.

Title to a certificate and to the shares represented thereby can be transferred only by delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or by delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

Section 4. Fractional Shares.

No fractional part of a share of stock shall be issued by the Bank.

Section 5. Stockholders Record Date.

In order that the Bank may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive any rights in respect of any change, conversion or exchange of stock or for any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Dividends.

Subject to the provisions of the Certificate of Incorporation, at any regular or special meeting the Board of Directors may, out of funds legally available therefor, declare dividends upon the capital stock of the Bank as and when it deems expedient. Before declaring any dividend, there may be set apart out of any fund of the Bank available for dividends, such sum or sums as the Directors, from time to time in their discretion, deem proper for working capital; as a reserve fund to meet contingencies; for equalizing dividends; or for such other purposes as the Directors shall deem conducive to the interests of the Bank. No dividends shall be declared that exceed the amounts authorized by applicable laws and regulations or are otherwise contrary to law.

Section 7. Seal.

The Bank may have a corporate seal, which shall have the name of the Bank inscribed thereon and shall be in such form as prescribed by the Board of Directors from time to time. The seal may also include appropriate descriptors, such as the words: "An Alabama Banking Corporation." The Secretary of the Bank shall have custody of the seal and is authorized to affix the same to instruments, documents and papers as required by law or as customary or appropriate in the Secretary's judgment and discretion. Without limiting the general authority of the Board of Directors of the Bank to name, appoint, remove and define the duties of officers of the Bank, the Secretary is further authorized to cause reproductions of the seal to be made, distributed to and used by officers and employees of the Bank whose duties and responsibilities involve the execution and delivery of instruments, documents and papers bearing the seal of the Bank. In this regard, the Secretary is further authorized to establish, implement, interpret and enforce policies and procedures governing the use of the seal and the authorization by the Secretary of officers and employees of the Bank to have custody of and to use the seal. Such policies and procedures may include (i) the right of the Secretary to appoint any Bank employee as an Assistant Secretary of the Bank, if such appointment would, in the Secretary's judgment, be convenient with respect to such employee's custody and use of a seal and/or (ii) the right of the Secretary to authorize Bank employees to have and use seals as delegates of the Secretary without appointing such employees as Assistant Secretaries of the Bank.

Section 8. Fiscal Year.

The fiscal year of the Bank shall be the calendar year.

Section 9. Checks, Drafts, Transfers, Services, etc.

The Chief Executive Officer, the President, any vice president or director, any Assistant Vice President, any Branch Manager, any Financial Relationship Specialist, any Financial Relationship Consultant or any other employee designated by the Board of Directors is authorized and empowered on behalf of the Bank and in its name to sign and endorse checks and warrants; to execute and deliver any and all documents that are necessary or desirable in connection with the opening of customer deposit accounts with the Bank, including, without limitation, documents associated with establishing treasury management services in connection with deposit accounts; documents requested or required by a third party in connection with the opening or rollover of individual retirement accounts to the Bank or otherwise; draw drafts; issue and sign cashier's checks; guarantee signatures; give receipts for money due and payable to the Bank; and sign such other papers and do such other acts as are necessary in the performance of his or her duties. The authority conveyed to any employee designated by the Board of Directors may be limited by general or specific resolution of the Board of Directors.

Section 10. Notice and Waiver of Notice.

Whenever any notice whatever is required to be given under the provisions of any law or under the provisions of the Certificate of Incorporation of the Bank or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of business at the meeting because the meeting is not lawfully called or convened.

Section 11. Right of Indemnity.

To the full extent provided for and in accordance with the Corporation Law, and specifically Section 10A-2A-8.50 *et seq.*, the Bank shall indemnify and hold harmless each Director and each officer now or hereafter serving the Bank against any loss and reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any claim, or any action, suit or proceeding against him or her or in which he or she is made a party, by reason of him or her being or having been a Director or officer of the Bank, or who, while a Director or officer of the Bank, is or was serving at the Bank's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. Such right of indemnity shall not be deemed exclusive of any other rights to which such Director or officer may be entitled under any statute, article of incorporation, rule of law, other bylaw, agreement, vote of stockholders or directors, or otherwise. Nor shall anything herein contained restrict the right of the Bank to indemnify or reimburse any officer or Director in any proper case even though not specifically provided for herein.

Notwithstanding anything to the contrary, the Bank shall not make or agree to make any indemnification payment to a Director or officer or any other institution-affiliated party (as such term is defined in 12 CFR § 359.1) with respect to (i) any civil money penalty or judgment resulting from any administrative or civil action instituted by any federal banking agency, except in full compliance with 12 CFR Part 359, (ii) any assessment, order of restitution, penalty or similar liability imposed under authority of the Banking Code, or (iii) any liability for violation of Section 10A-2A-8.32 of the Corporation Law.

In advance of final disposition, the Bank may, but is not required to, pay for or reimburse the reasonable expenses incurred by a person who may become eligible for indemnification under this Article V, Section 11, provided the conditions set forth in Section 10A-2A-8.53 of the Corporation Law (and, if applicable, 12 CFR § 359.5) shall have been satisfied.

The Bank may purchase and maintain insurance on behalf of said Directors or officers against liability asserted against or incurred by a Director or officer acting in such capacity as described in these By-Laws. Such insurance coverage shall not be used to pay or reimburse a person for the cost of (i) any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by any federal banking agency or (ii) any assessment or penalty imposed under authority of the Banking Code. Such insurance coverage may be used to pay any legal or professional expenses incurred in connection with such proceeding or action or the amount of any restitution to the Bank. Any insurance coverage of legal or professional expenses will be coordinated with the Bank's determination whether to advance expenses in advance of final disposition, taking into account the terms and conditions of the coverage and the requirements of Section 10A-2A-8.53 of the Corporation Law.

Section 12. Execution of Instruments and Documents.

The Chief Executive Officer; the President; any Senior Executive Vice President, Executive Vice President, Senior Vice President or Vice President; or any officer holding the title of Executive Managing Director, Managing Director or Director is authorized, in his or her discretion, to do and perform any and all corporate and official acts in carrying on the business of the Bank, including, but not limited to, the authority to make, execute, acknowledge, accept and deliver any and all deeds, mortgages, releases, bills of sale, assignments, transfers, leases (as lessor or lessee), powers of attorney or of substitution, servicing or sub-servicing agreements, vendor agreements, contracts, proxies to vote stock or any other instrument in writing that may be necessary in the purchase, sale, lease, assignment, transfer, discount, management or handling in any way of any property of any description held, controlled or used by Bank or to be held, controlled or used by Bank, either in its own or in its fiduciary capacity and including the authority from time to time to open bank accounts with the Bank or any other institution; to borrow money in such amounts for such lengths of time, at such rates of interest and upon such terms and conditions as any said officer may deem proper and to evidence the indebtedness thereby created by executing and delivering in the name of the Bank promissory notes or other appropriate evidences of indebtedness; and to guarantee the obligations of any subsidiary or affiliate of the Bank. The enumeration herein of particular powers shall not restrict in any way the general powers and authority of said officers.

By way of example and not limitation, such officers of the Bank are authorized to execute, accept, deliver and issue, on behalf of the Bank and as binding obligations of the Bank, such agreements and instruments as may be within the officer's area of responsibility, including, as applicable, agreements and related documents (such as schedules, confirmations, transfers, assignments, acknowledgments and other documents) relating to derivative transactions, loan or letter of credit transactions, syndications, participations, trades, purchase and sale or discount transactions, transfers and assignments, servicing and sub-servicing agreements, vendor agreements, contracts, securitizations and transactions of whatever kind or description arising in the conduct of the Bank's business.

The authority to execute and deliver documents, instruments and agreements may be limited by resolution of the Board of Directors or a committee of the Board of Directors, by the Chief Executive Officer or by the President, by reference to subject matter, category, amount, geographical location or any other criteria and may be made subject to such policies, procedures and levels of approval as may be adopted or amended from time to time.

Section 13. Voting Bank's Securities.

Unless otherwise ordered by the Board of Directors, the Chief Executive Officer, the President, any Executive Vice President or Executive Managing Director or above, the Controller, the Bank's General Counsel and any other officer as may be designated by the Board of Directors shall have full power and authority on behalf of the Bank (i) to attend and to act and vote or (ii) to execute a proxy or proxies empowering others to attend and to act and vote, at any meetings of security holders of any of the corporations, partnerships, limited liability companies or other entities in which the Bank may hold securities and, at such meetings, such officer shall possess and may exercise any and all rights and powers incident to the ownership of such securities which, as the owner thereof, the Bank might have possessed and exercised, if present.

Section 14. Bonds of Officers and Employees.

The Board of Directors shall, pursuant to the Banking Code, designate the officers and employees who shall be required to give bond and fix the amounts thereof.

Section 15. Satisfaction of Loans.

On payment of sums lent, for which security shall have been taken either by way of mortgage or other lien on real or personal property or by the pledge of collateral, whether said loans have been made from funds of the Bank or from funds held in fiduciary capacity, any officer of the Bank shall have the power and authority to sign or execute any and all collateral release documents that may be necessary or desirable for the purpose of releasing property or property rights held by the Bank as collateral for obligations to the Bank that are paid in full or otherwise satisfied or settled and enter the fact of payment or satisfaction on the margin of the record of any such security or in any other legal manner to cancel such indebtedness and to release said security, and the Chief Executive Officer, the President or any Vice President or Director of the Bank shall have power and authority to execute a power of attorney authorizing the cancellation, release or satisfaction of any mortgage or other security given to the Bank in its corporate or fiduciary capacity, by such person as he or she may in his or her discretion appoint.

ARTICLE VI. AMENDMENTS

Except as otherwise provided herein or in the Certificate of Incorporation of the Bank, these By-Laws may be amended or repealed by the affirmative vote of a majority of the Directors then holding office at any regular or special meeting of the Board of Directors, and the stockholders may make, alter or repeal any By-Laws, whether or not adopted by them.

ARTICLE VII. EMERGENCY BY-LAWS

Section 1. Emergency By-Laws.

This Article VII shall be operative if a quorum of the Bank's Directors cannot readily be assembled because of some catastrophic event (an "emergency"), notwithstanding any different or conflicting provisions in these By-Laws, the Certificate of Incorporation or the Code of Alabama. To the extent not inconsistent with the provisions of this Article VII, the By-Laws provided in the other Articles of these By-Laws and the provisions of the Certificate of Incorporation shall remain in effect during such emergency, and upon termination of such emergency, the provisions of this Article VII shall cease to be operative.

Section 2. Meetings.

During any emergency, a meeting of the Board of Directors, or any committee thereof, may be called by any member of the Board of Directors, the President, a Senior Executive Vice President, the Secretary or an Assistant Secretary. Notice of the time and place of the meeting shall be given by any available means of communication by the individual calling the meeting to such of the Directors and/or Designated Officers, as defined in Section 3 of this Article VII, as it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the individual calling the meeting, circumstances permit. As a result of such emergency, the Board of Directors may determine that a meeting of stockholders not be held at any place, but instead be held solely by means of remote communication in accordance with the Corporation Law.

Section 3. Quorum.

At any meeting of the Board, or any committee thereof, called in accordance with Section 2 of this Article VII, the presence or participation of two Directors or one Director and a Designated Officer shall constitute a quorum for the transaction of business. In the event that no Directors are able to attend the meeting of the Board of Directors, then the Designated Officers in attendance shall serve as directors for the meeting, without any additional quorum requirement and will have full powers to act as directors of the Bank.

The Board of Directors or the committees thereof, as the case may be, shall, from time to time but in any event prior to such time or times as an emergency may have occurred, designate the officers of the Bank in a numbered list (the "Designated Officers") who shall be deemed, in the order in which they appear on such list, directors of the Bank for purposes of obtaining a quorum during an emergency, if a quorum of Directors cannot otherwise be obtained.

Section 4. By-Laws.

At any meeting called in accordance with Section 2 of this Article VII, the Board of Directors or a committee thereof, as the case may be, may modify, amend or add to the provisions of this Article VII so as to make any provision that may be practical or necessary for the circumstances of the emergency.

Section 5. Liability.

No officer, Director or employee of the Bank acting in accordance with the provisions of this Article VII shall be liable except for willful misconduct.

Section 6. Repeal or Change.

The provisions of this Article VII shall be subject to repeal or change by further action of the Board of Directors or by action of the stockholders, but no such repeal or change shall modify the provisions of Section 5 of this Article VII with regard to action taken prior to the time of such repeal or change.

Section 7. Continued Operations.

In the event of an emergency declared by the President of the United States or the person performing his or her functions, the officers and employees of the Bank will continue to conduct the affairs of the Bank under such guidance from the Directors as may be available except as to matters which by statute require specific approval of the Board of Directors and subject to conformance with any governmental directives or directives of the Federal Deposit Insurance Corporation during the emergency.

CONSENT

In accordance with Section 321(b) of the Trust Indenture Act of 1939, Regions Bank hereby consents that reports of examination of Regions Bank by Federal, State, Territorial or District regulatory authorities may be furnished by such regulatory authorities to Securities and Exchange Commission upon request therefor.

Dated: August 10, 2023

REGIONS BANK

/s/ Shawn Bednasek

Shawn Bednasek

Senior Vice President

Consolidated Report of Condition for Insured Banks and Savings Associations

REGIONS BANK

As of the close of business on March 31, 2023:

ASSETS	<u>Thousands of Dollars</u>
Cash and balances due from depository institutions:	9,463,000
Securities:	29,468,000
Federal funds sold and securities purchased under agreement to resell:	0
Loans and leases held for sale:	544,000
Loans and leases net of unearned income and allowance:	96,585,000
Trading Assets:	19,000
Premises and fixed assets:	2,157,000
Other real estate owned:	14,000
Investments in unconsolidated subsidiaries and associated companies:	136,000
Direct and indirect investments in real estate ventures:	0
Intangible assets:	6,299,000
Other assets:	8,440,000
Total Assets:	153,125,000
LIABILITIES	<u>Thousands of Dollars</u>
Deposits	130,749,000
Federal funds purchased and securities sold under agreements to repurchase	0
Trading liabilities:	0
Other borrowed money:	2,014,000
Subordinated notes and debentures:	496,000
Other Liabilities:	4,245,000
Total Liabilities	137,504,000
EQUITY CAPITAL	<u>Thousands of Dollars</u>
Common Stock	0
Surplus	16,399,000
Retained Earnings	2,047,000
Accumulated other comprehensive income	-2,844,000
Total Equity Capital	15,621,000
Total Liabilities and Equity Capital	153,125,000

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

FORM T-1

**STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE**

- CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b) (2)**
-

REGIONS BANK

(Exact name of trustee as specified in its charter)

Alabama
(Jurisdiction of incorporation or
organization if not a U.S. national bank)

1900 Fifth Avenue North, Birmingham, Alabama
(Address of principal executive offices)

63-0371391
(I.R.S. Employer
Identification No.)

35203
(Zip code)

Shawn Bednasek
Regions Bank
3773 Richmond Avenue, Suite 1100
Houston, Texas 77046
(214) 220-6158
(Name, address and telephone number of agent for service)

BEAZER HOMES USA, INC.
(Exact name of obligor as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

2002 Summit Boulevard NE, 15th Floor
Atlanta, Georgia
(Address of principal executive offices)

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

30319
(Zip code)

Subordinated Debt Securities
(Titles of the indenture securities)

Item 1. General Information. Furnish the following information as to the trustee:

(a) Name and address of each examining or supervising authority to which it is subject.

State of Alabama State Banking Department
PO Box 4600
Montgomery, AL 36103-4600

Federal Deposit Insurance Corporation
Washington, D.C.

Federal Reserve Bank of Atlanta
Atlanta, Georgia 30309

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

Item 2. Affiliations with Obligor. If the obligor is an affiliate of the trustee, describe each such affiliation.

None with respect to the trustee.

Items 3-15. No responses are included for Items 3 through 15. Responses to those Items are not required because the obligor is not in default on any securities issued under indentures under which Regions Bank acts as trustee.

Item 16. List of Exhibits. List below all exhibits filed as a part of this Statement of Eligibility.

Exhibit 1. A copy of the Articles of Incorporation of the trustee now in effect.

Exhibit 2. The authority of Regions Bank to commence business was granted under the Articles of Incorporation for Regions Bank, incorporated herein by reference to Exhibit 1 of Form T-1.

Exhibit 3. The authorization to exercise corporate trust powers was granted under the Articles of Incorporation for Regions Bank, incorporated herein by reference to Exhibit 1 of Form T-1.

Exhibit 4. A copy of the bylaws of the trustee as now in effect.

Exhibit 5. Not applicable.

Exhibit 6. The consent of the trustee required by Section 321(b) of the Act.

Exhibit 7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

Exhibit 8. Not applicable.

Exhibit 9. Not applicable.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Regions Bank, a state chartered bank organized and existing under the laws of Alabama, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Houston, and State of Texas on August 10, 2023.

REGIONS BANK

/s/ Shawn Bednasek

Shawn Bednasek
Senior Vice President

**ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION
OF
REGIONS BANK
an Alabama banking corporation**

Pursuant to the provisions of Section 10A-1-3.13 and Sections 10A-2-10.01 through 10A-2-10.09 of the Alabama Business and Nonprofit Entities Code, as amended, (the "Law"), the undersigned banking corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the banking corporation is Regions Bank (the "Bank").

SECOND: The Bank is an Alabama banking corporation.

THIRD: The Restated Articles of Incorporation of the Bank were filed with the Office of the Judge of Probate of Jefferson County, Alabama on October 28, 2014. The Alabama Entity ID Number of the Bank is 006-854.

FOURTH: The Second Amended and Restated Certificate of Incorporation, attached hereto as Exhibit A and incorporated herein by this reference, is hereby adopted as the articles of incorporation of the Bank.

FIFTH: The Second Amended and Restated Certificate of Incorporation was adopted and approved by the Board of Directors of the Bank at a meeting duly called and held on July 22, 2020 and by the sole shareholder of the Bank pursuant to an action by written consent dated as of July 22, 2020.

SIXTH: The designation, number of outstanding shares, and number of votes entitled to be cast by the sole shareholder on the Second Amended and Restated Certificate of Incorporation were as follows:

<u>Shares</u>	<u>Outstanding</u>	<u>Entitled to Vote</u>
Common Stock, par value \$5.00	21,546	21,546

SEVENTH: The number of shares entitled to vote on the Second Amended and Restated Certificate of Incorporation that voted FOR the Second Amended and Restated Certificate of Incorporation and the number of shares entitled to vote on the Second Amended and Restated Certificate of Incorporation that voted AGAINST the Second Amended and Restated Certificate of Incorporation were as follows:

<u>Shares</u>	<u>Total Voted FOR</u>	<u>Total Voted AGAINST</u>
Common Stock	21,546	0

EIGHTH: The number of shares that voted FOR the Second Amended and Restated Certificate of Incorporation was sufficient for approval thereof by the sole shareholder of the Bank, as required by the Law and the Articles of Incorporation.

NINTH: The original written approval issued by the Superintendent of the Alabama State Banking Department with respect to the Second Amended and Restated Certificate of Incorporation is attached hereto as Exhibit B and recorded herewith.

IN WITNESS WHEREOF, the Bank has caused these Articles of Amendment to the Articles of Incorporation of the Bank to be executed in its name and on its behalf as of August 6, 2020.

BANK:

REGIONS BANK
an Alabama banking corporation

By: /s/ Hope D. Mehlman
Hope D. Mehlman
Executive Vice President, Corporate
Secretary, Chief Governance Officer, and Deputy
General Counsel

This instrument prepared by:

Andrew S. Nix
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203
(205) 254-1000

EXHIBIT A

Second Amended and Restated Certificate of Incorporation

(attached)

**SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
REGIONS BANK**

1. The name of this corporation shall be Regions Bank. The corporation is a domestic banking corporation.
2. The principal place of business of the corporation shall be 1900 Fifth Avenue North, Birmingham, Alabama 35203. The general business of Regions Bank (the “Bank”) shall be conducted at its main office and its branches and other facilities.
3. The Bank shall have the following objects, purposes and powers:
 - a. To be and serve as an Alabama banking corporation pursuant to the Alabama Banking Code, Section 5-1A-1 *et seq.* of the Code of Alabama 1975, as amended (together with any act amendatory thereof, supplementary thereto or substituted therefor, hereinafter referred to as the “Banking Code”), with all the power and authority that may be exercised by an Alabama banking corporation.
 - b. To engage in any lawful business, act or activity for which a banking corporation may be organized under Alabama law, it being the purpose and intent of this section to invest the Bank with the broadest objects, purposes and powers lawfully permitted an Alabama banking corporation.
 - c. To engage in any lawful business, act or activity for which a corporation may be organized under the Alabama Business Corporation Law of 2019, Section 10A-2A1.01 *et seq.* of the Code of Alabama 1975, as amended (together with any act amendatory thereof, supplementary thereto or substituted therefor, hereinafter referred to as the “ABCL”), to the extent not inconsistent with the provisions of the Banking Code or any other regulation of a banking corporation in the State of Alabama.
 - d. Without limiting the scope and generality of the foregoing, the Bank shall have the following specific objects, purposes and powers:
 - i. To conduct a general banking business through such means and at such places as the Board of Directors may deem proper.
 - ii. To sue and be sued, complain and defend, in its corporate name.
 - iii. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
 - iv. To purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

-
- v. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets, subject to the limitations hereinafter prescribed.
 - vi. To lend money and use its credit to assist its employees.
 - vii. To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof as may be permitted by law or appropriate regulations.
 - viii. To make contracts, guarantees and indemnity agreements and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge of or creation of security interests in, all or any of its property, franchises or income, or any interest therein.
 - ix. To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested.
 - x. To conduct its business, carry on its operations and have offices and exercise the powers granted by this section, within or without the State of Alabama.
 - xi. To elect or appoint and remove officers and agents of the Bank, define their duties and fix their compensation.
 - xii. To make and alter by its board of directors by-laws not inconsistent with its certificate of incorporation or with the laws of the State of Alabama for the administration and regulation of the affairs of the Bank.
 - xiii. To make donations for the public welfare or for charitable, scientific or educational purposes.
 - xiv. To transact any lawful business which the board of directors shall find will be in aid of governmental policy.
 - xv. To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.

-
- xvi. To be a promoter, incorporator, partner, member, trustee, associate or manager of any domestic or foreign corporation, partnership, joint venture, trust or other enterprise.
 - xvii. To consolidate or merge, before or after the completion of its works, with any other foreign or domestic corporation or corporations engaged in the business of banking or trust companies doing a banking business.
 - xviii. To discount bills, notes or other evidences of debt.
 - xix. To receive and pay out deposits, with or without interest, pay checks and impose charges for any services.
 - xx. To receive on special deposit money, bullion or foreign coins or bonds or other securities.
 - xxi. To buy and sell foreign and domestic exchanges, gold and silver bullion or foreign coins, bonds, bills of exchange, notes and other negotiable paper.
 - xxii. To lend money on personal security or upon pledges of bonds, stocks or other negotiable securities.
 - xxiii. To take and receive security by mortgage, security or otherwise on property, real and personal.
 - xxiv. To become trustee for any purpose and be appointed and act as executor, administrator, guardian, receiver or fiduciary.
 - xxv. To lease real and personal property upon specific request of a customer, provided that it complies with any applicable laws of the State of Alabama regulating leasing real property or improvements thereon to others.
 - xxvi. To perform computer, management and travel agency services for others.
 - xxvii. To subscribe to the capital stock and become a member of the Federal Reserve System and comply with rules and regulations thereof
 - xxviii. To do business and exercise directly or through operating subsidiaries any powers incident to the business of banks.

4. The duration of the corporation shall be perpetual.

-
5. The Board of Directors is expressly authorized from time to time to fix the number of Directors which shall constitute the entire Board, subject to the following:
- a. The number of Directors constituting the entire Board shall be fixed from time to time by vote of a majority of the entire Board; provided, however, that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in office; provided further, that the number of Directors shall not be less than five (5) nor more than twenty-five (25). Each Director shall be the record owner of the requisite number of shares of common stock of the Bank's parent bank holding company fixed by the appropriate regulatory authorities.
- b. Notwithstanding any other provisions of this Second Amended and Restated Certificate of Incorporation or the by-laws of the Bank (and notwithstanding the fact that some lesser percentage may be specified by law, this Second Amended and Restated Certificate of Incorporation or the by-laws of the Bank), any Director or the entire Board of Directors of the Bank may be removed at any time, with or without cause, by the affirmative vote of the holder(s) of ninety percent (90%) or more of the outstanding shares of capital stock of the Bank entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of stockholders called for that purpose.
6. The aggregate number of shares of capital stock which the Bank shall have authority to issue is thirty thousand five hundred forty-six (30,546) shares, which shall be common stock, par value five dollars (\$5.00) per share (the "Common Stock"). The Bank shall not issue fractional shares of stock, but shall pay in cash the fair value of fractions of a share as of the time when those otherwise entitled to receive such fractions are determined.
- a. Stockholders shall not have pre-emptive rights to purchase shares of any class of capital stock of the Bank. The Bank, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the stockholders.
- b. Authority is hereby expressly granted to the Board of Directors from time to time to issue any authorized but unissued shares of Common Stock for such consideration and on such terms as it may determine. Every share of Common Stock of the Bank shall have one vote at any meeting of stockholders and may be voted by the stockholders of record either in person or by proxy.
- c. In the event of any liquidation, dissolution or winding up of the Bank, or upon the distribution of the assets of the Bank, the assets of the Bank remaining after satisfaction of all obligations and liabilities shall be divided and distributed ratably among the holders of the Common Stock. Neither the merger nor the consolidation of the Bank with another corporation, nor the sale or lease of all or substantially all of the assets of the Bank, shall be deemed to be a liquidation, dissolution or winding up of the Bank or a distribution of its assets.
7. The Chief Executive Officer, Secretary, Board of Directors or holder(s) of at least 90% of the issued and outstanding voting stock of the Bank may call a special meeting of stockholders at any time. The Bank shall notify stockholders of the place, if any, date and time of each annual and special meeting of stockholders no fewer than ten (10) nor more than sixty (60) days before the meeting date, such notice to be delivered to each stockholder of record at the address as shown upon the stock transfer book of the Bank. Notice of a special meeting of stockholders shall include a description of the purpose or purposes for which the meeting is called.
8. The Bank reserves the right to amend, alter, change or repeal any provision contained in this Second Amended and Restated Certificate of Incorporation, in the manner now or hereafter provided by law, at any regular or special meeting of stockholders, and all rights conferred upon officers, directors and stockholders of the Bank hereby are granted subject to this reservation.

9. The Bank shall indemnify its officers, directors, employees and agents in accordance with the indemnification provisions set forth in the by-laws of the Bank, as may be amended from time to time, and in all cases in accordance with applicable laws and regulations.

10. To the extent not inconsistent with the provisions of the Banking Code or the rules, regulations or orders of the Superintendent of the Alabama State Banking Department, and pursuant to Section 10A-2A-17.01 of the ABCL, the Bank hereby elects to be governed by the provisions of the ABCL, and all references in this Second Amended and Restated Certificate of Incorporation to the ABCL shall mean the Alabama Business Corporation Law of 2019.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned hereby certifies that, in accordance with applicable law, this Second Amended and Restated Certificate of Incorporation has been adopted by the Bank as of the 6th day of August, 2020.

By: /s/ Hope D. Mehlman

Hope D. Mehlman

Executive Vice President, Corporate Secretary, Chief
Governance Officer, and Deputy General Counsel

STATE OF ALABAMA

MONTGOMERY COUNTY

I, Mike Hill, as Superintendent of Banks for the State of Alabama, do hereby certify that I have fully and duly examined the foregoing Second Amended and Restated Certificate of Incorporation whereby the shareholder of Regions Bank, a banking corporation located at Birmingham, Alabama, proposes to Amend and Restate the Certificate of Incorporation.

See attached Articles of Amendment which Amend and Restate the Certificate of Incorporation of Regions Bank.

I do hereby certify that said Second Amended and Restated Certificate of Incorporation appear to be in substantial conformity with the requirements of law and they are hereby approved. Upon the filing of the same, together with this Certificate of Approval, with the proper agency as required by law, the Second Amended and Restated Certificate of Incorporation of said bank shall be effective.

Given under my hand and seal of office this the 3rd day of August, 2020.

By: /s/ Mike Hill
Mike Hill
Superintendent of Banks

BY-LAWS OF
REGIONS BANK

(As amended and restated July 21, 2021)

ARTICLE I. OFFICES**Section 1. Registered Office.**

The registered office of Regions Bank (the "Bank") shall be maintained at the office of the Corporation Service Company, Inc., in the City of Montgomery, in the County of Montgomery, in the State of Alabama, or such other location as may be designated by the Board of Directors. Corporation Service Company, Inc. shall be the registered agent of the Bank unless and until a successor registered agent is appointed by the Board of Directors.

Section 2. Other Offices.

The Bank may have other offices at such places as the Board of Directors may from time to time appoint or the business of the Bank may require.

Section 3. Principal Place of Business.

The principal place of business of the Bank shall be in Birmingham, Alabama.

ARTICLE II. MEETINGS OF STOCKHOLDERS**Section 1. Annual Meeting.**

Annual meetings of stockholders for the election of members of the Board of Directors ("Directors") and for such other business as the Board of Directors may determine, shall be held at such place, time and date as the Board of Directors, by resolution, shall determine.

Section 2. Special Meetings.

The Chief Executive Officer, Secretary, Board of Directors or holder(s) of at least ninety percent (90%) of the issued and outstanding voting stock of the Bank may call a special meeting of stockholders at any time. Special meetings of stockholders may be held at such place, time and date as shall be stated in the notice of the meeting.

Section 3. Voting.

The vote of a majority of the votes cast by the shares entitled to vote on any matter at a meeting of stockholders at which a quorum is present shall be the act of the stockholders on that matter, except as otherwise required by law or by the Certificate of Incorporation of the Bank.

Section 4. Quorum.

At each meeting of stockholders, except where otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the holders of a majority of the outstanding shares of the Bank entitled to vote on a matter at the meeting, represented in person or by proxy, shall constitute a quorum. If less than a majority of the outstanding shares are represented, a majority of the shares so represented may adjourn

the meeting from time to time without further notice, but until a quorum is secured no other business may be transacted. The stockholders present at a duly organized meeting may continue to transact business until an adjournment notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 5. Notice of Meeting.

Written or printed notice stating the place, day and time of the meeting and, in case of a special meeting of stockholders, the purpose or purposes of the meeting, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting. The notice shall also include the record date for determining the stockholders entitled to vote at the meeting, if that date is different from the record date for determining stockholders entitled to notice of the meeting. Such notice may be communicated in person, by telephone, teletype, telecopier, facsimile transmission or other form of electronic communication, or by mail or private carrier. The notice shall be deemed to have been delivered (i) if mailed postage prepaid and correctly addressed to a stockholder, upon deposit in the United States mail; (ii) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a stockholder, the earliest of when it is actually received or (A) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee or (B) five (5) days after it is deposited in the United States mail; or (iii) if an electronic transmission, when (A) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission and (B) it is in a form capable of being processed by that system. The attendance of a stockholder at a meeting shall constitute a waiver of lack of notice or defective notice of such meeting, unless the stockholder expresses such objection at the beginning of the meeting, and shall constitute a waiver of any objection to the consideration of a particular matter that is not within the purpose or purposes described in the notice, unless the stockholder objects to considering the matter before action is taken thereon.

Section 6. Informal Action by Stockholders.

Any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting, and without prior notice, if one or more consents in writing setting forth the action so taken are signed by the holders of outstanding stock having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares of stock entitled to vote on the action were present and voted. The action must be evidenced by one or more written consents describing the action taken, signed by the stockholders approving the action and delivered to the Bank for filing by the Bank with the minutes or corporate records. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent is delivered to the Bank as required by this section, written consents signed by sufficient stockholders to take the action have been delivered to the Bank. A written consent may be revoked by a writing to that effect delivered to the Bank before unrevoked written consents sufficient in number to take the corporate action have been delivered to the Bank.

A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. The action taken by written consent shall be effective when written consents signed by sufficient stockholders to take the action have been delivered to the Bank.

If action is taken by less than unanimous written consent of the stockholders, the Bank shall give its nonconsenting stockholders written notice of the action not more than ten (10) days after written consents sufficient to take the action have been delivered to the Bank. The notice must reasonably describe the action taken and contain or be accompanied by the same material that would have been required to be sent to stockholders in a notice of a meeting at which the action would have been submitted to the stockholders for action.

ARTICLE III. DIRECTORS

Section 1. Number and Term.

The number of Directors that shall constitute the whole Board of Directors shall be fixed, from time to time, by resolutions adopted by the Board of Directors, but shall not be less than five (5) persons or more than twenty-five (25) persons. The number of Directors shall not be reduced so as to shorten the term of any Director in office at the time.

Directors elected at each annual or special meeting or appointed pursuant to Article III, Section 4 of these By-Laws shall hold office until the next annual meeting and until his or her successor shall have been elected and qualified, or until his or her earlier retirement, death, resignation or removal. Directors need not be residents of Alabama.

Section 2. Chair of the Board and Lead Independent Director.

The Board of Directors shall by majority vote designate from time to time from among its members a Chair of the Board of Directors. The Chair of the Board of Directors shall preside at all meetings of the stockholders and of the Board of Directors. He or she shall have and perform such duties as prescribed by these By-Laws and by the Board of Directors. The position of Chair of the Board of Directors is a Board position; provided, however, the position of Chair of the Board of Directors may be held by a person who is also an officer of the Bank.

In the absence of the Chair of the Board of Directors, or in the case he or she is unable to preside, the Lead Independent Director, if at the time a Director of the Bank has been designated by the Board of Directors as such, shall have and exercise all powers and duties of the Chair of the Board of Directors and shall preside at all meetings of the Board of Directors. If at any Board of Directors meeting neither of such persons is present or able to act, the Board of Directors shall select one of its members as acting chair of the meeting or any portion thereof.

Section 3. Resignations.

Any Director may resign at any time. All resignations shall be made in writing, and shall take effect at the time of receipt by the Chair of the Board of Directors, Chief Executive Officer, President or Secretary or at such other time as may be specified therein. The acceptance of a resignation shall not be necessary to make it effective.

Section 4. Vacancies.

If the office of any Director becomes vacant, including by reason of resignation or removal, or the size of the Board of Directors is increased, the remaining Directors in office, even if less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy or new position, and such person shall hold office for the unexpired term and until his or her successor shall be duly chosen.

Section 5. Removal.

Any Director may be removed at any time, with or without cause, by the affirmative vote of the holders of ninety percent (90%) or more of the outstanding shares of capital stock of the Bank entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of stockholders called for that purpose.

Section 6. Powers.

The business and affairs of the Bank shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by applicable law, the Certificate of Incorporation of the Bank or pursuant to these By-Laws.

Section 7. Meetings.

Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by the Board of Directors; provided, however, that such regular meetings shall be held at intervals in compliance with the Alabama Banking Code, Section 5-1A-1 *et seq.* of the Code of Alabama 1975, as amended (together with any act amendatory thereof, supplementary thereto or substituted therefor, hereinafter referred to as the "Banking Code").

Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, Lead Independent Director, Chief Executive Officer or President, or Secretary on the request of any two members of the Board of Directors, on at least two (2) days' notice to each Director and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the notice of such meeting.

Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone, video or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting. Notice of any special meeting of the Board of Directors need not be given personally, and may be given by United States mail, postage prepaid or by any form of electronic communication, and shall be deemed to have been given on the date such notice is transmitted by the Bank (which, if notice is mailed, shall be the date when such notice is deposited in the United States mail, postage prepaid, directed to the applicable Director at such Director's address as it appears on the records of the Bank).

Section 8. Quorum; Vote Required for Action.

A majority of the Directors shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned. The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Certificate of Incorporation or these By-Laws shall require a vote of a greater number.

Section 9. Compensation.

Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, the Board of Directors shall have the authority to fix the compensation of Directors. Nothing herein contained shall be construed to preclude any Director from serving the Bank in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

Section 10. Action Without Meeting.

Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board of Directors, or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or committee. Action taken under this section is the act of the Board of Directors when one or more consents signed by all of the Directors are delivered to the Bank. The consent may specify a later time as the time at which the action taken is to be

effective. A Director's consent may be withdrawn by a revocation signed by the Director and delivered to the Bank before delivery to the Bank of unrevoked written consents signed by all of the Directors. A consent signed under this section has the effect of action taken at a meeting of the Board of Directors and may be described as such in any document.

Section 11. Committees.

A majority of the Board of Directors shall have the authority to designate one or more committees, each committee to consist of one or more of the Directors of the Bank. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any committee of the Board of Directors, to the extent provided in the resolutions of the Board of Directors or in these By-Laws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Bank and may authorize the seal of the Bank to be affixed to all papers that may require it, in each case to the fullest extent permitted by applicable law. In the absence or disqualification of any member of a committee from voting at any meeting of such committee, the remaining member or members thereof present at such meeting and not disqualified from voting, whether or not the remaining member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at such meeting in the place of any such absent or disqualified member.

Section 12. Eligibility.

No person shall be eligible to serve as Director of the Bank unless such person shall be the owner of shares of stock of the parent holding company of the number and held in the manner sufficient to meet the requirements of any applicable law or regulation in effect requiring the ownership of Directors' qualifying shares.

Section 13. Directors Protected.

In accordance with the Alabama Business Corporation Law, Chapter 2A of Title 10A of the Code of Alabama (1975), or any statute amendatory or supplemental thereof (the "Corporation Law") and specifically Section 10A-2A-8.30, each Director shall, in the performance of his or her duties, be fully protected in relying in good faith upon information, opinions, reports or statements, including financial statements and other financial data, made to the Directors by the officers or employees of the Bank; legal counsel, public accountants, certified public accountants or other persons as to matters the Director reasonably believes are within the person's professional or expert competence; or a committee of the Board of Directors of which he or she is not a member if the Director reasonably believes the committee merits confidence, or in relying in good faith upon other records or books of account of the Bank.

ARTICLE IV. OFFICERS

Section 1. Officers, Elections, Terms.

The officers of the Bank shall be a Chief Executive Officer; a President; one or more vice presidents or directors (referring in this context to service in an officer capacity), who may be designated Senior Executive Vice Presidents, Executive Vice Presidents, Executive Managing Directors, Senior Vice Presidents, Managing Directors, Vice Presidents, Directors, and Assistant Vice Presidents; a Secretary; one or more Assistant Secretaries; a Chief Financial Officer; a Controller; an Auditor; and such other officers as may be deemed appropriate. All of such officers shall be appointed annually by the Board of Directors to serve for a term of one (1) year and until their respective successors are appointed and qualified or until such officer's earlier death, resignation, retirement or removal, except that the Board of Directors may delegate the authority to appoint officers holding the position of Senior Executive Vice President and below in accordance with procedures established or modified by the Board from time to time. None of the officers of the Bank need be Directors. More than one office may be held by the same person. The conduct of the business and affairs of the Bank by the officers shall be subject to the oversight of the Board of Directors and of any committee of the Board of Directors having authority over the subject matter.

Section 2. Chief Executive Officer.

The Board of Directors shall appoint a Chief Executive Officer of the Bank. The Chief Executive Officer is the most senior executive officer of the Bank, and shall be vested with authority to act for the Bank in all matters and shall have general supervision of the Bank and of its business affairs, including authority over the detailed operations of the Bank and over its personnel, with full power and authority during intervals between sessions of the Board of Directors to do and perform in the name of the Bank all acts and deeds necessary or proper, in his or her opinion, to be done and performed and to execute for and in the name of the Bank all instruments, agreements and deeds that may be authorized to be executed on behalf of the Bank or may be required by law. The Chief Executive Officer may, but need not, also hold the office of President.

Section 3. President.

The President shall have, and may exercise, the authority to act for the Bank in all ordinary matters and perform other such duties as directed by the By-Laws, the Board of Directors or the Chief Executive Officer. Among the officers of the Bank, the President is subordinate to only the Chief Executive Officer and is senior to the other officers of the Bank. The authority of the President shall include authority over the detailed operations of the Bank and over its personnel with full power and authority during intervals between sessions of the Board of Directors to do and perform in the name of the Bank all acts and deeds necessary or proper, in his or her opinion, to be done and performed and to execute for and in the name of the Bank all instruments, agreements and deeds that may be authorized to be executed on behalf of the Bank or may be required by law.

Section 4. Vice Presidents.

The vice presidents or directors, who may be designated as Senior Executive Vice Presidents, Executive Vice Presidents, Executive Managing Directors, Senior Vice Presidents, Managing Directors, Vice Presidents, Directors, and Assistant Vice Presidents, shall, subject to the control of the Chief Executive Officer or the President, have and may exercise the authority vested in them in all proper matters, including authority over the detailed operations of the Bank and over its personnel.

Section 5. Chief Financial Officer.

The Chief Financial Officer, or his or her designee, shall have and perform such duties as are incident to the office of Chief Financial Officer and such other duties as may from time to time be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President.

Section 6. Secretary and Assistant Secretary.

The Secretary shall keep minutes of all meetings of the stockholders and the Board of Directors unless otherwise directed by either of those bodies. The Secretary, or in his or her absence, any Assistant Secretary, shall attend to the giving and serving of all notices of the Bank. The Secretary shall perform all of the duties incident to the office of Secretary and shall do and perform such other duties as may from time to time be assigned by the Board of Directors, the Chair of the Board of Directors, the Chief Executive Officer or the President.

Section 7. Controller.

The Controller shall, under the direction of the Chief Executive Officer, the President, the Chief Financial Officer or other more senior officer, have general supervision and authority over all reports required of the Bank by law or by any public body or officer or regulatory authority pertaining to the condition of the Bank and its assets and liabilities. The Controller shall have general supervision of the books and accounts of the Bank and its methods and systems of recording and keeping accounts of its business transactions and of its assets and liabilities. The Controller shall be responsible for preparing statements showing the financial condition of the Bank and shall furnish such reports and financial records as may be required of him or her by the Board of Directors or by the Chief Executive Officer, the President, the Chief Financial Officer or other more senior officer.

Section 8. Auditor.

The Auditor's office may be filled by an employee of the Bank or his or her duties may be performed by an employee or committee of the parent company of the Bank. The Auditor shall have general supervision of the auditing of the books and accounts of the Bank, and shall continuously and from time to time check and verify the Bank's transactions, its assets and liabilities, and the accounts and doings of the officers, agents and employees of the Bank with respect thereto. The Auditor, whether an employee of the Bank or of its parent, shall be directly accountable to and under the jurisdiction of the Board of Directors and, if applicable, its designated committee, acting independently of all officers, agents and employees of the Bank. The Auditor shall render reports covering matters in his or her charge regularly and upon request to the Board and, if applicable, its designated committee.

Section 9. Other Officers and Agents.

The Board of Directors may appoint such other officers and agents as it may deem advisable, such as General Counsel, who shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. The functions of a cashier of the Bank may be performed by the Controller or any other officer of the Bank whose area of responsibility includes the function to be performed.

Section 10. Management Policymaking Committee.

Pursuant to the By-Laws of Regions Financial Corporation, the Chief Executive Officer shall establish and name (and may rename from time to time) an executive management committee to develop, publish and implement policies and procedures for the operation of Regions Financial Corporation and its subsidiaries and affiliates, including the Bank.

Section 11. Officer in Charge of Wealth Management.

The officer in charge of Wealth Management shall be designated as such by the Board of Directors and shall exercise general supervision and management over the affairs of Private Wealth Management, Institutional Services and Wealth Management Middle Office, which groups are responsible for exercise of the Bank's trust powers. Such officer is hereby empowered to appoint all necessary agents or attorneys; also to make, execute and acknowledge all checks, bonds, certificates, deeds, mortgages, notes, releases, leases, agreements, contracts, bills of sale, assignments, transfers, powers of attorney or of substitution, proxies to vote stock, or any other instrument in writing that may be necessary in the purchase, sale, mortgage, lease, assignment, transfer, management or handling, in any way of any property of any description held or controlled by the Bank in any fiduciary capacity. Said officer shall have such other duties and powers as shall be designated by the Board of Directors.

Section 12. Other Officers in Private Wealth Management, Institutional Services and Wealth Management Middle Office.

The officer in charge of Wealth Management shall appoint officers responsible for the activities of Private Wealth Management, Institutional Services and Wealth Management Middle Office. Various other officers as designated by the officers responsible for the activities of Private Wealth Management, Institutional Services and Wealth Management Middle Office are empowered and authorized to make, execute and acknowledge all checks, bonds, certificates, deeds, mortgages, notes, releases, leases, agreements, contracts, bills of sale, assignments, transfers, powers of attorney or substitution, proxies to vote stock or any other instrument in writing that may be necessary to the purchase, sale, mortgage, lease, assignments, transfer, management or handling in any way, of any property of any description held or controlled by the Bank in any fiduciary capacity.

Section 13. Removal and Resignation of Officers.

At its pleasure, the Board of Directors may remove any officer from office at any time by a majority vote of the Board of Directors; provided, however, that the terms of any employment or compensation contract shall be honored according to its terms. An individual's status as an officer will terminate without the necessity of any other action or ratification immediately upon termination for any reason of the individual's employment by the Bank. Any officer may resign at any time by delivering notice (whether written or verbal) to the Bank. Such resignation shall be effective immediately unless the notice of resignation specifies a later effective date.

ARTICLE V. MISCELLANEOUS**Section 1. Certificates of Stock.**

Certificates of stock of the Bank shall be signed by the President and the Secretary of the Bank, which signatures may be represented by a facsimile signature. The certificate may be sealed with the seal of the Bank or an engraved or printed facsimile thereof. The certificate represents the number of shares of stock registered in certificate form owned by such holder.

Section 2. Lost Certificates.

In case of the loss or destruction of any certificate of stock, the holder or owner of same shall give notice thereof to the Chief Executive Officer, the President, any Senior Executive Vice President or the Secretary of the Bank and, if such holder or owner shall desire the issue of a new certificate in the place of the one lost or destroyed, he or she shall make an affidavit of such loss or destruction and deliver the same to any one of said officers and accompany the same with a bond with surety satisfactory to the Bank to indemnify the Bank and save it harmless against any loss, cost or damage in case such certificate should thereafter be presented to the Bank, which affidavit and bond shall be, at the discretion of the deciding party listed in this Section 2, unless so ordered by a court having jurisdiction over the matter, approved or rejected by the Board of Directors, the Chief Executive Officer, the President or a Senior Executive Vice President before the issue of any new certificate.

Section 3. Transfer of Shares.

Title to a certificate and to the shares represented thereby can be transferred only by delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or by delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

Section 4. Fractional Shares.

No fractional part of a share of stock shall be issued by the Bank.

Section 5. Stockholders Record Date.

In order that the Bank may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive any rights in respect of any change, conversion or exchange of stock or for any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Dividends.

Subject to the provisions of the Certificate of Incorporation, at any regular or special meeting the Board of Directors may, out of funds legally available therefor, declare dividends upon the capital stock of the Bank as and when it deems expedient. Before declaring any dividend, there may be set apart out of any fund of the Bank available for dividends, such sum or sums as the Directors, from time to time in their discretion, deem proper for working capital; as a reserve fund to meet contingencies; for equalizing dividends; or for such other purposes as the Directors shall deem conducive to the interests of the Bank. No dividends shall be declared that exceed the amounts authorized by applicable laws and regulations or are otherwise contrary to law.

Section 7. Seal.

The Bank may have a corporate seal, which shall have the name of the Bank inscribed thereon and shall be in such form as prescribed by the Board of Directors from time to time. The seal may also include appropriate descriptors, such as the words: "An Alabama Banking Corporation." The Secretary of the Bank shall have custody of the seal and is authorized to affix the same to instruments, documents and papers as required by law or as customary or appropriate in the Secretary's judgment and discretion. Without limiting the general authority of the Board of Directors of the Bank to name, appoint, remove and define the duties of officers of the Bank, the Secretary is further authorized to cause reproductions of the seal to be made, distributed to and used by officers and employees of the Bank whose duties and responsibilities involve the execution and delivery of instruments, documents and papers bearing the seal of the Bank. In this regard, the Secretary is further authorized to establish, implement, interpret and enforce policies and procedures governing the use of the seal and the authorization by the Secretary of officers and employees of the Bank to have custody of and to use the seal. Such policies and procedures may include (i) the right of the Secretary to appoint any Bank employee as an Assistant Secretary of the Bank, if such appointment would, in the Secretary's judgment, be convenient with respect to such employee's custody and use of a seal and/or (ii) the right of the Secretary to authorize Bank employees to have and use seals as delegates of the Secretary without appointing such employees as Assistant Secretaries of the Bank.

Section 8. Fiscal Year.

The fiscal year of the Bank shall be the calendar year.

Section 9. Checks, Drafts, Transfers, Services, etc.

The Chief Executive Officer, the President, any vice president or director, any Assistant Vice President, any Branch Manager, any Financial Relationship Specialist, any Financial Relationship Consultant or any other employee designated by the Board of Directors is authorized and empowered on behalf of the Bank and in its name to sign and endorse checks and warrants; to execute and deliver any and all documents that are necessary or desirable in connection with the opening of customer deposit accounts with the Bank, including, without limitation, documents associated with establishing treasury management services in connection with deposit accounts; documents requested or required by a third party in connection with the opening or rollover of individual retirement accounts to the Bank or otherwise; draw drafts; issue and sign cashier's checks; guarantee signatures; give receipts for money due and payable to the Bank; and sign such other papers and do such other acts as are necessary in the performance of his or her duties. The authority conveyed to any employee designated by the Board of Directors may be limited by general or specific resolution of the Board of Directors.

Section 10. Notice and Waiver of Notice.

Whenever any notice whatever is required to be given under the provisions of any law or under the provisions of the Certificate of Incorporation of the Bank or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of business at the meeting because the meeting is not lawfully called or convened.

Section 11. Right of Indemnity.

To the full extent provided for and in accordance with the Corporation Law, and specifically Section 10A-2A-8.50 *et seq.*, the Bank shall indemnify and hold harmless each Director and each officer now or hereafter serving the Bank against any loss and reasonable expenses actually and necessarily incurred by him

or her in connection with the defense of any claim, or any action, suit or proceeding against him or her or in which he or she is made a party, by reason of him or her being or having been a Director or officer of the Bank, or who, while a Director or officer of the Bank, is or was serving at the Bank's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. Such right of indemnity shall not be deemed exclusive of any other rights to which such Director or officer may be entitled under any statute, article of incorporation, rule of law, other bylaw, agreement, vote of stockholders or directors, or otherwise. Nor shall anything herein contained restrict the right of the Bank to indemnify or reimburse any officer or Director in any proper case even though not specifically provided for herein.

Notwithstanding anything to the contrary, the Bank shall not make or agree to make any indemnification payment to a Director or officer or any other institution-affiliated party (as such term is defined in 12 CFR § 359.1) with respect to (i) any civil money penalty or judgment resulting from any administrative or civil action instituted by any federal banking agency, except in full compliance with 12 CFR Part 359, (ii) any assessment, order of restitution, penalty or similar liability imposed under authority of the Banking Code, or (iii) any liability for violation of Section 10A-2A-8.32 of the Corporation Law.

In advance of final disposition, the Bank may, but is not required to, pay for or reimburse the reasonable expenses incurred by a person who may become eligible for indemnification under this Article V, Section 11, provided the conditions set forth in Section 10A-2A-8.53 of the Corporation Law (and, if applicable, 12 CFR § 359.5) shall have been satisfied.

The Bank may purchase and maintain insurance on behalf of said Directors or officers against liability asserted against or incurred by a Director or officer acting in such capacity as described in these By-Laws. Such insurance coverage shall not be used to pay or reimburse a person for the cost of (i) any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by any federal banking agency or (ii) any assessment or penalty imposed under authority of the Banking Code. Such insurance coverage may be used to pay any legal or professional expenses incurred in connection with such proceeding or action or the amount of any restitution to the Bank. Any insurance coverage of legal or professional expenses will be coordinated with the Bank's determination whether to advance expenses in advance of final disposition, taking into account the terms and conditions of the coverage and the requirements of Section 10A-2A-8.53 of the Corporation Law.

Section 12. Execution of Instruments and Documents.

The Chief Executive Officer; the President; any Senior Executive Vice President, Executive Vice President, Senior Vice President or Vice President; or any officer holding the title of Executive Managing Director, Managing Director or Director is authorized, in his or her discretion, to do and perform any and all corporate and official acts in carrying on the business of the Bank, including, but not limited to, the authority to make, execute, acknowledge, accept and deliver any and all deeds, mortgages, releases, bills of sale, assignments, transfers, leases (as lessor or lessee), powers of attorney or of substitution, servicing or sub-servicing agreements, vendor agreements, contracts, proxies to vote stock or any other instrument in writing that may be necessary in the purchase, sale, lease, assignment, transfer, discount, management or handling in any way of any property of any description held, controlled or used by Bank or to be held, controlled or used by Bank, either in its own or in its fiduciary capacity and including the authority from time to time to open bank accounts with the Bank or any other institution; to borrow money in such amounts for such lengths of time, at such rates of interest and upon such terms and conditions as any said officer may deem proper and to evidence the indebtedness thereby created by executing and delivering in the name of the Bank promissory notes or other appropriate evidences of indebtedness; and to guarantee the obligations of any subsidiary or affiliate of the Bank. The enumeration herein of particular powers shall not restrict in any way the general powers and authority of said officers.

By way of example and not limitation, such officers of the Bank are authorized to execute, accept, deliver and issue, on behalf of the Bank and as binding obligations of the Bank, such agreements and instruments as may be within the officer's area of responsibility, including, as applicable, agreements and related documents (such as schedules, confirmations, transfers, assignments, acknowledgments and other documents) relating to derivative transactions, loan or letter of credit transactions, syndications, participations, trades, purchase and sale or discount transactions, transfers and assignments, servicing and sub-servicing agreements, vendor agreements, contracts, securitizations and transactions of whatever kind or description arising in the conduct of the Bank's business.

The authority to execute and deliver documents, instruments and agreements may be limited by resolution of the Board of Directors or a committee of the Board of Directors, by the Chief Executive Officer or by the President, by reference to subject matter, category, amount, geographical location or any other criteria and may be made subject to such policies, procedures and levels of approval as may be adopted or amended from time to time.

Section 13. Voting Bank's Securities.

Unless otherwise ordered by the Board of Directors, the Chief Executive Officer, the President, any Executive Vice President or Executive Managing Director or above, the Controller, the Bank's General Counsel and any other officer as may be designated by the Board of Directors shall have full power and authority on behalf of the Bank (i) to attend and to act and vote or (ii) to execute a proxy or proxies empowering others to attend and to act and vote, at any meetings of security holders of any of the corporations, partnerships, limited liability companies or other entities in which the Bank may hold securities and, at such meetings, such officer shall possess and may exercise any and all rights and powers incident to the ownership of such securities which, as the owner thereof, the Bank might have possessed and exercised, if present.

Section 14. Bonds of Officers and Employees.

The Board of Directors shall, pursuant to the Banking Code, designate the officers and employees who shall be required to give bond and fix the amounts thereof.

Section 15. Satisfaction of Loans.

On payment of sums lent, for which security shall have been taken either by way of mortgage or other lien on real or personal property or by the pledge of collateral, whether said loans have been made from funds of the Bank or from funds held in fiduciary capacity, any officer of the Bank shall have the power and authority to sign or execute any and all collateral release documents that may be necessary or desirable for the purpose of releasing property or property rights held by the Bank as collateral for obligations to the Bank that are paid in full or otherwise satisfied or settled and enter the fact of payment or satisfaction on the margin of the record of any such security or in any other legal manner to cancel such indebtedness and to release said security, and the Chief Executive Officer, the President or any Vice President or Director of the Bank shall have power and authority to execute a power of attorney authorizing the cancellation, release or satisfaction of any mortgage or other security given to the Bank in its corporate or fiduciary capacity, by such person as he or she may in his or her discretion appoint.

ARTICLE VI. AMENDMENTS

Except as otherwise provided herein or in the Certificate of Incorporation of the Bank, these By-Laws may be amended or repealed by the affirmative vote of a majority of the Directors then holding office at any regular or special meeting of the Board of Directors, and the stockholders may make, alter or repeal any By-Laws, whether or not adopted by them.

ARTICLE VII. EMERGENCY BY-LAWS

Section 1. Emergency By-Laws.

This Article VII shall be operative if a quorum of the Bank's Directors cannot readily be assembled because of some catastrophic event (an "emergency"), notwithstanding any different or conflicting provisions in these By-Laws, the Certificate of Incorporation or the Code of Alabama. To the extent not inconsistent with the provisions of this Article VII, the By-Laws provided in the other Articles of these By-Laws and the provisions of the Certificate of Incorporation shall remain in effect during such emergency, and upon termination of such emergency, the provisions of this Article VII shall cease to be operative.

Section 2. Meetings.

During any emergency, a meeting of the Board of Directors, or any committee thereof, may be called by any member of the Board of Directors, the President, a Senior Executive Vice President, the Secretary or an Assistant Secretary. Notice of the time and place of the meeting shall be given by any available means of communication by the individual calling the meeting to such of the Directors and/or Designated Officers, as defined in Section 3 of this Article VII, as it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the individual calling the meeting, circumstances permit. As a result of such emergency, the Board of Directors may determine that a meeting of stockholders not be held at any place, but instead be held solely by means of remote communication in accordance with the Corporation Law.

Section 3. Quorum.

At any meeting of the Board, or any committee thereof, called in accordance with Section 2 of this Article VII, the presence or participation of two Directors or one Director and a Designated Officer shall constitute a quorum for the transaction of business. In the event that no Directors are able to attend the meeting of the Board of Directors, then the Designated Officers in attendance shall serve as directors for the meeting, without any additional quorum requirement and will have full powers to act as directors of the Bank.

The Board of Directors or the committees thereof, as the case may be, shall, from time to time but in any event prior to such time or times as an emergency may have occurred, designate the officers of the Bank in a numbered list (the "Designated Officers") who shall be deemed, in the order in which they appear on such list, directors of the Bank for purposes of obtaining a quorum during an emergency, if a quorum of Directors cannot otherwise be obtained.

Section 4. By-Laws.

At any meeting called in accordance with Section 2 of this Article VII, the Board of Directors or a committee thereof, as the case may be, may modify, amend or add to the provisions of this Article VII so as to make any provision that may be practical or necessary for the circumstances of the emergency.

Section 5. Liability.

No officer, Director or employee of the Bank acting in accordance with the provisions of this Article VII shall be liable except for willful misconduct.

Section 6. Repeal or Change.

The provisions of this Article VII shall be subject to repeal or change by further action of the Board of Directors or by action of the stockholders, but no such repeal or change shall modify the provisions of Section 5 of this Article VII with regard to action taken prior to the time of such repeal or change.

Section 7. Continued Operations.

In the event of an emergency declared by the President of the United States or the person performing his or her functions, the officers and employees of the Bank will continue to conduct the affairs of the Bank under such guidance from the Directors as may be available except as to matters which by statute require specific approval of the Board of Directors and subject to conformance with any governmental directives or directives of the Federal Deposit Insurance Corporation during the emergency.

CONSENT

In accordance with Section 321(b) of the Trust Indenture Act of 1939, Regions Bank hereby consents that reports of examination of Regions Bank by Federal, State, Territorial or District regulatory authorities may be furnished by such regulatory authorities to Securities and Exchange Commission upon request therefor.

Dated: August 10, 2023

REGIONS BANK

/s/ Shawn Bednasek

Shawn Bednasek
Senior Vice President

Consolidated Report of Condition for Insured Banks and Savings Associations

REGIONS BANK

As of the close of business on March 31, 2023:

	Thousands of Dollars
ASSETS	
Cash and balances due from depository institutions:	9,463,000
Securities:	29,468,000
Federal funds sold and securities purchased under agreement to resell:	0
Loans and leases held for sale:	544,000
Loans and leases net of unearned income and allowance:	96,585,000
Trading Assets:	19,000
Premises and fixed assets:	2,157,000
Other real estate owned:	14,000
Investments in unconsolidated subsidiaries and associated companies:	136,000
Direct and indirect investments in real estate ventures:	0
Intangible assets:	6,299,000
Other assets:	8,440,000
Total Assets:	153,125,000
LIABILITIES	
Deposits	
Federal funds purchased and securities sold under agreements to repurchase	0
Trading liabilities:	0
Other borrowed money:	2,014,000
Subordinated notes and debentures:	496,000
Other Liabilities:	4,245,000
Total Liabilities	137,504,000
EQUITY CAPITAL	
Common Stock	0
Surplus	16,399,000
Retained Earnings	2,047,000
Accumulated other comprehensive income	-2,844,000
Total Equity Capital	15,621,000
Total Liabilities and Equity Capital	153,125,000

Calculation of Filing Fee Tables

Form S-3
(Form Type)

- Beazer Homes USA, Inc.
- Ballard Green Utility Company, LLC*
- Beazer Clarksburg, LLC*
- Beazer Fundamental, LLC*
- Beazer Gain, LLC*
- Beazer General Services, Inc.*
- Beazer Homes Holdings, LLC*
- Beazer Homes Indiana Holdings Corp.*
- Beazer Homes Indiana LLP*
- Beazer Homes Investments, LLC*
- Beazer Homes Sales, Inc.*
- Beazer Homes Texas Holdings, Inc.*
- Beazer Homes Texas, L.P.*
- Beazer Homes, LLC*
- Beazer Mortgage Corporation*
- Beazer Realty Corp.*
- Beazer Realty Los Angeles, Inc.*
- Beazer Realty Services, LLC*
- BH Building Products, LP*
- BH Investment Holdings, LLC*
- BH Materials, LLC*
- BH Procurement Services, Inc.*
- Clarksburg Arora LLC*
- Clarksburg Skylark, LLC*
- Dove Barrington Development LLC*
- Marshfield Land, LLC*

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial Effective Date	Filing Fee Previously Paid In Connection with Unsold Securities to be Carried Forward
Newly Registered Securities												
Fees to be Paid	Debt	Senior Debt Securities	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Debt	Subordinated Debt Securities	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Equity	Common Stock, par value .001 per share ⁽³⁾	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Equity	Preferred Stock, par value \$.01 per share	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Equity	Depository Shares ⁽⁴⁾	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Other	Warrants	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Other	Rights ⁽⁵⁾	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Other	Stock Purchase Contracts and Stock Purchase Units	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Other	Units ⁽⁶⁾	Rule 456(b) and Rule 457(r) ⁽¹⁾	(2)	(2)	(2)	(1)	(1)				
	Other	Guarantees with respect to Debt Securities ⁽⁷⁾	Rule 457(n)									
Fees Previously Paid	N/A	N/A	N/A	N/A	N/A	N/A		N/A				
Carry Forward Securities												

Carry Forward Securities	N/A	N/A	N/A	N/A		N/A			N/A	N/A	N/A	N/A
	Total Offering Amounts					(2)		(1)				
	Total Fees Previously Paid							N/A				
	Total Fee Offsets							N/A				
	Net Fee Due							(1)				

* Co-Registrant

- (1) The Registrants are relying on Rule 456(b) and Rule 457(r) under the Securities Act of 1933, as amended, to defer payment of all registration fees. In connection with the securities offered hereby, the Registrants will pay “pay-as-you-go registration fees” in accordance with Rule 456(b). The Registrants will calculate the registration fee applicable to an offer of securities pursuant to this Registration Statement based on the fee payment rate in effect on the date of such fee payment.
- (2) Not specified pursuant to General Instruction II.E of Form S-3. An indeterminate amount of securities to be offered at indeterminate prices is being registered pursuant to this Registration Statement.
- (3) Each share of common stock includes one preferred stock purchase right as described under “Description of Capital Stock.” No separate consideration will be received for the preferred stock purchase rights.
- (4) Each depository share will be issued under a deposit agreement, will represent an interest in a fractional share or multiple shares of preferred stock and will be evidenced by a depository receipt.
- (5) Rights evidencing the right to purchase common stock, preferred stock, depository shares or debt securities.
- (6) Each unit will be issued under a unit agreement or indenture and will represent an interest of two or more securities registered hereby, including shares of common stock or preferred stock, debt securities, depository shares, warrants, rights or purchase contracts, which may or may not be separable from one another.
- (7) No separate consideration will be received for the guarantees with respect to the debt securities. In accordance with Rule 457(n), no separate fee is payable with respect to the guarantees of the debt securities being registered. See “Table of Co-Registrants” for a list of the subsidiary guarantors.