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

FORM 8-K

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

Date of Report (Date of earliest event reported): January 6, 2010

BEAZER HOMES USA, INC.

(Exact name of registrant as specified in its charter)

Delaware	001-12822	58-2086934
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification No.)

1000 Abernathy Road, Suite 1200
Atlanta Georgia 30328
(Address of Principal
Executive Offices)

(770) 829-3700
(Registrant's telephone number, including area code)

None
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On January 12, 2010, Beazer Homes USA, Inc. (the "Company") completed an underwritten offering of 22,425,000 shares of its common stock, par value $0.001 per share (the "Shares"), which included the exercise of the underwriters' over-allotment option in full, pursuant to an Underwriting Agreement, dated January 6, 2010 (the "Common Stock Underwriting Agreement"), with Citigroup Global Markets Inc. and Credit Suisse Securities (USA) LLC (the "Representatives"), as representatives of the several underwriters named therein.

The offering of the Shares was made pursuant to the Company's Registration Statement on Form S-3 (File No. 333-163110) relating to the Shares, the Convertible Notes (as defined below), and other securities of the Company (the "Registration Statement"), including the Company's prospectus, dated January 4, 2010 (the "Prospectus"), as supplemented by a prospectus supplement relating to the Shares, dated January 6, 2010, filed by the Company pursuant to Rule 424(b)(5) under the Securities Act of 1933, as amended.

Also on January 12, 2010, the Company completed an underwritten offering of $57.5 million aggregate principal of amount of its 7 ½% Mandatory Convertible Subordinated Notes due 2013 (the "Convertible Notes"), which included the exercise of the underwriters' over-allotment option in full, pursuant to an Underwriting Agreement, dated January 6, 2010 (the "Convertible Notes Underwriting Agreement"), with the Representatives, as representatives of the several underwriters named therein.

The offering of the Convertible Notes was made pursuant to the Registration Statement, including the Prospectus, as supplemented by a prospectus supplement relating to the Convertible Notes, dated January 6, 2010, filed by the Company pursuant to Rule 424(b)(5) under the Securities Act of 1933, as amended.

The Company issued the Convertible Notes under an Indenture, dated as of January 12, 2010 (the "Base Indenture"), as supplemented by the First Supplemental Indenture, dated as of January 12, 2010 (the "Supplemental Indenture"), each between the Company and U.S. Bank National Association, as trustee (the "Trustee"). The Convertible Notes are general, unsecured obligations, will not be guaranteed by any of the Company's subsidiaries, and will rank junior to all of the Company's existing and future senior indebtedness and to all indebtedness of the Company's subsidiaries. The Convertible Notes will accrue interest at a rate of 7.50% per year, which will be payable in arrears on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2010.

The Convertible Notes will mature on January 15, 2013. Each Convertible Note, unless previously converted, will automatically convert at the stated maturity date into shares of the Company's common stock, par value $.001 per share (the "Common Stock"). The conversion rate for each Convertible Note will not be more than 5.4348 shares of Common Stock per $25 principal amount of Convertible Notes (the "Maximum Conversion Rate") and not less than 4.4547 shares of Common Stock per $25 principal amount of Convertible Notes (the "Minimum Conversion Rate"), depending on the applicable market value of the Common Stock at the time of conversion, subject, in each case, to customary anti-dilution adjustments. In the event the Company's consolidated tangible

net worth (as defined in the Supplemental Indenture), measured as of the last day of each fiscal quarter, shall be less than $85,000,000, the Company has the right to require holders to convert all, but not less than all, of the Convertible Notes then outstanding for shares of Common Stock at the then-applicable Maximum Conversion Rate, in addition to a make-whole payment equal to (x) any accrued and unpaid interest on the Convertible Notes plus (y) the present value of the remaining interest payments on the Convertible Notes. At the Company's option, it may satisfy any such make-whole payment by delivering additional shares of Common Stock to the converting holder. Except in the limited circumstances described above, the Company may not redeem or require the conversion of the Convertible Notes prior to the stated maturity date.

Prior to the maturity date, holders may convert the Convertible Notes, in whole or in part, into shares of Common Stock at the then-applicable Minimum Conversion Rate. If the Company undergoes a fundamental change prior to January 15, 2013, holders may convert the Convertible Notes into shares of Common Stock at a specified conversion rate that is calculated based on the stock price of the Common Stock at the time of the fundamental change, as set forth in the Indenture, and will be entitled to a make-whole payment equal to (x) any accrued and unpaid interest on the Convertible Notes plus (y) the present value of the remaining interest payments on the Convertible Notes. At the Company's option, it may satisfy any such make-whole payment by delivering additional shares of Common Stock to the converting holder.

On January 7, 2010, the Company entered into a First Amendment (the "Amendment") to the Section 382 Rights Agreement (the "Rights Agreement"), dated as of July 31, 2009, between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent (the "Rights Agent"). Pursuant to the Amendment, the "Expiration Date" of the "Rights" (each as defined in the Rights Agreement) was advanced to 9:00 A.M. (Eastern Time) on January 7, 2010. As a result of the Amendment, as of 9:00 A.M. (Eastern Time) on January 7, 2010, the Rights were no longer outstanding and were not exercisable and the Rights Agreement was terminated and of no further force or effect.

The foregoing descriptions of the Common Stock Underwriting Agreement, the Convertible Notes Underwriting Agreement, the Base Indenture, the Supplemental Indenture and the Amendment do not purport to be complete and are qualified in their entirety by reference to the copies or forms of such documents filed herewith as Exhibits 1.1, 1.2, 4.1, 4.2 and 4.4, respectively, all of which are incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

On January 7, 2010, U.S. Bank National Association, as trustee (the "2011 Notes Trustee"), at the request of the Company, issued a notice to holders of the Company's outstanding 8 5/8% Senior Notes due 2011 (the "2011 Notes") of the Company's redemption in full of the 2011 Notes. On January 8, 2010, the Company irrevocably deposited the full redemption price for the 2011 Notes with the 2011 Notes Trustee and discharged the Indenture, dated as of May 21, 2001, between the Company and the 2011 Notes Trustee, governing the 2011 Notes (the "2011 Notes Redemption"). The aggregate redemption price for the 2011 Notes was $129,296,691.81, an amount equal to 100% of the then-outstanding principal amount of the 2011 Notes plus accrued interest to the redemption date, which is January 22, 2010. The Company will use a portion of the net proceeds from the offerings of the Shares and the Convertible Notes to replenish funds used in connection with the 2011 Notes Redemption.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.03. Material Modification to Rights of Security Holders.

The information relating to the Amendment set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On January 12, 2010, the Company issued a press release attached hereto as Exhibit 99.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

1.1	Common Stock Underwriting Agreement, dated January 6, 2010, between Beazer Homes USA, Inc. and the underwriters party thereto
1.2	Convertible Notes Underwriting Agreement, dated January 6, 2010, between Beazer Homes USA, Inc. and the underwriters party thereto
4.1	Indenture, dated January 12, 2010, between Beazer Homes USA, Inc. and the U.S. Bank National Association
4.2	First Supplemental Indenture, dated January 12, 2010, between Beazer Homes USA, Inc. and U.S. Bank National Association
4.3	Form of 7 ½% Mandatory Convertible Notes due 2013 (included in Exhibit 4.2 hereof)
4.4	First Amendment to Section 382 Rights Agreement, dated as of January 7, 2010, between Beazer Homes USA, Inc. and American Stock Transfer & Trust Company, LLC.
5.1	Opinion of Troutman Sanders LLP relating to the Shares
5.2	Opinion of Troutman Sanders LLP relating to the Convertible Notes
23.1	Consent of Troutman Sanders LLP (included in Exhibit 5.1)
23.2	Consent of Troutman Sanders LLP (included in Exhibit 5.2)
99.1	Press Release dated January 12, 2010

SIGNATURES

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

BEAZER HOMES USA, INC.

Date: January 12, 2010

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President and
Chief Financial Officer

Exhibit 1.1

BEAZER HOMES USA, INC.

19,500,000 Shares
Common Stock
(par value $.001 per share)

UNDERWRITING AGREEMENT

January 6, 2010
New York, New York

Citigroup Global Markets Inc.
Credit Suisse Securities (USA) LLC
As Representatives of the Underwriters
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

Beazer Homes USA, Inc., a Delaware corporation (the "**Company**"), agrees with you as follows:

1. Issuance of Securities. The Company proposes to issue and sell to the several parties listed on Schedule I hereto (the "**Underwriters**"), for whom Citigroup Global Markets Inc. and Credit Suisse Securities (USA) LLC are acting as representatives (the "**Representatives**"), an aggregate of 19,500,000 shares of common stock, par value $.001 per share (the "**Common Stock**"), of the Company (the "**Underwritten Securities**"). The Company also proposes to grant to the Underwriters the option to purchase up to an additional 2,925,000 shares of Common Stock to cover over-allotments, if any (the "**Option Securities**"; the Option Securities, together with the Underwritten Securities, being hereafter called the "**Securities**"). The Securities will have attached thereto preferred share purchase rights (the "**Rights**") pursuant to a Section 382 Rights Agreement, dated as of July 31, 2009 (the "**Rights Agreement**"), between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent, unless such Rights Agreement is terminated prior to the Closing Date (as defined below).

The Company meets the requirements for use of Form S-3 under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "**Act**"), and has prepared and filed with the Securities and Exchange Commission (the "**Commission**") a registration statement on Form S-3 (File No. 333-163110) under the Act, including a related Base Prospectus, for registration under the Act of the offering and sale of the Securities. Such Registration Statement, including any amendments thereto filed on or prior to the date hereof has become effective. The Company may have filed with the Commission, as part of an amendment to the Registration Statement or pursuant to Rule 424(b) under the Act, one or more preliminary prospectus supplements relating to the Securities, each of which has previously been furnished to you. The Registration Statement meets the requirements set forth in

Rule 415(a)(1)(x) under the Act. The initial Effective Date of the Registration Statement was not earlier than the date three years before the date hereof.

The terms that follow, when used in this Agreement, shall have the meanings indicated:

"**Applicable Time**" shall mean 5:30 p.m. (Eastern time) on the date of this Agreement.

"**Base Prospectus**" shall mean the base prospectus contained in the Registration Statement at the Applicable Time.

"**Business Day**" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

"**Effective Date**" shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or becomes effective.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Final Prospectus**" shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) under the Act after the Applicable Time, together with the Base Prospectus.

"**Free Writing Prospectus**" shall mean a free writing prospectus, as defined in Rule 405 under the Act.

"**Issuer Free Writing Prospectus**" shall mean an issuer free writing prospectus, as defined in Rule 433 under the Act.

"**Preliminary Prospectus**" shall mean any preliminary prospectus supplement to the Base Prospectus which is used prior to the filing of the Final Prospectus, together with the Base Prospectus.

"**Pricing Disclosure Package**" shall mean (i) the Base Prospectus, (ii) the Preliminary Prospectus used most recently prior to the Applicable Time, (iii) the information set forth on Schedule IV hereto, (iv) the Issuer Free Writing Prospectuses, if any, identified in Schedule V hereto, and (v) any other Free Writing Prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Pricing Disclosure Package.

"**Registration Statement**" shall mean the registration statement on Form S-3 (File No. 333-163110), including exhibits and financial statements and any prospectus supplement relating to the Securities that is filed with the Commission pursuant to Rule 424(b) under the Act and deemed part of such registration statement pursuant to Rule

430B under the Act, as amended on each Effective Date and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be.

"**Rule 462(b) Registration Statement**" shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the registration statement on Form S-3 (File No. 333-163110) referred to in the immediately preceding paragraph.

Unless stated to the contrary, any references herein to the terms "Registration Statement," "Base Prospectus," "Preliminary Prospectus" or "Final Prospectus" shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include any information filed under the Exchange Act subsequent to the date hereof that is incorporated by reference therein. All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" (or other references of like import) in the Registration Statement, Pricing Disclosure Package (including the Preliminary Prospectus) or Final Prospectus shall be deemed to mean and include all such financial statements and schedules and other information which are incorporated by reference in the Registration Statement, Pricing Disclosure Package (including the Preliminary Prospectus) or Final Prospectus, as the case may be.

2. Agreements to Sell and Purchase. On the basis of the representations, warranties and covenants of the Underwriters contained in this Agreement, the Company agrees to issue and sell to the Underwriters, and, on the basis of the representations, warranties and covenants of the Company contained in this Agreement and subject to the terms and conditions contained in this Agreement, each of the Underwriters, severally and not jointly, agrees to purchase from the Company, the number of Underwritten Securities set forth opposite its name on Schedule I attached hereto. The purchase price for the Underwritten Securities shall be $4.37 per share.

On the basis of the representations, warranties and covenants of the Underwriters contained in this Agreement, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to 2,925,000 Option Securities at the same purchase price per share as the Underwriters shall pay for the Underwritten Securities. Said option may be exercised only to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written or telegraphic notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are exercising the option and the settlement date. The number of Option Securities to be purchased by each Underwriter shall be the same percentage of the total number of shares of the Option Securities to be purchased by the several Underwriters as such

Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional shares.

3. Delivery and Payment. Delivery of, and payment of the purchase price for, the Underwritten Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 a.m., New York City time, on January 12, 2010 (such date and time, the "**Closing Date**") at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036. The Closing Date and the location of, delivery of and the form of payment for the Securities may be varied by mutual agreement between the Underwriters and the Company.

Delivery of the Securities shall be made to the Representative for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price therefor by means of transfer of immediately available funds to such account or accounts specified by the Company in accordance with its obligations under Section 4(h) hereof on or prior to the Closing Date, or by such means as the parties hereto shall agree prior to the Closing Date. Delivery of the Underwritten Securities and the Option Securities shall be made through the facilities of The Depository Trust Company ("**DTC**") unless the Representative shall otherwise instruct.

If the option provided for in Section 2 hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, at 388 Greenwich Street, New York, New York, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives of the purchase price therefor by means of transfer of immediately available funds to such account or accounts specified by the Company. If settlement for the Option Securities occurs after the Closing Date (such date of settlement if not the Closing Date, the "**settlement date**"), the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 8 hereof.

4. Agreements of the Company. The Company covenants and agrees with the Underwriters as follows:

(a) To furnish, without charge as soon as available, to the Representatives and counsel for the Underwriters signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and to the Underwriters and those persons identified by the Underwriters as many copies of the Preliminary Prospectus, any Issuer Free Writing Prospectus and the Final Prospectus, and any amendments or supplements thereto, as the Underwriters may reasonably request. The Company consents to the use of the Preliminary Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus and the Final Prospectus, and any amendments and supplements

thereto required pursuant to this Agreement, by the Underwriters in connection with the offer and sale of the Securities.

(b) As promptly as practicable following the execution and delivery of this Agreement, to prepare and file with the Commission in accordance with and within the time period prescribed in Rule 424(b) under the Act (and provide evidence satisfactory to the Representatives of such timely filing) and deliver to the Underwriters the Final Prospectus, which shall contain all information required by the Act and shall consist of the Preliminary Prospectus as modified by the information set forth on Schedule IV hereto and other non-material changes thereto as shall be approved by the Underwriters. Not to amend or supplement the Preliminary Prospectus (except with the information set forth on Schedule IV hereto and other non-material changes thereto as shall be approved by the Underwriters). Not to amend or supplement the Registration Statement, the Base Prospectus, any Preliminary Prospectus, the Pricing Disclosure Package or the Final Prospectus) or any Rule 462(b) Registration Statement unless the Underwriters shall previously have been advised of such proposed amendment or supplement to the extent permitted by law at least two business days prior to the proposed use, and shall not have objected to such amendment or supplement.

(c) If, at any time prior to the filing of the Final Prospectus pursuant to Rule 424(b) under the Act, any event shall occur that, in the judgment of the Company or in the judgment of counsel to the Underwriters, makes any statement of a material fact in the Pricing Disclosure Package untrue or that requires the making of any additions to or changes in the Pricing Disclosure Package in order to make the statements in the Pricing Disclosure Package, in light of the circumstances under which they are made, not misleading, or if it is necessary to amend or supplement the Pricing Disclosure Package to comply with any applicable law, the Company shall promptly notify the Underwriters of such event and (subject to Section 4(b)) prepare, at its own expense, an appropriate amendment or supplement to the Pricing Disclosure Package so that (i) the Pricing Disclosure Package, as amended or supplemented, will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) the Pricing Disclosure Package will comply with all applicable laws. Neither the Underwriters' consent to, nor their delivery to offerees or investors of, any such amendment or supplement shall constitute a waiver of any of the covenants set forth in this Section 4(c) or Section 4(b).

(d) If, at any time when a prospectus relating to the Securities is required to be delivered under the Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Act), any event shall occur that, in the judgment of the Company or in the judgment of counsel to the Underwriters, makes any statement of a material fact in the Final Prospectus untrue or that requires the making of any additions to or changes in the Final Prospectus in order to make the statements in the Final Prospectus, in light of the circumstances under which they are made, not misleading, or if it is necessary to amend the Registration Statement, to file a new registration statement or supplement the Final Prospectus to comply with any applicable law, the Company shall promptly notify the Underwriters of such event and (subject to Section 4(b)) prepare and file with the Commission, at its own expense, an appropriate amendment or supplement to the Registration Statement or the Final Prospectus or a new registration statement so that (i) the Final Prospectus, as amended or supplemented, will not

contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) the Registration Statement and the Final Prospectus will comply with all applicable laws. Neither the Underwriters' consent to, nor their delivery to offerees or investors of, any such amendment or supplement shall constitute a waiver of any of the covenants set forth in this Section 4(d) or Section 4(b). The Company shall use its reasonable best efforts to have any amendment of the Registration Statement or any such new registration statement declared effective as promptly as practicable in order to avoid any disruption of the use of the Final Prospectus. The Company shall file any supplement to the Final Prospectus as promptly as practicable with the Commission in accordance with and within the time period prescribed in Rule 424(b) under the Act (and provide evidence satisfactory to the Representatives of such timely filing).

(e) To cooperate with the Underwriters and counsel to the Underwriters in connection with the qualification or registration of the Securities under the securities laws of such jurisdictions as the Underwriters may request and to continue such qualification in effect so long as required for the distribution of the Securities. Notwithstanding the foregoing, the Company shall not be required to qualify as a foreign corporation in any jurisdiction in which it is not so qualified or to file a general consent to service of process in any such jurisdiction or subject itself to taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then so subject.

(f) To advise the Underwriters promptly and, if requested by the Underwriters, to confirm such advice in writing, (i) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) under the Act or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (ii) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement or any new registration statement relating to the Securities shall have been filed or become effective, (iii) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any notice objecting to its use or the institution or threatening of any proceeding for that purpose and (v) of the issuance by any securities commission of any stop order suspending the qualification or exemption from qualification of the Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for such purpose by any securities commission or other regulatory authority. The Company shall use its reasonable best efforts to prevent the issuance of any stop order or the occurrence of any such suspension or notice of objection to the use of the Registration Statement or any stop order or order suspending the qualification or exemption of any of the Securities under any securities laws, and if at any time the Commission or any securities commission or other regulatory authority shall issue a stop order or notice of objection to the use of the Registration Statement or a stop order or order suspending the qualification or exemption of any of the Securities under any securities laws, the Company shall use its reasonable best efforts to obtain the withdrawal or lifting of such order or relief from such notice of objection at the earliest possible time, including, if necessary, by filing an amendment to the Registration Statement or a new registration statement and using its

reasonable best efforts to have such amendment or new registration statement declared effective as soon as practicable.

(g) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement becomes effective or is terminated other than by reason of a default by the Underwriters, to pay all costs, expenses, fees and disbursements reasonably incurred and stamp, documentary or similar taxes incident to and in connection with: (i) the preparation, printing, distribution and filing with the Commission of the Registration Statement (including, without limitation, financial statements and exhibits thereto), each Preliminary Prospectus, each Issuer Free Writing Prospectus and the Final Prospectus, and all amendments and supplements thereto, (ii) all expenses (including travel expenses) of the Company and the Underwriters in connection with any meetings with prospective investors in the Securities, (iii) the execution, issue, authentication, packaging and initial delivery of the Securities, the preparation, notarization (if necessary) and delivery of this Agreement and all other agreements, memoranda, correspondence and documents prepared and delivered in connection with this Agreement, (iv) the issuance, transfer and delivery by the Company of the Securities to the Underwriters, (v) the qualification or registration of the Securities for offer and sale under the securities laws of such jurisdictions as the Underwriters may request (including, without limitation, the cost of printing and mailing preliminary and final "Blue Sky" or legal investment memoranda and fees and disbursements of counsel (including local counsel) to the Underwriters relating thereto), (vi) the furnishing of such copies of the Registration Statement, each Preliminary Prospectus, each Issuer Free Writing Prospectus and the Final Prospectus, and all amendments and supplements thereto, as may be reasonably requested, (vii) the preparation of certificates for the Securities, (viii) the fees and expenses of the transfer agent and registrar for the Securities, (ix) the performance by the Company of its obligations under this Agreement, (x) the listing of the Securities on the New York Stock Exchange, and (xi) any filings required to be made with the Financial Industry Regulatory Authority, Inc. (including filing fees and reasonable and documented fees and expenses of counsel to the Underwriters incurred in connection therewith).

(h) To use the proceeds from the sale of the Securities in the manner described in the Pricing Disclosure Package and Final Prospectus under the caption "Use of Proceeds."

(i) To do and perform all things required to be done and performed under this Agreement by it prior to or after the Closing Date and to satisfy all conditions precedent on its part to the delivery of the Securities.

(j) Prior to the Closing Date, to furnish without charge to the Underwriters, (i) as soon as they have been prepared, a copy of any regularly prepared internal financial statements of the Company and its subsidiaries for any period subsequent to the period covered by the financial statements appearing in the Pricing Disclosure Package and Final Prospectus, (ii) all other reports and other communications (financial or otherwise) that the Company mails or otherwise makes available to their security holders and (iii) such other information as the Underwriters shall reasonably request.

(k) Not to distribute any offering material in connection with the offer and sale of the Securities other than the Preliminary Prospectus, any other Issuer Free Writing Prospectus specified in Schedule V hereto and the Final Prospectus.

(l) Not to make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 under the Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 under the Act (other than those listed on Schedule V hereto) without the prior consent of the Underwriters. Any such free writing prospectus consented to by the Underwriters (including those listed on Schedule V hereto) is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 under the Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(m) During the period of one year after the later of the Closing Date and any settlement date, not to be or become an "investment company" required to be registered, but not registered, under the Investment Company Act of 1940 as amended (the "**Investment Company Act**").

(n) In connection with the offering, until the Underwriters shall have notified the Company of the completion of the resale of the Securities (which the Company may assume occurred on or before the 90th day following the date of this Agreement unless given written notice to the contrary), not to, and not to permit any of their affiliates or affiliated purchasers (as such term is defined in Regulation M under the Exchange Act) to, either alone or with one or more other persons, bid for or purchase for any account in which they or any of their affiliates or affiliated purchasers has a beneficial interest any shares of Common Stock or attempt to induce any person to purchase any shares of Common Stock in violation of Section 9 of the Exchange Act or Regulation M; and none of the Company or any of its affiliates or affiliated purchasers will make bids or purchases for the purpose of creating actual, or apparent, active trading in, or of raising the price of, the Securities.

(o) During the period beginning on the date hereof and continuing until the date 90 days after the Closing Date, the Company and its affiliates shall not offer, sell, contract to sell, pledge, or otherwise dispose of, directly or indirectly (whether by actual disposition or effective economic disposition due to cash settlement or otherwise), or file with the Commission a registration statement under the Securities Act relating to, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, except pursuant to this Agreement, any other shares of Common Stock or any securities convertible into, or exercisable, or exchangeable for, shares of Common Stock; or publicly disclosure the intention to make any such offer, sale, contract of sale, pledge, disposition, filing or transaction, without the prior written consent of the Representatives; *provided*, *however*, that the Company may issue and sell Common Stock (or any securities convertible into, or exchangeable for, shares of Common Stock) pursuant to (i) the concurrent offering of the Company's 7 1/2% mandatory convertible subordinated notes due 2013 and (ii) any

employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company in effect as of the date hereof and the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants outstanding as of the date hereof. The Company will provide the Representatives and any co-managers and each individual subject to the restricted period pursuant to the lock-up letters described in Section 4(q) with prior notice of any such announcement that gives rise to an extension of the restricted period.

(p) As soon as practicable, to make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(q) To cause each individual listed on Schedule VI to furnish to the Representatives, on or prior to the date of this agreement, a letter substantially in the form of Exhibit B hereto from each person listed on Schedule VI hereto and addressed to the Representatives (the "Lock-up Agreements").

5. Representations and Warranties. The Company represents and warrants to the Underwriters that, as of the date hereof and as of the Closing Date (and as of the settlement date, as applicable):

(a) On each Effective Date, the Registration Statement did, and when the Final Prospectus is first filed in accordance with Rule 424(b) under the Act and on the Closing Date and on any settlement date, the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act and the Exchange Act and the respective rules thereunder. On each Effective Date and on the date hereof, the Registration Statement did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; *provided*, *however*, that the Company makes no representation or warranty with respect to information relating to the Underwriters contained in or omitted from the Registration Statement in reliance upon and in conformity with information furnished to the Company in writing by or on behalf of any Underwriter through the Representatives expressly for inclusion in the Registration Statement.

(b) Neither the Pricing Disclosure Package, as of the Applicable Time, nor the Final Prospectus, as of its date or (as amended or supplemented in accordance with Section 4(b), if applicable) as of the Closing Date or any settlement date, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided, however*, that the Company makes no representation or warranty with respect to information relating to the Underwriters contained in or omitted from the Pricing Disclosure Package or the Final Prospectus, or any amendment or supplement thereto, in reliance upon and in conformity with information furnished to the Company in writing by or on behalf of any Underwriter through the Representatives expressly for inclusion in the Pricing Disclosure Package or the Final Prospectus, or any supplement or amendment thereto, as the case may be. No order preventing the use of the Base Prospectus, the Preliminary Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus or the Final Prospectus, or any amendment or supplement thereto,

or the effectiveness of the Registration Statement has been issued or, to the knowledge of the Company, has been threatened.

(c) Each Issuer Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated therein by reference and any prospectus supplement deemed to be a part thereof that has not been superseded or modified; *provided*, *however*, that the Company makes no representation or warranty with respect to information relating to the Underwriters contained in or omitted from any Issuer Free Writing Prospectus in reliance upon and in conformity with information furnished to the Company in writing by or on behalf of any Underwriter through the Representatives expressly for inclusion in such Issuer Free Writing Prospectus.

(d) As of September 30, 2009, the Company had the authorized, issued and outstanding capital stock as set forth in the section of the Pricing Disclosure Package and Final Prospectus entitled "Capitalization" in the common stock line item. All of the issued and outstanding shares of capital stock or other equity interests of the Company have been duly and validly authorized and issued, are fully paid and nonassessable and were not issued in violation of any preemptive or similar right. Except as set forth in the Pricing Disclosure Package and Final Prospectus, there are no outstanding subscriptions, calls, options, warrants, rights, or other agreements with respect to the capital stock, membership interests, or partnership interests of the Company or any of the Subsidiaries (as defined below). No holder of any securities of the Company or any Subsidiary is entitled to have such securities registered under the Registration Statement.

(e) The Company has been duly incorporated and is validly existing as a corporation in good standing under the law of the State of Delaware with full corporate power and authority to own, lease and operate its properties and conduct its business as described in the Pricing Disclosure Package and Final Prospectus, to execute and deliver this Agreement and to issue, sell and deliver the Securities as herein contemplated.

(f) All of the issued and outstanding shares of the capital stock of each of the Company's corporate subsidiaries (the "**Corporate Subsidiaries**") and the Company's trust subsidiary (the "**Trust Subsidiary**") have been validly issued and are fully paid and nonassessable, and each of the capital stock of the Corporate Subsidiaries and the Trust Subsidiary, membership interests of each of the Company's limited liability company subsidiaries (the "**LLC Subsidiaries**") and the partnership interests of each of the Company's limited partnership subsidiaries and limited liability partnership subsidiaries (the "**Partnership Subsidiaries**" and, together with the LLC Subsidiaries, the Corporate Subsidiaries, and the Trust Subsidiary, the "**Subsidiaries**") have been duly authorized and to the extent owned by the Company, are owned free and clear of any pledge, lien, encumbrance, security interest, preemptive right or other claim except for pledges, liens, encumbrances, and security interests securing obligations under the Amended and Restated Credit Agreement, dated as of August 5, 2009 (the "**Credit Agreement**"), among the Company, Citibank, N.A., as swing line lender and agent, and the lenders party thereto and the Indenture, dated as of September 11, 2009 (the "**Indenture**"), by and among the Company, the guarantors party thereto, U.S. Bank National Association, as trustee, and Wilmington Trust FSB, as Notes Collateral Agent. Attached as Schedule II is a true and complete list of each entity in which the Company has a direct or

indirect majority equity or voting interest, their jurisdictions of incorporation or formation, and percentage equity ownership by the Company.

(g) Each of the Corporate Subsidiaries has been duly incorporated, and each of the Trust Subsidiary, the LLC Subsidiaries and Partnership Subsidiaries has been duly formed, and is validly existing as a corporation, in the case of the Corporate Subsidiaries, as a trust, in the case of the Trust Subsidiary, as a limited partnership or a limited liability partnership, in the case of the Partnership Subsidiaries or as a limited liability company, in the case of LLC Subsidiaries, and in good standing under the laws of its respective jurisdiction of incorporation or formation with full corporate, trust, partnership or limited liability company power, as the case may be, and authority to own its respective properties and conduct its respective business as described in the Pricing Disclosure Package and Final Prospectus.

(h) The Company has all requisite corporate power and authority to execute, deliver and perform all of its obligations under this Agreement and to consummate the transactions contemplated by this Agreement to be consummated on its part and, without limitation, the Company has all requisite corporate power and authority to issue, sell and deliver the Securities. The Company has duly authorized the execution, delivery and performance of this Agreement. This Agreement conforms in all material respects to the description thereof in the Pricing Disclosure Package and the Final Prospectus.

(i) The Company and each of the Subsidiaries are duly qualified or licensed by and are in good standing in each jurisdiction in which the nature of their respective businesses or their respective ownership or leasing of their respective properties requires such qualification, except where the failure to so qualify would not, individually or in the aggregate, have a Material Adverse Effect (as defined herein). Other than the entities listed on Schedule II hereto, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, association or other entity other than the entities listed on Schedule III hereto. A "**Material Adverse Effect**" means any material adverse effect on the business, condition (financial or other), results of operations, performance, properties or prospects of the Company and the Subsidiaries, taken as a whole.

(j) This Agreement has been duly and validly executed and delivered by the Company.

(k) The Underwritten Securities, on the Closing Date, and the Option Securities, on the Closing Date or settlement date, as applicable, will be duly and validly authorized and issued, fully paid and nonassessable and not issued in violation of any preemptive or similar right and will conform to the description thereof contained in the Pricing Disclosure Package and the Final Prospectus. The Rights have been duly authorized by the Company. Unless the Rights Agreement has been terminated prior to the Closing Date, the Rights attached to the outstanding shares of Common Stock have been validly issued, and, if and when issued in accordance with the Rights Agreement upon issuance of the Securities, the Rights attached to the Securities will be validly issued. The Series A Junior Participating Preferred Stock has been duly classified as such by the Company, and the Board has authorized the reservation of shares of the Series A Junior Participating Preferred Stock for issuance upon the exercise of the Rights

in accordance with the terms of the Rights Agreement. When issued upon such exercise in accordance with the terms of the Rights Agreement, shares of the Series A Junior Participating Preferred Stock will be validly issued, fully paid and nonassessable.

(l) All documentary, stamp, recording, transfer or similar taxes, fees and other governmental charges that are due and payable on or prior to the Closing Date in connection with the execution and delivery of this Agreement and the issuance and sale of the Securities shall have been paid by or on behalf of the Company at or prior to the Closing Date.

(m) None of the Company or any Subsidiary is (A) in violation of its charter, bylaws, limited liability company agreement, partnership agreement, operating agreement or other constitutive documents, (B) except as disclosed in the Pricing Disclosure Package and Final Prospectus, in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement, covenant or condition contained in any bond, debenture, note, indenture, mortgage, deed of trust, loan or credit agreement, lease, license, franchise agreement, authorization, permit, certificate or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of their assets or properties is subject (collectively, "**Agreements and Instruments**"), (C) in violation of any law, statute, rule or regulation applicable to the Company or any Subsidiary or their respective assets or properties or (D) in violation of any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Subsidiary or their respective assets or properties or other governmental or regulatory authority, agency or other body, which in the case of clauses (B), (C) and (D) herein, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There exists no condition that, with notice, the passage of time or otherwise, would constitute a default by the Company or any Subsidiary under any such document or instrument or result in the imposition of any penalty or the acceleration of any indebtedness, other than penalties, defaults or conditions that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(n) The execution, delivery and performance by the Company of this Agreement, including the consummation of the offer and sale of the Securities, does not and will not violate, conflict with or constitute a breach of any of the terms or provisions of or a default (or an event that with notice or the lapse of time, or both, would constitute a default) under, or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Subsidiary pursuant to, (A) the charter, bylaws, limited liability company agreement, partnership agreement, operating agreement or other constitutive documents of the Company or any Subsidiary, (B) any of the Agreements and Instruments, (C) any law, statute, rule or regulation applicable to the Company or any Subsidiary or their respective assets or properties or (D) any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Subsidiary or their respective assets or properties. No consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any court or governmental agency, body or administrative agency, domestic or foreign, is required to be obtained or made by the Company or any Subsidiary for the execution, delivery and performance by the Company of this Agreement including the consummation of the offer and sale of the Securities, except such as have been or will be obtained or made on or prior to the Closing Date. No consents or

waivers from any other person or entity are required for the execution, delivery and performance of this Agreement by the Company or the consummation by the Company of the issuance and sale of the Securities.

(o) Except as set forth in the Pricing Disclosure Package and Final Prospectus, there is (A) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to the knowledge of the Company, threatened or contemplated, to which the Company or any Subsidiary is or may be a party or to which the business, assets or property of such person is or may be subject, (B) no statute, rule, regulation or order that has been enacted, adopted or issued or, to the knowledge of the Company, that has been proposed by any governmental body or agency, domestic or foreign, (C) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Company or any Subsidiary is or may be subject that (x) in the case of clause (A) above, if determined adversely to the Company or any Subsidiary, could, individually or in the aggregate, reasonably be expected, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Securities in any jurisdiction or adversely affect the consummation of the transactions contemplated by this Agreement and (y) in the case of clauses (B) and (C) above, could, individually or in the aggregate, reasonably be expected, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Securities in any jurisdiction or adversely affect the consummation of the transactions contemplated by this Agreement. Every request of any securities authority or agency of any jurisdiction for additional information with respect to the Securities that has been received by the Company or any Subsidiary or their counsel prior to the date hereof has been, or will prior to the Closing Date be, complied with in all material respects.

(p) Except as could not reasonably be expected to have a Material Adverse Effect, no labor problem or dispute with the employees of the Company or the Subsidiaries exists or, to the knowledge of the Company, is threatened or imminent.

(q) The business, operations and facilities of the Company and each of the Subsidiaries have been and are being conducted in compliance with all applicable laws, ordinances, rules, regulations, licenses, permits, approvals, plans, authorizations or requirements relating to occupational safety and health, or pollution, or protection of health or the environment, or reclamation (including, without limitation, those relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic substances, materials or wastes into ambient air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of chemical substances, materials or wastes, whether solid, gaseous or liquid in nature) or otherwise relating to remediating real property of any governmental department, commission, board, bureau, agency or instrumentality of the United States, any state or political subdivision thereof, or any foreign jurisdiction, and all applicable judicial or administrative agency or regulatory decrees, awards, judgments and orders relating thereto, except any violation thereof which would not, individually or in the aggregate, have a Material Adverse Effect; and, except as disclosed in the Pricing Disclosure Package and Final Prospectus, neither the Company nor any of the Subsidiaries has received any notice from a governmental instrumentality or any third party alleging any violation thereof or liability thereunder (including, without limitation, liability

for costs of investigating or remediating sites containing hazardous substances and/or damages to natural resources).

(r) There is no claim pending or, to the best knowledge of the Company, threatened or contemplated under any federal, state, local or foreign law, rule, regulation, decision or order governing pollution or protection or restoration of the environment (the "**Environmental Laws**") against the Company or any of the Subsidiaries which, if adversely determined, would, individually or in the aggregate, have a Material Adverse Effect; there are no past or present actions or conditions including, without limitation, the use, disposal or release of, or human exposure to, any hazardous or toxic substance or waste regulated under any Environmental Law that are likely to form the basis of any such claim against the Company or any of the Subsidiaries which, if adversely determined, would, individually or in the aggregate, have a Material Adverse Effect. The Company and each Subsidiary maintain a system of internal environmental management controls sufficient to provide reasonable assurance of compliance in all material respects of their business facilities, real property and operations with requirements of applicable Environmental Laws.

(s) Each of the Company and the Subsidiaries has all necessary permits, licenses, authorizations, consents and approvals and has made all necessary filings required under any federal, state, local or foreign law, regulation or rule, and has obtained all necessary authorizations, consents and approvals from other persons, material to the conduct of its respective business. Neither the Company nor any of the Subsidiaries is in violation of, or in default under, any such license, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order judgment applicable to the Company or any of the Subsidiaries the effect of which could, individually or in the aggregate, have a Material Adverse Effect.

(t) All legal or governmental proceedings, contracts or documents of a character required to be described in the Registration Statement, the Preliminary Prospectus or the Final Prospectus pursuant to Regulation S-K have been so described as required.

(u) The statements in the Pricing Disclosure Package and the Final Prospectus under the headings (i) "Description of Capital Stock" and (ii) "Material United States Federal Income Tax Considerations" (to the extent such statements relate to matters of U.S. federal income tax laws), fairly summarize the matters therein described.

(v) The Company and the Subsidiaries have good title to all properties and assets owned by them and have good leasehold interest in each property and asset leased by them, in each case free and clear of all pledges, liens, encumbrances, security interests, charges, mortgages and defects, except for liens permitted under the Credit Agreement and the Indenture or such as would not, individually or in the aggregate, have a Material Adverse Effect or do not materially affect the value of such property and do not interfere with the use made or proposed to be made of such properties by the Company or the Subsidiaries.

(w) The Company and each Subsidiary have, own, possess or have the right to employ all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems

or procedures), trademarks, service marks, trade names and other intellectual property (collectively, the "**Intellectual Property**") necessary to conduct the businesses operated by them as described in the Pricing Disclosure Package, except where the failure to own, possess or have the right to employ such Intellectual Property could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has received any notice of infringement of or conflict with (and neither knows of any such infringement or a conflict with) asserted rights of others with respect to any of the foregoing that, if such assertion of infringement or conflict were sustained, could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The use of the Intellectual Property in connection with the business and operations of the Company and the Subsidiaries does not infringe on the rights of any person, except for such infringement as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(x) The Company and each of the Subsidiaries have filed all federal, state, local or foreign income and franchise tax returns required to be filed and all such returns are true, complete and correct in all material respects. The Company and each of the Subsidiaries have paid all taxes shown thereon as due, and there is no material tax deficiency which has been or is reasonably likely to be asserted against the Company or any of the Subsidiaries; all material tax liabilities of the Company and the Subsidiaries are adequately provided for on the books of the Company and the Subsidiaries.

(y) The Company, either directly or through one or more Subsidiaries, has in effect, with financially sound insurers, insurance with respect to its business and properties and the business and properties of the Subsidiaries against loss or damage of the kind customarily insured against by corporations engaged in the same or similar businesses and similarly situated, of such type and in such amounts as are customarily carried under similar circumstances by such other corporations; neither the Company nor any Subsidiary (A) has received notice from any insurer or agent of such insurer that substantial capital improvements or other material expenditures will have to be made in order to continue such insurance or (B) has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that would not, individually or in the aggregate, have a Material Adverse Effect.

(z) The Company and the Subsidiaries are in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("**ERISA**"), except where the failure to be in such compliance would not, individually or in the aggregate, have a Material Adverse Effect; no "reportable event" (as defined in ERISA and with respect to which the 30-day notice provision has not been waived) has occurred with respect to any "pension plan" (as defined in ERISA) subject to Title IV of ERISA for which the Company or any Subsidiary would have liability; except for matters that would not, individually or in the aggregate, have a Material Adverse Effect, the Company and the Subsidiaries have not incurred and do not expect to incur liability under (A) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (B) Section 412, 430 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder ("**Code**"); and each "pension plan" for which the Company and the Subsidiaries would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects

and nothing has occurred, whether by action or by failure to act, which would reasonably be expected to cause the loss of such qualification.

(aa) The execution and delivery of this Agreement and the sale of the Securities will not involve any nonexempt prohibited transaction within the meaning of Section 406(a) of ERISA or Section 4975(c)(1)(A) of the Code.

(bb) The Company is subject to and in compliance in all material respects with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act.

(cc) Neither the Company nor any Subsidiary is an "investment company" that is or is required to be registered under Section 8 of the Investment Company Act; and neither the Company nor any Subsidiary is, and after giving effect to the offering and sale of the Securities and the application of the proceeds therefrom as described in the Pricing Disclosure Package and Final Prospectus neither the Company nor any Subsidiary will be, an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act.

(dd) Each of the Company and its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of its financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for its assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ee) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company and the Subsidiaries is made known to the chief executive officer and chief financial officer of the Company by others within the Company or any Subsidiary, and such disclosure controls and procedures are reasonably effective to perform the functions for which they were established subject to the limitations of any such control system. The Company's auditors and the audit committee of the board of directors of the Company have been advised of: (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize, and report financial information; and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting and since the date of the most recent evaluation of such disclosure controls and procedures, there have been no changes in internal control over financial reporting that have materially affected or are reasonably likely to materially affect, the Company's internal control over financial reporting. As of September 30, 2009, the Company and the Subsidiaries' internal controls over financial reporting were reasonably effective to perform the functions for which they were established, subject to the limitations of any such control system, and the Company and the Subsidiaries are not aware of any material weakness in their internal control over financial reporting.

(ff) None of the Company or any of its affiliates (as defined in Rule 501(b) of Regulation D under the Act) has taken, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(gg) The Company has not made any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 under the Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 under the Act (other than those listed on Schedule V hereto) without the prior consent of the Underwriters.

(hh) No forward-looking statement (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) contained in the Pricing Disclosure Package has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(ii) As of September 30, 2009, none of the Company or any Subsidiary had any material liabilities or obligations, direct or contingent, that were not set forth in the consolidated balance sheet as of such date or in the notes thereto set forth in the Pricing Disclosure Package and Final Prospectus. Since September 30, 2009, except as set forth or contemplated in the Pricing Disclosure Package and Final Prospectus, (a) none of the Company or any Subsidiary has (1) incurred any liabilities or obligations, direct or contingent, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (2) entered into any material transaction not in the ordinary course of business, or (3) purchased any of its outstanding capital stock, (b) there has not been any material adverse change, prospective change, event or development in respect of the business, properties, prospects, results of operations or condition (financial or other) of the Company and the Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of capital stock and (d) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company or any of the Subsidiaries.

(jj) Deloitte & Touche LLP is an independent accountant within the meaning of the Act. The historical financial statements and the notes thereto included in the Pricing Disclosure Package and Final Prospectus present fairly in all material respects the consolidated financial position and results of operations of the Company and the Subsidiaries at the respective dates and for the respective periods indicated. Such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods presented (except as disclosed in the Pricing Disclosure Package and Final Prospectus). The other financial and statistical information and data included in the Pricing Disclosure Package and Final Prospectus are accurately presented in all material respects and prepared on a basis consistent with the financial statements and the books and records of the Company and the Subsidiaries.

(kk) Except as described in the section entitled "Underwriting" in the Pricing Disclosure Package and Final Prospectus, there are no contracts, agreements or understandings between the Company or any Subsidiary and any other person other than the Underwriters that would give rise to a valid claim against, the Company, any Subsidiary or the Underwriters for a

brokerage commission, finder's fee or like payment in connection with the issuance, purchase and sale of the Securities.

(ll) The industry, statistical and market-related data included in the Pricing Disclosure Package and Final Prospectus are based on or derived from sources that the Company reasonably and in good faith believe to be reliable and accurate in all material respects and represent their good faith estimates that are made on the basis of data derived from such sources.

(mm) There is and has been no failure on the part of the Company and any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including without limitation Section 402 related to loans and Sections 302 and 906 related to certifications, other than any such failures which would not result in a Material Adverse Effect.

Each certificate or document signed by any officer of the Company and delivered to the Underwriters or counsel for the Underwriters pursuant to, or in connection with, this Agreement shall be deemed to be a representation and warranty by the Company to the Underwriters as to the matters covered by such certificate or document. The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered to the Underwriters pursuant to Section 8 of this Agreement, counsel to the Company and counsel to the Underwriters will rely upon the accuracy and truth of the foregoing representations and the Company hereby consent to such reliance.

6. Indemnification.

(a) The Company agrees to indemnify and hold harmless the Underwriters, each person, if any, who controls any Underwriter within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, the agents, employees, affiliates, officers and directors of any Underwriter and the agents, employees, affiliates, officers and directors of any such controlling person from and against any and all losses, liabilities, claims, damages and expenses whatsoever (including, but not limited to, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation) (collectively, "**Losses**") to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Pricing Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein (in the case of any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Final Prospectus or any Issuer Free Writing Prospectus, in light of the circumstances under which they were made) not misleading; *provided*, *however*, that the Company will not be liable in any such case to the extent, but only to the extent, that any such Loss arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission relating to an Underwriter made therein in reliance upon and in conformity with written information relating to

an Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein. This indemnity agreement will be in addition to any liability that the Company may otherwise have, including, but not limited to, liability under this Agreement.

(b) Each Underwriter agrees to indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, and each of their respective agents, employees, officers and directors and the agents, employees, officers and directors of any such controlling person from and against any Losses to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Pricing Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein (in the case of any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Final Prospectus or any Issuer Free Writing Prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that any such Loss arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission relating to such Underwriter made therein in reliance upon and in conformity with information relating to such Underwriter furnished in writing to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein. The Company and each Underwriter, severally and not jointly, acknowledge that the information set forth in Section 9 is the only information furnished in writing by the Underwriters to the Company expressly for use in the Registration Statement, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Pricing Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus.

(c) Promptly after receipt by an indemnified party under subsection 6(a) or 6(b) above of notice of the commencement of any action, suit or proceeding (collectively, an "**action**"), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the commencement of such action (but the failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability that it may have under this Section 6 except to the extent that it has been prejudiced in any material respect by such failure). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement of such action, the indemnifying party will be entitled to participate in such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense of such action with counsel reasonably satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such action, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to

take charge of the defense of such action within a reasonable time after notice of commencement of the action, (iii) the named parties to such action (including any impleaded parties) include such indemnified party and the indemnifying parties (or such indemnifying parties have assumed the defense of such action), and such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them that are different from or additional to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), or (iv) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, in any of which events such reasonable fees and expenses of counsel shall be borne by the indemnifying parties. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) at any time for all indemnified parties in connection with any one action or separate but substantially similar or related actions arising in the same jurisdiction out of the same general allegations or circumstances. An indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent which consent may not be unreasonably withheld. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by paragraph (a) or (b) of this Section 6, then the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 45 days prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

7. Contribution.

(a) In order to provide for contribution in circumstances in which the indemnification provided for in Section 6 of this Agreement is for any reason held to be unavailable from the indemnifying party, or is insufficient to hold harmless a party indemnified under Section 6 of this Agreement, each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such aggregate Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities or (ii) if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the offering of the Securities (net of discounts and commissions but before deducting expenses) received by the Company are to (y) the total discounts and commissions received by the Underwriters as set

forth in this Agreement. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission.

(b) The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to above. Notwithstanding the provisions of this Section 7, (i) in no case shall any Underwriter be required to contribute any amount in excess of the amount by which the total discount and commissions applicable to the Securities pursuant to this Agreement exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 7, each person, if any, who controls any Underwriter within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and each director, officer, employee and agent of the Underwriters shall have the same rights to contribution as the Underwriters, and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and each director, officer, employee and agent of the Company shall have the same rights to contribution the Company. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made against another party or parties under this Section 7, notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 7 or otherwise, except to the extent that it has been prejudiced in any material respect by such failure; *provided*, *however*, that no additional notice shall be required with respect to any action for which notice has been given under Section 6 for purposes of indemnification. Anything in this section to the contrary notwithstanding, no party shall be liable for contribution with respect to any action or claim settled without its written consent, *provided*, *however*, that such written consent was not unreasonably withheld. The obligations of the Underwriters to make any contributions pursuant to this Section 7(b) shall be several and not joint.

8. Conditions of Underwriters' Obligations. The obligations of the Underwriters to purchase and pay for the Underwritten Securities and the Option Securities, as the case may be, as provided for in this Agreement, shall be subject to satisfaction of the following conditions prior to or concurrently with such purchase:

(a) All of the representations and warranties of the Company contained in this Agreement and made pursuant to the provisions hereof shall be true and correct, or true and correct in all material respects where such representations and warranties are not qualified by materiality or Material Adverse Effect, on the date of this Agreement and, in each case after giving effect to the transactions contemplated hereby, on the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on such settlement date), except that if a

representation and warranty is made as of a specific date, and such date is expressly referred to therein, such representation and warranty shall be true and correct (or true and correct in all material respects, as applicable) as of such date. The Company shall have performed or complied with all of the agreements and covenants contained in this Agreement and required to be performed or complied with by it at or prior to the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on or prior to such settlement date).

(b) The Final Prospectus, and any supplement thereto, shall have been filed in the manner and within the time period required by Rule 424(b) under the Act and shall be reasonably acceptable to the Representatives and shall have been printed and copies distributed to the Underwriters on the date of this Agreement or at such later date as the Underwriters may determine. Any material required to be filed with the Commission pursuant to Rule 433 under the Act has been filed within the applicable time periods prescribed for such filings by Rule 433 under the Act. No stop order suspending the effectiveness of the Registration Statement or any notice objecting to its use or suspending the qualification or exemption from qualification of the Securities in any jurisdiction shall have been issued and no proceeding for that purpose shall have been commenced or shall be pending or threatened.

(c) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency, body, or official that would, as of the Closing Date, prevent the issuance of the Securities; and, except as disclosed in the Pricing Disclosure Package and Final Prospectus, no action, suit or proceeding shall have been commenced and be pending against or affecting or, to the best knowledge of the Company, threatened against the Company before any court or arbitrator or any governmental body, agency or official that, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and no stop order preventing the use of the Base Prospectus, the Preliminary Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus or the Final Prospectus, or any amendment or supplement thereto, shall have been issued. The Company shall not have amended or supplemented the Registration Statement, the Base Prospectus, any Preliminary Prospectus, the Pricing Disclosure Package or the Final Prospectus) or any Rule 462(b) Registration Statement unless the Underwriters shall previously have been advised of such proposed amendment or supplement at least two business days prior to the proposed use, and shall not have reasonably objected to such amendment or supplement.

(d) As of September 30, 2009, except as set forth in the Pricing Disclosure Package and Final Prospectus, neither the Company nor any Subsidiary shall have had any material liabilities or obligations, direct or contingent, that were not set forth in the Company's consolidated balance sheet as of such date or in the notes thereto set forth in the Pricing Disclosure Package and Final Prospectus. Since September 30, 2009, except as set forth or contemplated in the Pricing Disclosure Package and Final Prospectus, (a) none of the Company or its Subsidiaries has (1) incurred any liabilities or obligations, direct or contingent, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (2) entered into any material transaction not in the ordinary course of business, or (3) purchased any of its outstanding capital stock, (b) there shall not have been any material adverse change, prospective change, event or development in respect of the business, properties, prospects, results of operations or condition (financial or other) of the Company or its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect,

(c) there shall have been no dividend or distribution of any kind declared, paid or made by the Company on any class of capital stock and (d) there shall not have been any material change in the capital stock, short-term debt or long-term debt of the Company or of any of the Subsidiaries, other than, as applicable, under any existing line of credit or revolving credit facility in the ordinary course of business.

(e) The Underwriters shall have received certificates, dated the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date), signed by (x) the chief executive officer or the president and (y) the principal financial or accounting officer of each Issuer confirming, as of the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, as of such settlement date), to their knowledge, the matters set forth in paragraphs (a), (b), (c) and (d) of this Section 8.

(f) The Underwriters shall have received on the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on such settlement date) opinions dated the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date), addressed to the Underwriters, of Troutman Sanders LLP, counsel to the Company, substantially in the form of Exhibit A hereto in form and substance reasonably satisfactory to the Representatives and counsel to the Underwriters.

(g) The Underwriters shall have received on the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on such settlement date) an opinion or opinions (satisfactory in form and substance to the Representatives) dated the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date) of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Underwriters.

(h) The Underwriters shall have received on the date hereof or as soon as practicable thereafter a “comfort letter” from Deloitte & Touche LLP, independent public accountants for the Company, dated the date of this Agreement, addressed to the Underwriters and the board of directors of the Company, in form and substance satisfactory to the Representatives and counsel to the Underwriters covering the financial and accounting information in the Registration Statement and the Pricing Disclosure Package. In addition, the Underwriters shall have received a “bring-down comfort letter” from Deloitte & Touche LLP, dated as of the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date), addressed to the Underwriters and the board of directors of the Company and in the form of the “comfort letter” delivered on the date hereof, except that (i) it shall cover the financial and accounting information in the Final Prospectus and any amendment or supplement thereto and (ii) procedures shall be brought down to a date no more than 2 days prior to the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, prior to such settlement date), and otherwise in form and substance satisfactory to the Representatives and counsel to the Underwriters.

(i) All government authorizations required in connection with the issue and sale of the Securities as contemplated under this Agreement and the performance of the Company’s obligations hereunder shall be in full force and effect.

(j) The Underwriters shall have been furnished with wiring instructions for the application of the proceeds of the Securities in accordance with this Agreement and such other information as they may reasonably request.

(k) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Underwriters, shall have been furnished with such documents as they may reasonably request to enable them to review or pass upon the matters referred to in this Section 8 and in order to evidence the accuracy, completeness or satisfaction in all material respects of any of the representations, warranties or conditions contained in this Agreement.

(l) All costs, fees and expenses (including, without limitation, legal fees and expenses) and other compensation payable to the Underwriters and their affiliates in connection with the offering of the Securities shall have been, or simultaneously with the issuance of the Securities shall be, paid.

(m) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have been any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded the Company's debt by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Act.

(n) If there has been any amendment or supplement to the Final Prospectus, the Underwriters shall have been provided draft copies thereof at a reasonable time prior to the use thereof and the Underwriters shall not have objected to any such amendment or supplement.

(o) The Securities shall have been listed and admitted and authorized for trading on the New York Stock Exchange, subject to official notice of issuance, and satisfactory evidence of such actions shall have been provided to the Representatives.

(p) The Lock-up Agreements described in Section 4(q) hereof are in full force and effect.

The documents required to be delivered by this Section 8 will be delivered at the office of counsel for the Underwriters on the Closing Date.

9. Underwriters' Information. The Company and the Underwriters severally acknowledge that the statements set forth in (i) the last paragraph of the cover page regarding delivery of the Securities, and (ii) the paragraph under the caption "Underwriting" in the Preliminary Prospectus and the Final Prospectus related to stabilization and syndicate covering transactions, constitute the only information furnished in writing by or on behalf of any Underwriter expressly for use in the Registration Statement, the Preliminary Prospectus the Pricing Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus.

10. Survival of Representations and Agreements. All representations and warranties, covenants, and agreements contained in or made pursuant to this Agreement, including the agreements contained in Sections 4(g) and 11(d), the indemnity agreements contained in Section 6 and the contribution agreements contained in Section 7 shall remain

operative and in full force and effect regardless of any investigation, or statement as to the results thereof, made by or on behalf of the Underwriters or any controlling person, representative, officer or director of the Underwriters or by or on behalf of the Company or any controlling person, representative, officer or director thereof, and shall survive delivery of and payment for the Securities to and by the Underwriters. The agreements contained in Sections 4(g), 6, 7, 9 and 11(d) shall survive the termination of this Agreement, including pursuant to Section 11.

11. Effective Date of Agreement; Termination.

(a) This Agreement shall become effective upon execution and delivery of a counterpart hereof by each of the parties hereto.

(b) The Underwriters shall have the right to terminate this Agreement at any time prior to the Closing Date by notice to the Company from the Underwriters, without liability (other than with respect to Sections 6 and 7) on the Underwriters' part to the Company if, on or prior to such date, (i) the Company shall have failed, refused or been unable to perform in any material respect any agreement on its part to be performed under this Agreement when and as required, (ii) any other condition to the obligations of the Underwriters under this Agreement to be fulfilled by the Company pursuant to Section 8 is not fulfilled when and as required and not waived in writing by the Underwriters, (iii) trading in the Company's securities on any exchange or in the over-the-counter market shall have been suspended, (iv) trading in securities generally on the New York Stock Exchange, the NASDAQ Global Select or NASDAQ Global Market shall have been suspended or materially limited, or minimum prices shall have been established thereon by the Commission, or by such exchange or other regulatory body or governmental authority having jurisdiction, (v) a general banking moratorium shall have been declared by federal or New York authorities, (vi) there is an outbreak or escalation of hostilities or other national or international calamity, in any case involving the United States, on or after the date of this Agreement, or if there has been a declaration by the United States of a national emergency or war or other national or international calamity or crisis (economic, political, financial or otherwise) which affects the U.S. and international markets, making it, in the Representatives' judgment, impracticable to proceed with the offering or delivery of the Securities on the terms and in the manner contemplated in the Pricing Disclosure Package and Final Prospectus or (vii) there shall have been such a material adverse change or material disruption in the financial, banking or capital markets generally (including, without limitation, the markets for debt securities of companies similar to the Company) or the effect (or potential effect if the financial markets in the United States have not yet opened) of international conditions on the financial markets in the United States shall be such as, in the Representatives' judgment, to make it inadvisable or impracticable to proceed with the offering or delivery of the Securities on the terms and in the manner contemplated in the Pricing Disclosure Package and Final Prospectus.

(c) Any notice of termination pursuant to this Section 11 shall be given at the address specified in Section 12 below by telephone, telex, telephonic facsimile or telegraph, confirmed in writing by letter.

(d) If this Agreement shall be terminated pursuant to Section 11(b), or if the sale of the Notes provided for in this Agreement is not consummated because of any refusal, inability or failure on the part of the Company to satisfy any condition to the obligations of the

Underwriters set forth in this Agreement to be satisfied on its part or because of any refusal, inability or failure on the part of the Company to perform any agreement in this Agreement or comply with any provision of this Agreement, the Company will reimburse the Underwriters for all of their reasonable out-of-pocket expenses (including, without limitation, the reasonable fees and expenses of the Underwriters' counsel) incurred in connection with this Agreement.

(e) If any one or more Underwriters shall fail to purchase and pay for any of the Underwritten Securities agreed to be purchased by such Underwriter hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Underwritten Securities set forth opposite their names in Schedule I hereto bears to the aggregate amount of Underwritten Securities set forth opposite the names of all the remaining Underwriters) the Underwritten Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; *provided*, *however*, that in the event that the amount of Underwritten Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Underwritten Securities set forth in Schedule I hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Underwritten Securities, and if such nondefaulting Underwriters do not purchase all the Underwritten Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 11(f), the Closing Date shall be postponed for such period, not exceeding seven Business Days, as the Underwriters shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company or any nondefaulting Underwriter for damages occasioned by its default hereunder.

12. Notice.

(a) All communications with respect to or under this Agreement, except as may be otherwise specifically provided in this Agreement, shall be in writing and shall be mailed, delivered, or, telegraphed or telecopied and confirmed in writing as follows:

If to the Company:

Beazer Homes USA, Inc.
1000 Abernathy Road
Atlanta, Georgia 30328
Fax: 770-481-7364
Attention: Kenneth F. Khoury

with copy to:

Troutman Sanders LLP
600 Peachtree Street, NE Suite 5200
Atlanta, GA 30308

Fax: 404-885-3900
Attention: William Calvin Smith, Esq.

If to any Underwriter:

Citigroup Global Markets Inc.
88 Greenwich Street
New York, NY 10013
Fax: 212-816-7912
Attention: General Counsel

and

Credit Suisse Securities (USA) LLC
11 Madison Avenue
New York, New York 10010
Fax: 212-325-4296
Attention: LCD-IBD

with copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
Fax: 213-687-5600
Attention: Casey T. Fleck, Esq.

(b) All such notices and communications shall be deemed to have been duly given: (i) when delivered by hand, if personally delivered, (ii) five business days after being deposited in the mail, postage prepaid, if mailed; (iii) when receipt acknowledged by telecopier machine, if telecopied; and (iv) and one business day after being timely delivered to a next-day air courier.

13. Parties. This Agreement shall inure solely to the benefit of, and shall be binding upon, the Underwriters, the Company and the controlling persons and agents referred to in Sections 6 and 7, and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision herein contained. The term “successors and assigns” shall not include a purchaser, in its capacity as such, of Securities from the Underwriters.

14. Construction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to any provisions thereof relating to conflicts of law).

15. Captions. The captions included in this Agreement are included solely for convenience of reference and are not to be considered a part of this Agreement.

16. Counterparts. This Agreement may be executed in various counterparts each of which when taken together shall be deemed an original and shall constitute one and the same instrument.

17. No Fiduciary Relationship. The Company hereby acknowledges that the Underwriters are acting solely as Underwriters in connection with the purchase and sale of the Securities. The Company further acknowledges that each of the Underwriters is acting pursuant to a contractual relationship created solely by this Agreement entered into on an arm's length basis and in no event do the parties intend that any Underwriter act or be responsible as a fiduciary to the Company, its management, stockholders, creditors or any other person in connection with any activity that such Underwriter may undertake or has undertaken in furtherance of the purchase and sale of the Securities, either before or after the date hereof. The Underwriters hereby expressly disclaim any fiduciary or similar obligations to the Company, either in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions, and the Company hereby confirms its understanding and agreement to that effect. The Company and each Underwriter agree that they are each responsible for making their own independent judgments with respect to any such transactions, and that any opinions or views expressed by any Underwriter to the Company regarding such transactions, including but not limited to any opinions or views with respect to the price or market for the Securities, do not constitute advice or recommendations to the Company. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any breach or alleged breach of any fiduciary or similar duty to the Company in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions.

If the foregoing Underwriting Agreement correctly sets forth the understanding among the Company and the Underwriters, please so indicate in the space provided below for the purpose, whereupon this letter and your acceptance shall constitute a binding agreement among the Company and the Underwriters.

BEAZER HOMES USA, INC.

By: /s/ Allan P. Merrill
Name: Allan P. Merrill
Title: Executive Vice President and Chief Financial Officer

Confirmed and accepted as of
the date first above written:

CITIGROUP GLOBAL MARKETS INC.
as Representative of the Underwriters

By: /s/ Richard L. Moriarty
Name: Richard L. Moriarty
Title: Managing Director

CREDIT SUISSE SECURITIES (USA) LLC
as Representative of the Underwriters

By: /s/ Eric A. Anderson
Name: Eric A. Anderson
Title: Managing Director

Schedule I

Underwriter	Number of Underwritten Securities To Be Purchased
Citigroup Global Markets Inc.	6,825,000
Credit Suisse Securities (USA) LLC	5,850,000
Deutsche Bank Securities Inc	2,925,000
UBS Securities LLC	2,925,000
Moelis & Company LLC	975,000
Total	19,500,000

Schedule II

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Beazer Homes Corp.	TN	Beazer Homes Holdings Corp.	100
Beazer/Squires Realty, Inc.	NC	Beazer Homes Corp.	100
Beazer Homes Sales, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Realty Corp.	GA	Beazer Homes Corp.	100
Beazer Mortgage Corporation	DE	Beazer Homes USA, Inc.	100
Beazer General Services, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Homes Holdings Corp.	DE	Beazer Homes USA, Inc.	100
Beazer Homes Texas Holdings, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Homes Texas, L.P.	DE	Beazer Homes Holdings Corp.; Beazer Homes Texas Holdings, Inc.	100
April Corporation	CO	Beazer Homes Holdings Corp.	100
Beazer SPE, LLC	GA	Beazer Homes Holdings Corp.	100
Beazer Homes Investments, LLC	DE	Beazer Homes Corp.	100
Beazer Realty, Inc.	NJ	Beazer Homes Corp.	100
Homebuilders Title Services of Virginia, Inc.	VA	Beazer Homes USA, Inc.	100
Homebuilders Title Services, Inc.	DE	Beazer Homes USA, Inc.	100
Texas Lone Star Title, L.P.	TX	Beazer Homes Sales, Inc.; Beazer Homes Texas Holdings, Inc.	100
Beazer Allied Companies Holdings, Inc.	DE	Beazer Homes Holdings Corp.	100
United Home Insurance Company A Risk Retention Group	VT	Beazer Homes Corp.; Beazer Homes Holdings Corp.; Beazer Homes Texas Holdings, Inc.	100
Security Title Insurance Company	VT	Beazer Homes USA, Inc	100

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Builders Homesite, Inc.	DE	Beazer Homes Holdings Corp. (Cooperative Consortium Among Builders)	(Common 2,206,230 shares; Series A-2 Preferred 1,691,410)
Paragon Title, LLC	IN	Beazer Homes Investments, LLC	100
Trinity Homes, LLC	IN	Beazer Homes Investments, LLC; Beazer Homes Indiana LLP	100
Beazer Homes Indiana LLP	IN	Beazer Homes Investments, LLC; Beazer Homes Indiana Holdings Corp.; Beazer Homes Corp.	100
Beazer Homes Indiana Holdings Corp.	DE	Beazer Homes Investments, LLC	100
Beazer Realty Services, LLC	DE	Beazer Homes Investments, LLC	100
Beazer Realty Los Angeles, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Realty Sacramento, Inc.	DE	Beazer Homes Holdings Corp.	100
BH Building Products, LP	DE	Beazer Homes Texas, L.P.; BH Procurement Services, LLC	100
BH Procurement Services, LLC	DE	Beazer Homes Texas, L.P.	100
Beazer Commercial Holdings, LLC	DE	Beazer Homes Corp.	100
Beazer Clarksburg, LLC	MD	Beazer Homes Corp.	100
Arden Park Ventures, LLC	FL	Beazer Homes Corp.	100
Beazer Homes Capital Trust I	DE	Beazer Homes USA, Inc.	*
Beazer Homes Michigan, LLC	DE	Beazer Homes Corp.	100
Dove Barrington Development LLC	DE	Beazer Homes Corp.	100
Ridings Development LLC	DE	Beazer Homes Corp.; Centex Homes	99
Clarksburg Arora LLC	MD	Beazer Clarksburg, LLC	100

* Statutory trust of which Beazer Homes USA, Inc. is the beneficiary. However, Beazer Homes USA, Inc. does not exercise any control over Beazer Homes Capital Trust I.

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Clarksburg Skylark, LLC	MD	Clarksburg Arora LLC	100
Elysian Heights Potomia, LLC	VA	Beazer Homes Corp.	100

* Statutory trust of which Beazer Homes USA, Inc. is the beneficiary. However, Beazer Homes USA, Inc. does not exercise any control over Beazer Homes Capital Trust I.

Schedule III

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Imagine Built Homes, Ltd	TX	Beazers Homes Texas, L.P.; B.F. Managing Partners, LLC; BFF Partners LTD	33.33
Castle Star Development Company, LLC	CO	April Corporation; Tom Hall Building Corporation; North 180, LLC	49
Castle Star Commercial Investments, LLC	CO	April Corporation; Tadaptanam, LLC; Charles H. Sanford; Perry A. Cadman	49
FallBrook Partners, LLC	CO	Beazer Homes Holdings Corp.; Meritage Homes of Colorado, Inc.	50
Beach Boulevard Venture, LLC	FL	Beazer Homes Corp; Intervest Construction of JAX, Inc.	50
West Kernan, LLC	FL	Beazer Homes Corp; Intervest Construction of JAX, Inc.	50
South Edge, LLC	NV	Beazer Homes Holdings Corp; Focus South Group, LLC; MTH Homes Nevada, Inc.; Almeda Investments, LLC; Kimball Hill Homes Nevada; Pardee Homes of Nevada; Coleman-Toll Limited Partnership, LLC; Beazer Homes Holdings Corp.; KB Home Nevada Inc.	2.58
904 Georgetown Treatment Plant, LLC	NC	Beazer Homes Corp; North Star Management, Inc. Sandpiper Bay Land Company, Inc.	25
Belmont, LLC	FL	Beazer Homes Corp; Residential Funding Corporation	50
Long Lake Ranch, LLC	FL	Beazer Homes Corp; M/I Homes of Tampa, LLC	50
WCD Associates, LLC	IN	Beazer Homes Corp; MGB; Bill Olsen	37.5

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Fair Chase Development, LLC	DE	Beazer Homes Corp; Centex Homes	50
Lansdowne Town Center, LLC	VA	Beazer Homes Corp.; Centex Homes; Van Metre Lansdowne Town Center, LLC	50
Creekside Development, LLC	VA	Beazer Homes Corp.; Centex Homes; Van Metre Creekside Investment, LLC	49
Lansdowne Community Development, LLC	VA	Beazer Homes Corp.; Centex Homes; WL Homes LLC, dba John Laing homes; Van Metre Lansdowne Investments, LLC	25

Schedule IV

Information Conveyed to Accounts

Number of Shares Offered: 19,500,000

Number of Shares Subject to Over-Allotment Purchase Option: 2,925,000

Offering Price to the Public: $4.60

Schedule V

Issuer Free Writing Prospectus (included in the Pricing Disclosure Package)

1. None

Schedule VI

Lock-Up Agreement Signatories

Laurent Alpert
Brian C. Beazer
Kenneth F. Khoury
Peter G. Leemputte
Ian J. McCarthy
Allan P. Merrill
Norma A. Provencio
Robert L. Salomon
Larry T. Solari
Stephen P. Zelnak, Jr.

Exhibit 1.2

BEAZER HOMES USA, INC.

$50,000,000
7 ½% Mandatory Convertible Subordinated Notes due 2013

UNDERWRITING AGREEMENT

January 6, 2010
New York, New York

Citigroup Global Markets Inc.
Credit Suisse Securities (USA) LLC
As Representatives of the Underwriters
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

Beazer Homes USA, Inc., a Delaware corporation (the "**Company**"), agrees with you as follows:

1. Issuance of Securities. The Company proposes to issue and sell to the several parties listed on Schedule I hereto (the "**Underwriters**"), for whom Citigroup Global Markets Inc. and Credit Suisse Securities (USA) LLC are acting as representatives (the "**Representatives**"), $50,000,000 aggregate principal amount of 7 ½% Mandatory Convertible Subordinated Notes due 2013 (the "**Notes**") of the Company (the "**Underwritten Securities**"). The Company also proposes to grant to the Underwriters the option to purchase up to an additional $7,500,000 principal amount of Notes to cover over-allotments, if any (the "**Option Securities**"; the Option Securities, together with the Underwritten Securities, being hereafter called the "**Securities**"). The Securities are initially convertible into shares of Common Stock, par value $.001 per share, of the Company (the "**Common Stock**") at the conversion price set forth in the Pricing Term Sheet and the Final Prospectus (the "**Underlying Shares**"). The Underlying Shares will have attached thereto preferred share purchase rights (the "**Rights**") pursuant to a Section 382 Rights Agreement, dated as of July 31, 2009 (the "**Rights Agreement**"), between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent, unless such Rights Agreement is terminated prior to the Closing Date. The Notes will be issued pursuant to an indenture (the "**Base Indenture**") to be dated the Closing Date by and between the Company and U.S. Bank National Association, as trustee (the "**Trustee**"), as supplemented by a supplemental indenture (the "**Supplemental Indenture**", and together with the Base Indenture, the "**Indenture**").

The Company meets the requirements for use of Form S-3 under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "**Act**"), and has prepared and filed with the Securities and Exchange Commission (the "**Commission**") a registration statement on Form S-3 (File No. 333-163110) under the Act, including a related Base Prospectus, for registration under the Act of the offering and sale of the

Securities. Such Registration Statement, including any amendments thereto filed on or prior to the date hereof has become effective. The Company may have filed with the Commission, as part of an amendment to the Registration Statement or pursuant to Rule 424(b) under the Act, one or more preliminary prospectus supplements relating to the Securities, each of which has previously been furnished to you. The Registration Statement meets the requirements set forth in Rule 415(a)(1)(x) under the Act. The initial Effective Date of the Registration Statement was not earlier than the date three years before the date hereof.

The terms that follow, when used in this Agreement, shall have the meanings indicated:

"**Applicable Time**" shall mean 5:30 p.m. (Eastern time) on the date of this Agreement.

"**Base Prospectus**" shall mean the base prospectus contained in the Registration Statement at the Applicable Time.

"**Business Day**" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

"**Effective Date**" shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or becomes effective.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Final Prospectus**" shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) under the Act after the Applicable Time, together with the Base Prospectus.

"**Free Writing Prospectus**" shall mean a free writing prospectus, as defined in Rule 405 under the Act.

"**Issuer Free Writing Prospectus**" shall mean an issuer free writing prospectus, as defined in Rule 433 under the Act.

"**Preliminary Prospectus**" shall mean any preliminary prospectus supplement to the Base Prospectus which is used prior to the filing of the Final Prospectus, together with the Base Prospectus.

"**Pricing Disclosure Package**" shall mean (i) the Base Prospectus, (ii) the Preliminary Prospectus used most recently prior to the Applicable Time, (iii) the Pricing Term Sheet, (iv) the Issuer Free Writing Prospectuses, if any, identified in Schedule V hereto, and (v) any other Free Writing Prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Pricing Disclosure Package.

"**Pricing Term Sheet**" shall mean the final term sheet prepared and filed with the Commission pursuant to Section 4(s) hereof.

"**Registration Statement**" shall mean the registration statement on Form S-3 (File No. 333-163110), including exhibits and financial statements and any prospectus supplement relating to the Securities and Underlying Shares that is filed with the Commission pursuant to Rule 424(b) under the Act and deemed part of such registration statement pursuant to Rule 430B under the Act, as amended on each Effective Date and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be.

"**Rule 462(b) Registration Statement**" shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the registration statement on Form S-3 (File No. 333-163110) referred to in the immediately preceding paragraph.

"**Trust Indenture Act**" shall mean the Trust Indenture Act of 1939, as amended, and the rules and regulations promulgated thereunder.

Unless stated to the contrary, any references herein to the terms "Registration Statement," "Base Prospectus," "Preliminary Prospectus" or "Final Prospectus" shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include any information filed under the Exchange Act subsequent to the date hereof that is incorporated by reference therein. All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" (or other references of like import) in the Registration Statement, Pricing Disclosure Package (including the Preliminary Prospectus) or Final Prospectus shall be deemed to mean and include all such financial statements and schedules and other information which are incorporated by reference in the Registration Statement, Pricing Disclosure Package (including the Preliminary Prospectus) or Final Prospectus, as the case may be.

This Agreement, the Securities, the Underlying Shares and the Indenture are hereafter sometimes referred to collectively as the "**Note Documents**."

2. Agreements to Sell and Purchase. On the basis of the representations, warranties and covenants of the Underwriters contained in this Agreement, the Company agrees to issue and sell to the Underwriters, and, on the basis of the representations, warranties and covenants of the Company contained in this Agreement and subject to the terms and conditions contained in this Agreement, each of the Underwriters, severally and not jointly, agrees to purchase from the Company, the aggregate principal amount of Underwritten Securities set forth

opposite its name on Schedule I attached hereto. The purchase price for the Underwritten Securities shall be 97% of their principal amount.

On the basis of the representations, warranties and covenants of the Underwriters contained in this Agreement, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to $7,500,000 aggregate principal amount of Option Securities at the same purchase price as the Underwriters shall pay for the Underwritten Securities. Said option may be exercised only to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written or telegraphic notice by the Representatives to the Company setting forth the aggregate principal amount of Option Securities as to which the several Underwriters are exercising the option and the settlement date. The principal amount of Option Securities to be purchased by each Underwriter shall be the same percentage of the aggregate principal amount of the Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments to ensure that the Option Securities are not issued in minimum denominations of less than $25 or whole multiples thereof.

3. Delivery and Payment. Delivery of, and payment of the purchase price for, the Underwritten Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 a.m., New York City time, on January 12, 2010 (such date and time, the "**Closing Date**") at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036. The Closing Date and the location of, delivery of and the form of payment for the Securities may be varied by mutual agreement between the Underwriters and the Company.

Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price therefor by means of transfer of immediately available funds to such account or accounts specified by the Company in accordance with its obligations under Section 4(h) hereof on or prior to the Closing Date, or by such means as the parties hereto shall agree prior to the Closing Date. Delivery of the Underwritten Securities and the Option Securities shall be made through the facilities of The Depository Trust Company ("**DTC**") unless the Representatives shall otherwise instruct.

If the option provided for in Section 2 hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, at 388 Greenwich Street, New York, New York, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives of the purchase price therefor by means of transfer of immediately available funds to such account or accounts specified by the Company. If settlement for the Option Securities occurs after the Closing Date (such date of settlement if not the Closing Date, the "**settlement date**"), the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates

and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 8 hereof.

4. Agreements of the Company. The Company covenants and agrees with the Underwriters as follows:

(a) To furnish, without charge as soon as available, to the Representatives and counsel for the Underwriters signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and to the Underwriters and those persons identified by the Underwriters as many copies of the Preliminary Prospectus, any Issuer Free Writing Prospectus and the Final Prospectus, and any amendments or supplements thereto, as the Underwriters may reasonably request. The Company consents to the use of the Preliminary Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus and the Final Prospectus, and any amendments and supplements thereto required pursuant to this Agreement, by the Underwriters in connection with the offer and sale of the Securities.

(b) As promptly as practicable following the execution and delivery of this Agreement, to prepare and file with the Commission in accordance with and within the time period prescribed in Rule 424(b) under the Act (and provide evidence satisfactory to the Representatives of such timely filing) and deliver to the Underwriters the Final Prospectus, which shall contain all information required by the Act and shall consist of the Preliminary Prospectus as modified by the information set forth in the Pricing Term Sheet and other non-material changes thereto as shall be approved by the Underwriters. Not to amend or supplement the Preliminary Prospectus (except with the information set forth in the Pricing Term Sheet and other non-material changes thereto as shall be approved by the Underwriters). Not to amend or supplement the Registration Statement, the Base Prospectus, any Preliminary Prospectus, the Pricing Disclosure Package or the Final Prospectus) or any Rule 462(b) Registration Statement unless the Underwriters shall previously have been advised of such proposed amendment or supplement to the extent permitted by law at least two business days prior to the proposed use, and shall not have objected to such amendment or supplement.

(c) If, at any time prior to the filing of the Final Prospectus pursuant to Rule 424(b) under the Act, any event shall occur that, in the judgment of the Company or in the judgment of counsel to the Underwriters, makes any statement of a material fact in the Pricing Disclosure Package untrue or that requires the making of any additions to or changes in the Pricing Disclosure Package in order to make the statements in the Pricing Disclosure Package, in light of the circumstances under which they are made, not misleading, or if it is necessary to amend or supplement the Pricing Disclosure Package to comply with any applicable law, the Company shall promptly notify the Underwriters of such event and (subject to Section 4(b)) prepare, at its own expense, an appropriate amendment or supplement to the Pricing Disclosure Package so that (i) the Pricing Disclosure Package, as amended or supplemented, will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) the Pricing Disclosure Package will comply with all applicable laws. Neither the Underwriters' consent to, nor their delivery to offerees or investors of, any such amendment or

supplement shall constitute a waiver of any of the covenants set forth in this Section 4(c) or Section 4(b).

(d) If, at any time when a prospectus relating to the Securities is required to be delivered under the Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Act), any event shall occur that, in the judgment of the Company or in the judgment of counsel to the Underwriters, makes any statement of a material fact in the Final Prospectus untrue or that requires the making of any additions to or changes in the Final Prospectus in order to make the statements in the Final Prospectus, in light of the circumstances under which they are made, not misleading, or if it is necessary to amend the Registration Statement, to file a new registration statement or supplement the Final Prospectus to comply with any applicable law, the Company shall promptly notify the Underwriters of such event and (subject to Section 4(b)) prepare and file with the Commission, at its own expense, an appropriate amendment or supplement to the Registration Statement or the Final Prospectus or a new registration statement so that (i) the Final Prospectus, as amended or supplemented, will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) the Registration Statement and the Final Prospectus will comply with all applicable laws. Neither the Underwriters' consent to, nor their delivery to offerees or investors of, any such amendment or supplement shall constitute a waiver of any of the covenants set forth in this Section 4(d) or Section 4(b). The Company shall use its reasonable best efforts to have any amendment of the Registration Statement or any such new registration statement declared effective as promptly as practicable in order to avoid any disruption of the use of the Final Prospectus. The Company shall file any supplement to the Final Prospectus as promptly as practicable with the Commission in accordance with and within the time period prescribed in Rule 424(b) under the Act (and provide evidence satisfactory to the Representatives of such timely filing).

(e) To cooperate with the Underwriters and counsel to the Underwriters in connection with the qualification or registration of the Securities under the securities laws of such jurisdictions as the Underwriters may request and to continue such qualification in effect so long as required for the distribution of the Securities. Notwithstanding the foregoing, the Company shall not be required to qualify as a foreign corporation in any jurisdiction in which it is not so qualified or to file a general consent to service of process in any such jurisdiction or subject itself to taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then so subject.

(f) To advise the Underwriters promptly and, if requested by the Underwriters, to confirm such advice in writing, (i) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) under the Act or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (ii) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement or any new registration statement relating to the Securities shall have been filed or become effective, (iii) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the

Registration Statement or of any notice objecting to its use or the institution or threatening of any proceeding for that purpose and (v) of the issuance by any securities commission of any stop order suspending the qualification or exemption from qualification of the Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for such purpose by any securities commission or other regulatory authority. The Company shall use its reasonable best efforts to prevent the issuance of any stop order or the occurrence of any such suspension or notice of objection to the use of the Registration Statement or any stop order or order suspending the qualification or exemption of any of the Securities under any securities laws, and if at any time the Commission or any securities commission or other regulatory authority shall issue a stop order or notice of objection to the use of the Registration Statement or a stop order or order suspending the qualification or exemption of any of the Securities under any securities laws, the Company shall use its reasonable best efforts to obtain the withdrawal or lifting of such order or relief from such notice of objection at the earliest possible time, including, if necessary, by filing an amendment to the Registration Statement or a new registration statement and using its reasonable best efforts to have such amendment or new registration statement declared effective as soon as practicable.

(g) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement becomes effective or is terminated other than by reason of a default by the Underwriters, to pay all costs, expenses, fees and disbursements reasonably incurred and stamp, documentary or similar taxes incident to and in connection with: (i) the preparation, printing, distribution and filing with the Commission of the Registration Statement (including, without limitation, financial statements and exhibits thereto), each Preliminary Prospectus, each Issuer Free Writing Prospectus and the Final Prospectus, and all amendments and supplements thereto, (ii) all expenses (including travel expenses) of the Company and the Underwriters in connection with any meetings with prospective investors in the Securities, (iii) the execution, issue, authentication, packaging and initial delivery of the Securities and the Underlying Shares, the preparation, notarization (if necessary) and delivery of the Note Documents and all other agreements, memoranda, correspondence and documents prepared and delivered in connection with this Agreement, (iv) the issuance, transfer and delivery by the Company of the Securities to the Underwriters, (v) the qualification or registration of the Securities for offer and sale under the securities laws of such jurisdictions as the Underwriters may request (including, without limitation, the cost of printing and mailing preliminary and final “Blue Sky” or legal investment memoranda and fees and disbursements of counsel (including local counsel) to the Underwriters relating thereto), (vi) the furnishing of such copies of the Registration Statement, each Preliminary Prospectus, each Issuer Free Writing Prospectus and the Final Prospectus, and all amendments and supplements thereto, as may be reasonably requested, (vii) the preparation of certificates for the Securities, (viii) the approval of the Securities by DTC for “book-entry” transfer, (ix) the rating of the Securities by rating agencies, (x) the fees and expenses of the Trustee and its counsel and of the transfer agent and registrar for the Underlying Shares, (xi) the performance by the Company of its obligations under the Note Documents, (xii) the listing of the Securities and the Underlying Shares on the New York Stock Exchange, and (xiii) any filings required to be made with the Financial Industry Regulatory Authority, Inc. (including filing fees and reasonable and documented fees and expenses of counsel to the Underwriters incurred in connection therewith).

(h) To use the proceeds from the sale of the Securities in the manner described in the Pricing Disclosure Package and Final Prospectus under the caption "Use of Proceeds."

(i) To do and perform all things required to be done and performed under this Agreement by it prior to or after the Closing Date and to satisfy all conditions precedent on its part to the delivery of the Securities.

(j) To comply with all of its obligations set forth in the representations letter of the Company to DTC relating to the approval of the Securities by DTC for "book-entry" transfer and to use their reasonable best efforts to obtain approval of the Securities by DTC for "book-entry" transfer.

(k) Prior to the Closing Date, to furnish without charge to the Underwriters, (i) as soon as they have been prepared, a copy of any regularly prepared internal financial statements of the Company and its subsidiaries for any period subsequent to the period covered by the financial statements appearing in the Pricing Disclosure Package and Final Prospectus, (ii) all other reports and other communications (financial or otherwise) that the Company mails or otherwise makes available to their security holders and (iii) such other information as the Underwriters shall reasonably request.

(l) Not to distribute any offering material in connection with the offer and sale of the Securities other than the Preliminary Prospectus, any other Issuer Free Writing Prospectus specified in Schedule V hereto and the Final Prospectus.

(m) Not to make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 under the Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 under the Act (other than those listed on Schedule V hereto and other than the Pricing Term Sheet) without the prior consent of the Underwriters. Any such free writing prospectus consented to by the Underwriters (including those listed on Schedule V hereto) is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 under the Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(n) During the period of one year after the later of the Closing Date and any settlement date, not to be or become an "investment company" required to be registered, but not registered, under the Investment Company Act of 1940 as amended (the "**Investment Company Act**").

(o) In connection with the offering, until the Underwriters shall have notified the Company of the completion of the resale of the Securities (which the Company may assume occurred on or before the 90th day following the date of this Agreement unless given written notice to the contrary), not to, and not to permit any of their affiliates or affiliated purchasers (as

such term is defined in Regulation M under the Exchange Act) to, either alone or with one or more other persons, bid for or purchase for any account in which they or any of their affiliates or affiliated purchasers has a beneficial interest any shares of Common Stock or attempt to induce any person to purchase any shares of Common Stock in violation of Section 9 of the Exchange Act or Regulation M; and none of the Company or any of its affiliates or affiliated purchasers will make bids or purchases for the purpose of creating actual, or apparent, active trading in, or of raising the price of, the Securities.

(p) During the period beginning on the date hereof and continuing until the date 90 days after the Closing Date, the Company and its affiliates shall not offer, sell, contract to sell, pledge, or otherwise dispose of, directly or indirectly (whether by actual disposition or effective economic disposition due to cash settlement or otherwise), or file with the Commission a registration statement under the Securities Act relating to, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, except pursuant to this Agreement, any other shares of Common Stock or any securities convertible into, or exercisable, or exchangeable for, shares of Common Stock; or publicly disclosure the intention to make any such offer, sale, contract of sale, pledge, disposition, filing or transaction, without the prior written consent of the Representatives; *provided*, *however*, that the Company may issue and sell Common Stock pursuant to (i) the concurrent offering of up to 22,425,000 shares of the Company's Common Stock (which includes an additional 2,925,000 shares of the Company's Common Stock if the underwriters exercise their over-allotment option in full) or (ii) any employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company in effect as of the date hereof and the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants outstanding as of the date hereof. The Company will provide the Representatives and any co-managers and each individual subject to the restricted period pursuant to the lock-up letters described in Section 4(r) with prior notice of any such announcement that gives rise to an extension of the restricted period.

(q) As soon as practicable, to make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(r) To cause each individual listed on Schedule VI to furnish to the Representatives, on or prior to the date of this agreement, a letter substantially in the form of Exhibit B hereto from each person listed on Schedule VI hereto and addressed to the Representatives (the "Lock-up Agreements").

(s) To prepare a final term sheet, containing solely a description of final terms of the Securities and the offering thereof, in the form approved by you and attached as Schedule IV hereto and to file such term sheet pursuant to Rule 433(d) under the Act within the time required by such Rule.

(t) To reserve and keep available at all times, free of preemptive rights, the maximum number of shares of Common Stock issuable upon conversion of the Securities.

(u) Between the date hereof and the Closing Date, not to do or authorize any act or thing that would result in an adjustment of the conversion price of the Notes.

(v) To use its commercially reasonable efforts to cause the Securities and the Underlying Shares to be listed and admitted and authorized for trading on the New York Stock Exchange, subject to official notice of issuance, and to provide satisfactory evidence of such actions to the Representatives.

5. Representations and Warranties. The Company represents and warrants to the Underwriters that, as of the date hereof and as of the Closing Date (and as of the settlement date, as applicable):

(a) On each Effective Date, the Registration Statement did, and when the Final Prospectus is first filed in accordance with Rule 424(b) under the Act and on the Closing Date and on any settlement date, the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act and the Exchange Act and the respective rules thereunder. On each Effective Date and on the date hereof, the Registration Statement did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; on the Effective Date and on the Closing Date and any settlement date the Indenture did or will comply in all material respects with the applicable requirements of the Trust Indenture Act and the rules thereunder; *provided*, *however*, that the Company makes no representation or warranty with respect to (i) that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of the Trustee or (ii) information relating to the Underwriters contained in or omitted from the Registration Statement in reliance upon and in conformity with information furnished to the Company in writing by or on behalf of any Underwriter through the Representatives expressly for inclusion in the Registration Statement.

(b) Neither the Pricing Disclosure Package, as of the Applicable Time, nor the Final Prospectus, as of its date or (as amended or supplemented in accordance with Section 4(b), if applicable) as of the Closing Date or any settlement date, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided*, *however*, that the Company, makes no representation or warranty with respect to information relating to the Underwriters contained in or omitted from the Pricing Disclosure Package or the Final Prospectus, or any amendment or supplement thereto, in reliance upon and in conformity with information furnished to the Company in writing by or on behalf of any Underwriter through the Representatives expressly for inclusion in the Pricing Disclosure Package or the Final Prospectus, or any supplement or amendment thereto, as the case may be. No order preventing the use of the Base Prospectus, the Preliminary Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus or the Final Prospectus, or any amendment or supplement thereto, or the effectiveness of the Registration Statement has been issued or, to the knowledge of the Company, has been threatened.

(c) Each Issuer Free Writing Prospectus and the Pricing Term Sheet does not include any information that conflicts with the information contained in the Registration

Statement, including any document incorporated therein by reference and any prospectus supplement deemed to be a part thereof that has not been superseded or modified; *provided*, *however*, that the Company makes no representation or warranty with respect to information relating to the Underwriters contained in or omitted from any Issuer Free Writing Prospectus in reliance upon and in conformity with information furnished to the Company in writing by or on behalf of any Underwriter through the Representatives expressly for inclusion in such Issuer Free Writing Prospectus.

(d) As of September 30, 2009, the Company had the authorized, issued and outstanding capital stock as set forth in the section of the Pricing Disclosure Package and Final Prospectus entitled "Capitalization" in the common stock line item. All of the issued and outstanding shares of capital stock or other equity interests of the Company have been duly and validly authorized and issued, are fully paid and nonassessable and were not issued in violation of any preemptive or similar right. Except as set forth in the Pricing Disclosure Package and Final Prospectus, there are no outstanding subscriptions, calls, options, warrants, rights, or other agreements with respect to the capital stock, membership interests, or partnership interests of the Company or any of the Subsidiaries (as defined below). No holder of any securities of the Company or any Subsidiary is entitled to have such securities registered under the Registration Statement.

(e) The Company has been duly incorporated and is validly existing as a corporation in good standing under the law of the State of Delaware with full corporate power and authority to own, lease and operate its properties and conduct its business as described in the Pricing Disclosure Package and Final Prospectus, to execute and deliver this Agreement and to issue, sell and deliver the Securities and the Underlying Shares as contemplated herein and in the Indenture (as defined below).

(f) All of the issued and outstanding shares of the capital stock of each of the Company's corporate subsidiaries (the "**Corporate Subsidiaries**") and the Company's trust subsidiary (the "**Trust Subsidiary**") have been validly issued and are fully paid and nonassessable, and each of the capital stock of the Corporate Subsidiaries and the Trust Subsidiary, membership interests of each of the Company's limited liability company subsidiaries (the "**LLC Subsidiaries**") and the partnership interests of each of the Company's limited partnership subsidiaries and limited liability partnership subsidiaries (the "**Partnership Subsidiaries**" and, together with the LLC Subsidiaries, the Corporate Subsidiaries, and the Trust Subsidiary, the "**Subsidiaries**") have been duly authorized and to the extent owned by the Company, are owned free and clear of any pledge, lien, encumbrance, security interest, preemptive right or other claim except for pledges, liens, encumbrances, and security interests securing obligations under the Amended and Restated Credit Agreement, dated as of August 5, 2009 (the "**Credit Agreement**"), among the Company, Citibank, N.A., as swing line lender and agent, and the lenders party thereto and the Indenture, dated as of September 11, 2009 (the "**Indenture**"), by and among the Company, the guarantors party thereto, U.S. Bank National Association, as trustee, and Wilmington Trust FSB, as Notes Collateral Agent. Attached as Schedule II is a true and complete list of each entity in which the Company has a direct or indirect majority equity or voting interest, their jurisdictions of incorporation or formation, and percentage equity ownership by the Company.

(g) Each of the Corporate Subsidiaries has been duly incorporated, and each of the Trust Subsidiary, the LLC Subsidiaries and Partnership Subsidiaries has been duly formed, and is validly existing as a corporation, in the case of the Corporate Subsidiaries, as a trust, in the case of the Trust Subsidiary, as a limited partnership or a limited liability partnership, in the case of the Partnership Subsidiaries or as a limited liability company, in the case of LLC Subsidiaries, and in good standing under the laws of its respective jurisdiction of incorporation or formation with full corporate, trust, partnership or limited liability company power, as the case may be, and authority to own its respective properties and conduct its respective business as described in the Pricing Disclosure Package and Final Prospectus.

(h) The Company has all requisite corporate power and authority to execute, deliver and perform all of its obligations under the Note Documents and to consummate the transactions contemplated by the Note Documents to be consummated on its part and, without limitation, the Company has all requisite corporate power and authority to issue, sell and deliver the Securities and the Underlying Shares. The Company has duly authorized the execution, delivery and performance of each of the Note Documents. The Note Documents conform in all material respects to the descriptions thereof in the Pricing Disclosure Package and the Final Prospectus.

(i) The Company and each of the Subsidiaries are duly qualified or licensed by and are in good standing in each jurisdiction in which the nature of their respective businesses or their respective ownership or leasing of their respective properties requires such qualification, except where the failure to so qualify would not, individually or in the aggregate, have a Material Adverse Effect (as defined herein). Other than the entities listed on Schedule II hereto, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, association or other entity other than the entities listed on Schedule III hereto. A "**Material Adverse Effect**" means any material adverse effect on the business, condition (financial or other), results of operations, performance, properties or prospects of the Company and the Subsidiaries, taken as a whole.

(j) This Agreement has been duly and validly executed and delivered by the Company.

(k) The Indenture, when duly executed and delivered by the Company (assuming the due authorization, execution and delivery thereof by the Trustee), will be a legally binding and valid obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity and the discretion of the court before which any proceedings therefor may be brought (collectively, the "**Enforceability Exceptions**").

(l) The Securities, when issued, authenticated and delivered by the Company against payment by the Underwriters in accordance with the terms of this Agreement and the Indenture, will be legally binding and valid obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, except that

enforceability thereof may be limited by the Enforceability Exceptions, and will conform to the description thereof contained in the Pricing Disclosure Package and Final Prospectus.

(m) When the Securities are delivered and paid for pursuant to this Agreement on the Closing Date and any settlement date, the Securities will be convertible into shares of Common Stock in accordance with the terms of the Indenture. The Underlying Shares have been duly authorized and reserved for issuance upon such conversion and, when issued upon such conversion pursuant to the terms of the Indenture will be validly issued, fully paid and nonassessable and not issued in violation of any preemptive or similar right. The Rights have been duly authorized by the Company. Unless the Rights Agreement shall have been terminated prior to the Closing Date, the Rights attached to the outstanding shares of Common Stock have been validly issued, and, if and when issued in accordance with the Rights Agreement upon issuance of the Securities, the Rights attached to the Securities will be validly issued. The Series A Junior Participating Preferred Stock has been duly classified as such by the Company, and the Board has authorized the reservation of shares of the Series A Junior Participating Preferred Stock for issuance upon the exercise of the Rights in accordance with the terms of the Rights Agreement. When issued upon such exercise in accordance with the terms of the Rights Agreement, shares of the Series A Junior Participating Preferred Stock will be validly issued, fully paid and nonassessable.

(n) All documentary, stamp, recording, transfer or similar taxes, fees and other governmental charges that are due and payable on or prior to the Closing Date in connection with the execution and delivery of the Note Documents and the execution, delivery and sale of the Securities and the issuance of the Underlying Shares shall have been paid by or on behalf of the Company at or prior to the Closing Date.

(o) None of the Company or any Subsidiary is (A) in violation of its charter, bylaws, limited liability company agreement, partnership agreement, operating agreement or other constitutive documents, (B) except as disclosed in the Pricing Disclosure Package and Final Prospectus, in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement, covenant or condition contained in any bond, debenture, note, indenture, mortgage, deed of trust, loan or credit agreement, lease, license, franchise agreement, authorization, permit, certificate or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of their assets or properties is subject (collectively, "**Agreements and Instruments**"), (C) in violation of any law, statute, rule or regulation applicable to the Company or any Subsidiary or their respective assets or properties or (D) in violation of any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Subsidiary or their respective assets or properties or other governmental or regulatory authority, agency or other body, which in the case of clauses (B), (C) and (D) herein, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There exists no condition that, with notice, the passage of time or otherwise, would constitute a default by the Company or any Subsidiary under any such document or instrument or result in the imposition of any penalty or the acceleration of any indebtedness, other than penalties, defaults or conditions that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(p) The execution, delivery and performance by the Company of the Note Documents, including the consummation of the offer and sale of the Securities and the issuance of the Underlying Shares upon conversion thereof in accordance with the Indenture, does not and will not violate, conflict with or constitute a breach of any of the terms or provisions of or a default (or an event that with notice or the lapse of time, or both, would constitute a default) under, or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Subsidiary pursuant to, (A) the charter, bylaws, limited liability company agreement, partnership agreement, operating agreement or other constitutive documents of the Company or any Subsidiary, (B) any of the Agreements and Instruments, (C) any law, statute, rule or regulation applicable to the Company or any Subsidiary or their respective assets or properties or (D) any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Subsidiary or their respective assets or properties. No consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any court or governmental agency, body or administrative agency, domestic or foreign, is required to be obtained or made by the Company or any Subsidiary for the execution, delivery and performance by the Company of this Agreement or any of the other Note Documents including the consummation of the offer and sale of the Securities and the issuance of the Underlying Shares upon conversion thereof in accordance with the Indenture, except such as have been or will be obtained or made on or prior to the Closing Date. No consents or waivers from any other person or entity are required for the execution, delivery and performance of this Agreement by the Company or the consummation by the Company of the issuance and sale of the Securities.

(q) Except as set forth in the Pricing Disclosure Package and Final Prospectus, there is (A) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to the knowledge of the Company, threatened or contemplated, to which the Company or any Subsidiary is or may be a party or to which the business, assets or property of such person is or may be subject, (B) no statute, rule, regulation or order that has been enacted, adopted or issued or, to the knowledge of the Company, that has been proposed by any governmental body or agency, domestic or foreign, (C) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Company or any Subsidiary is or may be subject that (x) in the case of clause (A) above, if determined adversely to the Company or any Subsidiary, could, individually or in the aggregate, reasonably be expected, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Securities in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Note Documents and (y) in the case of clauses (B) and (C) above, could, individually or in the aggregate, reasonably be expected, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Securities in any jurisdiction or adversely affect the consummation of the transactions contemplated by the Note Documents. Every request of any securities authority or agency of any jurisdiction for additional information with respect to the Securities that has been received by the Company or any Subsidiary or their counsel prior to the date hereof has been, or will prior to the Closing Date be, complied with in all material respects.

(r) Except as could not reasonably be expected to have a Material Adverse Effect, no labor problem or dispute with the employees of the Company or the Subsidiaries exists or, to the knowledge of the Company, is threatened or imminent.

(s) The business, operations and facilities of the Company and each of the Subsidiaries have been and are being conducted in compliance with all applicable laws, ordinances, rules, regulations, licenses, permits, approvals, plans, authorizations or requirements relating to occupational safety and health, or pollution, or protection of health or the environment, or reclamation (including, without limitation, those relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic substances, materials or wastes into ambient air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of chemical substances, materials or wastes, whether solid, gaseous or liquid in nature) or otherwise relating to remediating real property of any governmental department, commission, board, bureau, agency or instrumentality of the United States, any state or political subdivision thereof, or any foreign jurisdiction, and all applicable judicial or administrative agency or regulatory decrees, awards, judgments and orders relating thereto, except any violation thereof which would not, individually or in the aggregate, have a Material Adverse Effect; and, except as disclosed in the Pricing Disclosure Package and Final Prospectus, neither the Company nor any of the Subsidiaries has received any notice from a governmental instrumentality or any third party alleging any violation thereof or liability thereunder (including, without limitation, liability for costs of investigating or remediating sites containing hazardous substances and/or damages to natural resources).

(t) There is no claim pending or, to the best knowledge of the Company, threatened or contemplated under any federal, state, local or foreign law, rule, regulation, decision or order governing pollution or protection or restoration of the environment (the "**Environmental Laws**") against the Company or any of the Subsidiaries which, if adversely determined, would, individually or in the aggregate, have a Material Adverse Effect; there are no past or present actions or conditions including, without limitation, the use, disposal or release of, or human exposure to, any hazardous or toxic substance or waste regulated under any Environmental Law that are likely to form the basis of any such claim against the Company or any of the Subsidiaries which, if adversely determined, would, individually or in the aggregate, have a Material Adverse Effect. The Company and each Subsidiary maintain a system of internal environmental management controls sufficient to provide reasonable assurance of compliance in all material respects of their business facilities, real property and operations with requirements of applicable Environmental Laws.

(u) Each of the Company and the Subsidiaries has all necessary permits, licenses, authorizations, consents and approvals and has made all necessary filings required under any federal, state, local or foreign law, regulation or rule, and has obtained all necessary authorizations, consents and approvals from other persons, material to the conduct of its respective business. Neither the Company nor any of the Subsidiaries is in violation of, or in default under, any such license, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order judgment applicable to the Company or any of the Subsidiaries the effect of which could, individually or in the aggregate, have a Material Adverse Effect.

(v) All legal or governmental proceedings, contracts or documents of a character required to be described in the Registration Statement, the Preliminary Prospectus or the Final Prospectus pursuant to Regulation S-K have been so described as required.

(w) The statements in the Pricing Disclosure Package and the Final Prospectus under the headings (i) “Description of Capital Stock,” (ii) “Description of the Notes,” (iii) “Description of Other Indebtedness” and (iv) “Material United States Federal Income Tax Considerations” (to the extent such statements relate to matters of U.S. federal income tax laws), fairly summarize the matters therein described.

(x) The Company and the Subsidiaries have good title to all properties and assets owned by them and have good leasehold interest in each property and asset leased by them, in each case free and clear of all pledges, liens, encumbrances, security interests, charges, mortgages and defects, except for liens permitted under the Credit Agreement and the Indenture or such as would not, individually or in the aggregate, have a Material Adverse Effect or do not materially affect the value of such property and do not interfere with the use made or proposed to be made of such properties by the Company or the Subsidiaries.

(y) The Company and each Subsidiary have, own, possess or have the right to employ all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names and other intellectual property (collectively, the “**Intellectual Property**”) necessary to conduct the businesses operated by them as described in the Pricing Disclosure Package, except where the failure to own, possess or have the right to employ such Intellectual Property could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has received any notice of infringement of or conflict with (and neither knows of any such infringement or a conflict with) asserted rights of others with respect to any of the foregoing that, if such assertion of infringement or conflict were sustained, could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The use of the Intellectual Property in connection with the business and operations of the Company and the Subsidiaries does not infringe on the rights of any person, except for such infringement as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(z) The Company and each of the Subsidiaries have filed all federal, state, local or foreign income and franchise tax returns required to be filed and all such returns are true, complete and correct in all material respects. The Company and each of the Subsidiaries have paid all taxes shown thereon as due, and there is no material tax deficiency which has been or is reasonably likely to be asserted against the Company or any of the Subsidiaries; all material tax liabilities of the Company and the Subsidiaries are adequately provided for on the books of the Company and the Subsidiaries.

(aa) The Company, either directly or through one or more Subsidiaries, has in effect, with financially sound insurers, insurance with respect to its business and properties and the business and properties of the Subsidiaries against loss or damage of the kind customarily insured against by corporations engaged in the same or similar businesses and similarly situated, of such type and in such amounts as are customarily carried under similar circumstances by such other corporations; neither the Company nor any Subsidiary (A) has received notice from any insurer or agent of such insurer that substantial capital improvements or other material expenditures will have to be made in order to continue such insurance or (B) has any reason to believe that it will not be able to renew its existing insurance coverage as and when such

coverage expires or to obtain similar coverage from similar insurers at a cost that would not, individually or in the aggregate, have a Material Adverse Effect.

(bb) The Company and the Subsidiaries are in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("**ERISA**"), except where the failure to be in such compliance would not, individually or in the aggregate, have a Material Adverse Effect; no "reportable event" (as defined in ERISA and with respect to which the 30-day notice provision has not been waived) has occurred with respect to any "pension plan" (as defined in ERISA) subject to Title IV of ERISA for which the Company or any Subsidiary would have liability; except for matters that would not, individually or in the aggregate, have a Material Adverse Effect, the Company and the Subsidiaries have not incurred and do not expect to incur liability under (A) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (B) Section 412, 430 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder ("**Code**"); and each "pension plan" for which the Company and the Subsidiaries would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would reasonably be expected to cause the loss of such qualification.

(cc) The execution and delivery of this Agreement and the sale of the Securities will not involve any nonexempt prohibited transaction within the meaning of Section 406(a) of ERISA or Section 4975(c)(1)(A) of the Code.

(dd) The Company is subject to and in compliance in all material respects with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act.

(ee) Neither the Company nor any Subsidiary is an "investment company" that is or is required to be registered under Section 8 of the Investment Company Act; and neither the Company nor any Subsidiary is, and after giving effect to the offering and sale of the Securities and the application of the proceeds therefrom as described in the Pricing Disclosure Package and Final Prospectus neither the Company nor any Subsidiary will be, an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act.

(ff) Each of the Company and its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of its financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for its assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(gg) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating

to the Company and the Subsidiaries is made known to the chief executive officer and chief financial officer of the Company by others within the Company or any Subsidiary, and such disclosure controls and procedures are reasonably effective to perform the functions for which they were established subject to the limitations of any such control system. The Company's auditors and the audit committee of the board of directors of the Company have been advised of: (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize, and report financial information; and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting and since the date of the most recent evaluation of such disclosure controls and procedures, there have been no changes in internal control over financial reporting that have materially affected or are reasonably likely to materially affect, the Company's internal control over financial reporting. As of September 30, 2009, the Company and the Subsidiaries' internal controls over financial reporting were reasonably effective to perform the functions for which they were established, subject to the limitations of any such control system, and the Company and the Subsidiaries are not aware of any material weakness in their internal control over financial reporting.

(hh) None of the Company or any of its affiliates (as defined in Rule 501(b) of Regulation D under the Act) has taken, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(ii) The Company has not made any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 under the Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 under the Act (other than those listed on Schedule V hereto) without the prior consent of the Underwriters.

(jj) No forward-looking statement (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) contained in the Pricing Disclosure Package has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(kk) As of September 30, 2009, none of the Company or any Subsidiary had any material liabilities or obligations, direct or contingent, that were not set forth in the consolidated balance sheet as of such date or in the notes thereto set forth in the Pricing Disclosure Package and Final Prospectus. Since September 30, 2009, except as set forth or contemplated in the Pricing Disclosure Package and Final Prospectus, (a) none of the Company or any Subsidiary has (1) incurred any liabilities or obligations, direct or contingent, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (2) entered into any material transaction not in the ordinary course of business, or (3) purchased any of its outstanding capital stock, (b) there has not been any material adverse change, prospective change, event or development in respect of the business, properties, prospects, results of operations or condition (financial or other) of the Company and the Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) there has been no dividend or distribution of any kind declared, paid or made by the

Company on any class of capital stock and (d) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company or any of the Subsidiaries.

(ll) Neither the Company nor any Subsidiary (nor any agent thereof acting on their behalf) has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Notes to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System, as in effect, or as the same may hereafter be in effect, on the Closing Date.

(mm) Deloitte & Touche LLP is an independent accountant within the meaning of the Act. The historical financial statements and the notes thereto included in the Pricing Disclosure Package and Final Prospectus present fairly in all material respects the consolidated financial position and results of operations of the Company and the Subsidiaries at the respective dates and for the respective periods indicated. Such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods presented (except as disclosed in the Pricing Disclosure Package and Final Prospectus). The other financial and statistical information and data included in the Pricing Disclosure Package and Final Prospectus are accurately presented in all material respects and prepared on a basis consistent with the financial statements and the books and records of the Company and the Subsidiaries.

(nn) The Company is not and, upon consummation of the transactions, will not be (A) "insolvent" as that term is defined in Section 101(32) of the United States Bankruptcy Code (the "Bankruptcy Code") (11 U.S.C. § 101(32)), Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (B) an entity with "unreasonably small capital" as that term is used in Section 548(a)(2)(ii) of the Bankruptcy Code or Section 5 of the UFCA, (C) engaged or about to engage in a business or transaction for which its remaining property is "unreasonably small" in relation to the business or transaction as that term is used in Section 4 of the UFTA or (D) unable to pay its debts as they mature or become due, within the meaning of Section 548(a)(2)(B)(iii) of the Bankruptcy Code, Section 4 of the UFTA and Section 6 of the UFCA. The Company now owns and upon consummation of the transactions will own assets having a value of both "fair valuation" and at "present fair saleable value" greater than the amount required to pay its "debts" as such terms are used in Section 2 of the UFTA and Section 2 of the UFCA.

(oo) Except as described in the section entitled "Underwriting" in the Pricing Disclosure Package and Final Prospectus, there are no contracts, agreements or understandings between the Company or any Subsidiary and any other person other than the Underwriters that would give rise to a valid claim against, the Company, any Subsidiary or the Underwriters for a brokerage commission, finder's fee or like payment in connection with the issuance, purchase and sale of the Securities.

(pp) The Indenture is in sufficient form for due qualification under the Trust Indenture Act.

(qq) The industry, statistical and market-related data included in the Pricing Disclosure Package and Final Prospectus are based on or derived from sources that the Company

reasonably and in good faith believe to be reliable and accurate in all material respects and represent their good faith estimates that are made on the basis of data derived from such sources.

(rr) There is and has been no failure on the part of the Company and any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including without limitation Section 402 related to loans and Sections 302 and 906 related to certifications, other than any such failures which would not result in a Material Adverse Effect.

Each certificate or document signed by any officer of the Company and delivered to the Underwriters or counsel for the Underwriters pursuant to, or in connection with, this Agreement shall be deemed to be a representation and warranty by the Company to the Underwriters as to the matters covered by such certificate or document. The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered to the Underwriters pursuant to Section 8 of this Agreement, counsel to the Company and counsel to the Underwriters will rely upon the accuracy and truth of the foregoing representations and the Company hereby consent to such reliance.

6. Indemnification.

(a) The Company agrees to indemnify and hold harmless the Underwriters, each person, if any, who controls any Underwriter within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, the agents, employees, affiliates, officers and directors of any Underwriter and the agents, employees, affiliates, officers and directors of any such controlling person from and against any and all losses, liabilities, claims, damages and expenses whatsoever (including, but not limited to, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation) (collectively, "**Losses**") to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Pricing Disclosure Package (including the Pricing Term Sheet), the Final Prospectus or any Issuer Free Writing Prospectus, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein (in the case of any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Pricing Disclosure Package (including the Pricing Term Sheet), the Final Prospectus or any Issuer Free Writing Prospectus, in light of the circumstances under which they were made) not misleading; *provided*, *however*, that the Company will not be liable in any such case to the extent, but only to the extent, that any such Loss arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission relating to an Underwriter made therein in reliance upon and in conformity with written information relating to an Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein. This indemnity agreement will be in addition to any liability that the Company may otherwise have, including, but not limited to, liability under this Agreement.

(b) Each Underwriter agrees to indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, and each of their respective agents, employees, officers and directors and the agents, employees, officers and directors of any such controlling person from and against any Losses to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, , the Pricing Disclosure Package (including the Pricing Term Sheet), the Final Prospectus or any Issuer Free Writing Prospectus, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein (in the case of any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Final Prospectus or any Issuer Free Writing Prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that any such Loss arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission relating to such Underwriter made therein in reliance upon and in conformity with information relating to such Underwriter furnished in writing to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein. The Company and each Underwriter, severally and not jointly, acknowledge that the information set forth in Section 9 is the only information furnished in writing by the Underwriters to the Company expressly for use in the Registration Statement, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Pricing Disclosure Package (including the Pricing Term Sheet), the Final Prospectus or any Issuer Free Writing Prospectus.

(c) Promptly after receipt by an indemnified party under subsection 6(a) or 6(b) above of notice of the commencement of any action, suit or proceeding (collectively, an "**action**"), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the commencement of such action (but the failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability that it may have under this Section 6 except to the extent that it has been prejudiced in any material respect by such failure). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement of such action, the indemnifying party will be entitled to participate in such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense of such action with counsel reasonably satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such action, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to take charge of the defense of such action within a reasonable time after notice of commencement of the action, (iii) the named parties to such action (including any impleaded parties) include such indemnified party and the indemnifying parties (or such indemnifying parties have assumed the defense of such action), and such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them that are different from or additional

to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), or (iv) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, in any of which events such reasonable fees and expenses of counsel shall be borne by the indemnifying parties. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) at any time for all indemnified parties in connection with any one action or separate but substantially similar or related actions arising in the same jurisdiction out of the same general allegations or circumstances. An indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent which consent may not be unreasonably withheld. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by paragraph (a) or (b) of this Section 6, then the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 45 days prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

7. Contribution.

(a) In order to provide for contribution in circumstances in which the indemnification provided for in Section 6 of this Agreement is for any reason held to be unavailable from the indemnifying party, or is insufficient to hold harmless a party indemnified under Section 6 of this Agreement, each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such aggregate Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities or (ii) if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the offering of the Securities (net of discounts and commissions but before deducting expenses) received by the Company are to (y) the total discounts and commissions received by the Underwriters as set forth in this Agreement. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the

Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission.

(b) The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to above. Notwithstanding the provisions of this Section 7, (i) in no case shall any Underwriter be required to contribute any amount in excess of the amount by which the total discount and commissions applicable to the Securities pursuant to this Agreement exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 7, each person, if any, who controls any Underwriter within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and each director, officer, employee and agent of the Underwriters shall have the same rights to contribution as the Underwriters, and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and each director, officer, employee and agent of the Company shall have the same rights to contribution the Company. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made against another party or parties under this Section 7, notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 7 or otherwise, except to the extent that it has been prejudiced in any material respect by such failure; *provided*, *however*, that no additional notice shall be required with respect to any action for which notice has been given under Section 6 for purposes of indemnification. Anything in this section to the contrary notwithstanding, no party shall be liable for contribution with respect to any action or claim settled without its written consent, *provided*, *however*, that such written consent was not unreasonably withheld. The obligations of the Underwriters to make any contributions pursuant to this Section 7(b) shall be several and not joint.

8. Conditions of Underwriters' Obligations. The obligations of the Underwriters to purchase and pay for the Underwritten Securities and the Option Securities, as the case may be, as provided for in this Agreement, shall be subject to satisfaction of the following conditions prior to or concurrently with such purchase:

(a) All of the representations and warranties of the Company contained in this Agreement and made pursuant to the provisions hereof shall be true and correct, or true and correct in all material respects where such representations and warranties are not qualified by materiality or Material Adverse Effect, on the date of this Agreement and, in each case after giving effect to the transactions contemplated hereby, on the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on such settlement date), except that if a representation and warranty is made as of a specific date, and such date is expressly referred to therein, such representation and warranty shall be true and correct (or true and correct in all material respects, as applicable) as of such date. The Company shall have performed or complied with all of the agreements and covenants contained in this Agreement and required to

be performed or complied with by it at or prior to the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on or prior to such settlement date).

(b) The Final Prospectus, and any supplement thereto, shall have been filed in the manner and within the time period required by Rule 424(b)under the Act and shall be reasonably acceptable to the Representatives and shall have been printed and copies distributed to the Underwriters on the date of this Agreement or at such later date as the Underwriters may determine. Any material required to be filed with the Commission pursuant to Rule 433 under the Act has been filed within the applicable time periods prescribed for such filings by Rule 433 under the Act. No stop order suspending the effectiveness of the Registration Statement or any notice objecting to its use or suspending the qualification or exemption from qualification of the Securities in any jurisdiction shall have been issued and no proceeding for that purpose shall have been commenced or shall be pending or threatened.

(c) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency, body, or official that would, as of the Closing Date, prevent the issuance of the Securities; and, except as disclosed in the Pricing Disclosure Package and Final Prospectus, no action, suit or proceeding shall have been commenced and be pending against or affecting or, to the best knowledge of the Company, threatened against the Company before any court or arbitrator or any governmental body, agency or official that, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and no stop order preventing the use of the Base Prospectus, the Preliminary Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus or the Final Prospectus, or any amendment or supplement thereto, shall have been issued. The Company shall not have amended or supplemented the Registration Statement, the Base Prospectus, any Preliminary Prospectus, the Pricing Disclosure Package or the Final Prospectus) or any Rule 462(b) Registration Statement unless the Underwriters shall previously have been advised of such proposed amendment or supplement at least two business days prior to the proposed use, and shall not have reasonably objected to such amendment or supplement.

(d) As of September 30, 2009, except as set forth in the Pricing Disclosure Package and Final Prospectus, neither the Company nor any Subsidiary shall have had any material liabilities or obligations, direct or contingent, that were not set forth in the Company's consolidated balance sheet as of such date or in the notes thereto set forth in the Pricing Disclosure Package and Final Prospectus. Since September 30, 2009, except as set forth or contemplated in the Pricing Disclosure Package and Final Prospectus, (a) none of the Company or its Subsidiaries has (1) incurred any liabilities or obligations, direct or contingent, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (2) entered into any material transaction not in the ordinary course of business, or (3) purchased any of its outstanding capital stock, (b) there shall not have been any material adverse change, prospective change, event or development in respect of the business, properties, prospects, results of operations or condition (financial or other) of the Company or its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) there shall have been no dividend or distribution of any kind declared, paid or made by the Company on any class of capital stock and (d) there shall not have been any material change in the capital stock, short-term debt or long-term debt of the Company or of any of the Subsidiaries,

other than, as applicable, under any existing line of credit or revolving credit facility in the ordinary course of business.

(e) The Underwriters shall have received certificates, dated the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date), signed by (x) the chief executive officer or the president and (y) the principal financial or accounting officer of each Issuer confirming, as of the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, as of such settlement date), to their knowledge, the matters set forth in paragraphs (a), (b), (c) and (d) of this Section 8.

(f) The Underwriters shall have received on the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on such settlement date) opinions dated the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date), addressed to the Underwriters, of Troutman Sanders LLP, counsel to the Company, substantially in the form of Exhibit A hereto in form and substance reasonably satisfactory to the Representatives and counsel to the Underwriters.

(g) The Underwriters shall have received on the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, on such settlement date) an opinion or opinions (satisfactory in form and substance to the Representatives) dated the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date) of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Underwriters.

(h) The Underwriters shall have received on the date hereof or as soon as practicable thereafter a “comfort letter” from Deloitte & Touche LLP, independent public accountants for the Company, dated the date of this Agreement, addressed to the Underwriters and the board of directors of the Company, in form and substance satisfactory to the Representatives and counsel to the Underwriters covering the financial and accounting information in the Registration Statement and the Pricing Disclosure Package. In addition, the Underwriters shall have received a “bring-down comfort letter” from Deloitte & Touche LLP, dated as of the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, dated such settlement date), addressed to the Underwriters and the board of directors of the Company and in the form of the “comfort letter” delivered on the date hereof, except that (i) it shall cover the financial and accounting information in the Final Prospectus and any amendment or supplement thereto and (ii) procedures shall be brought down to a date no more than 2 days prior to the Closing Date (and if settlement of the Option Securities occurs after the Closing Date, prior to such settlement date), and otherwise in form and substance satisfactory to the Representatives and counsel to the Underwriters.

(i) The Company and the Trustee shall have executed and delivered the Indenture and the Underwriters shall have received copies, conformed as executed, thereof.

(j) All government authorizations required in connection with the issue and sale of the Securities as contemplated under this Agreement and the performance of the Company’s obligations hereunder and under the Indenture and the Securities shall be in full force and effect.

(k) The Underwriters shall have been furnished with wiring instructions for the application of the proceeds of the Securities in accordance with this Agreement and such other information as they may reasonably request.

(l) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Underwriters, shall have been furnished with such documents as they may reasonably request to enable them to review or pass upon the matters referred to in this Section 8 and in order to evidence the accuracy, completeness or satisfaction in all material respects of any of the representations, warranties or conditions contained in this Agreement.

(m) All agreements set forth in the representation letter of the Company to DTC relating to the approval of the Securities by DTC for "book-entry" transfer shall have been complied with.

(n) All costs, fees and expenses (including, without limitation, legal fees and expenses) and other compensation payable to the Underwriters and their affiliates in connection with the offering of the Securities shall have been, or simultaneously with the issuance of the Securities shall be, paid.

(o) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have been any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded the Company's debt by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Act.

(p) If there has been any amendment or supplement to the Final Prospectus, the Underwriters shall have been provided draft copies thereof at a reasonable time prior to the use thereof and the Underwriters shall not have objected to any such amendment or supplement.

(q) The Lock-up Agreements described in Section 4(r) hereof are in full force and effect.

The documents required to be delivered by this Section 8 will be delivered at the office of counsel for the Underwriters on the Closing Date.

9. Underwriters' Information. The Company and the Underwriters severally acknowledge that the statements set forth in (i) the last paragraph of the cover page regarding delivery of the Securities, and (ii) the paragraph under the caption "Underwriting" in the Preliminary Prospectus and the Final Prospectus related to stabilization and syndicate covering transactions, constitute the only information furnished in writing by or on behalf of any Underwriter expressly for use in the Registration Statement, the Preliminary Prospectus the Pricing Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus. [and, under the heading "Underwriting" or "Plan of Distribution", (ii) the list of Underwriters and their respective participation in the sale of the Securities, (iii) the sentences [35] in any Preliminary Prospectus and the Final Prospectus

10. Survival of Representations and Agreements. All representations and warranties, covenants, and agreements contained in or made pursuant to this Agreement, including the agreements contained in Sections 4(g) and 11(d), the indemnity agreements contained in Section 6 and the contribution agreements contained in Section 7 shall remain operative and in full force and effect regardless of any investigation, or statement as to the results thereof, made by or on behalf of the Underwriters or any controlling person, representative, officer or director of the Underwriters or by or on behalf of the Company or any controlling person, representative, officer or director thereof, and shall survive delivery of and payment for the Securities to and by the Underwriters. The agreements contained in Sections 4(g), 6, 7, 9 and 11(d) shall survive the termination of this Agreement, including pursuant to Section 11.

11. Effective Date of Agreement; Termination.

(a) This Agreement shall become effective upon execution and delivery of a counterpart hereof by each of the parties hereto.

(b) The Underwriters shall have the right to terminate this Agreement at any time prior to the Closing Date by notice to the Company from the Underwriters, without liability (other than with respect to Sections 6 and 7) on the Underwriters' part to the Company if, on or prior to such date, (i) the Company shall have failed, refused or been unable to perform in any material respect any agreement on its part to be performed under this Agreement when and as required, (ii) any other condition to the obligations of the Underwriters under this Agreement to be fulfilled by the Company pursuant to Section 8 is not fulfilled when and as required and not waived in writing by the Underwriters, (iii) trading in the Company's securities on any exchange or in the over-the-counter market shall have been suspended, (iv) trading in securities generally on the New York Stock Exchange, the NASDAQ Global Select or NASDAQ Global Market shall have been suspended or materially limited, or minimum prices shall have been established thereon by the Commission, or by such exchange or other regulatory body or governmental authority having jurisdiction, (v) a general banking moratorium shall have been declared by federal or New York authorities, (vi) there is an outbreak or escalation of hostilities or other national or international calamity, in any case involving the United States, on or after the date of this Agreement, or if there has been a declaration by the United States of a national emergency or war or other national or international calamity or crisis (economic, political, financial or otherwise) which affects the U.S. and international markets, making it, in the Representatives' judgment, impracticable to proceed with the offering or delivery of the Securities on the terms and in the manner contemplated in the Pricing Disclosure Package and Final Prospectus or (vii) there shall have been such a material adverse change or material disruption in the financial, banking or capital markets generally (including, without limitation, the markets for debt securities of companies similar to the Company) or the effect (or potential effect if the financial markets in the United States have not yet opened) of international conditions on the financial markets in the United States shall be such as, in the Representatives' judgment, to make it inadvisable or impracticable to proceed with the offering or delivery of the Securities on the terms and in the manner contemplated in the Pricing Disclosure Package and Final Prospectus.

(c) Any notice of termination pursuant to this Section 11 shall be given at the address specified in Section 12 below by telephone, telex, telephonic facsimile or telegraph, confirmed in writing by letter.

(d) If this Agreement shall be terminated pursuant to Section 11(b), or if the sale of the Notes provided for in this Agreement is not consummated because of any refusal, inability or failure on the part of the Company to satisfy any condition to the obligations of the Underwriters set forth in this Agreement to be satisfied on its part or because of any refusal, inability or failure on the part of the Company to perform any agreement in this Agreement or comply with any provision of this Agreement, the Company will reimburse the Underwriters for all of their reasonable out-of-pocket expenses (including, without limitation, the reasonable fees and expenses of the Underwriters' counsel) incurred in connection with this Agreement.

(e) If any one or more Underwriters shall fail to purchase and pay for any of the Underwritten Securities agreed to be purchased by such Underwriter hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the principal amount of Underwritten Securities set forth opposite their names in Schedule I hereto bears to the aggregate principal amount of Underwritten Securities set forth opposite the names of all the remaining Underwriters) the Underwritten Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; *provided*, *however*, that in the event that the principal amount of Underwritten Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate principal amount of Underwritten Securities set forth in Schedule I hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Underwritten Securities, and if such nondefaulting Underwriters do not purchase all the Underwritten Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 11(f), the Closing Date shall be postponed for such period, not exceeding seven Business Days, as the Underwriters shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company or any nondefaulting Underwriter for damages occasioned by its default hereunder.

12. Notice.

(a) All communications with respect to or under this Agreement, except as may be otherwise specifically provided in this Agreement, shall be in writing and shall be mailed, delivered, or, telegraphed or telecopied and confirmed in writing as follows:

If to the Company:

Beazer Homes USA, Inc.
1000 Abernathy Road
Atlanta, Georgia 30328
Fax: 770-481-7364
Attention: Kenneth F. Khoury

with copy to:

Troutman Sanders LLP
600 Peachtree Street, NE Suite 5200
Atlanta, GA 30308
Fax: 404-885-3900
Attention: William Calvin Smith, Esq.

If to any Underwriter:

Citigroup Global Markets Inc.
88 Greenwich Street
New York, NY 10013
Fax: 212-816-7912
Attention: General Counsel

and

Credit Suisse Securities (USA) LLC
11 Madison Avenue
New York, New York 10010
Fax: 212-325-4296
Attention: LCD-IBD

with copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
Fax: 213-687-5600
Attention: Casey T. Fleck, Esq.

(b) All such notices and communications shall be deemed to have been duly given: (i) when delivered by hand, if personally delivered, (ii) five business days after being deposited in the mail, postage prepaid, if mailed; (iii) when receipt acknowledged by telecopier machine, if telecopied; and (iv) and one business day after being timely delivered to a next-day air courier.

13. Parties. This Agreement shall inure solely to the benefit of, and shall be binding upon, the Underwriters, the Company and the controlling persons and agents referred to in Sections 6 and 7, and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision herein contained. The term “successors and assigns” shall not include a purchaser, in its capacity as such, of Securities from the Underwriters.

14. Construction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to any provisions thereof relating to conflicts of law).

15. Captions. The captions included in this Agreement are included solely for convenience of reference and are not to be considered a part of this Agreement.

16. Counterparts. This Agreement may be executed in various counterparts each of which when taken together shall be deemed an original and shall constitute one and the same instrument.

17. No Fiduciary Relationship. The Company hereby acknowledges that the Underwriters are acting solely as Underwriters in connection with the purchase and sale of the Securities. The Company further acknowledges that each of the Underwriters is acting pursuant to a contractual relationship created solely by this Agreement entered into on an arm's length basis and in no event do the parties intend that any Underwriter act or be responsible as a fiduciary to the Company, its management, stockholders, creditors or any other person in connection with any activity that such Underwriter may undertake or has undertaken in furtherance of the purchase and sale of the Securities, either before or after the date hereof. The Underwriters hereby expressly disclaim any fiduciary or similar obligations to the Company, either in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions, and the Company hereby confirms its understanding and agreement to that effect. The Company and each Underwriter agree that they are each responsible for making their own independent judgments with respect to any such transactions, and that any opinions or views expressed by any Underwriter to the Company regarding such transactions, including but not limited to any opinions or views with respect to the price or market for the Securities, do not constitute advice or recommendations to the Company. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any breach or alleged breach of any fiduciary or similar duty to the Company in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions.

If the foregoing Underwriting Agreement correctly sets forth the understanding among the Company and the Underwriters, please so indicate in the space provided below for the purpose, whereupon this letter and your acceptance shall constitute a binding agreement among the Company and the Underwriters.

BEAZER HOMES USA, INC.

By: /s/ Allan P. Merrill
Name: Allan P. Merrill
Title: Executive Vice President and Chief Financial Officer

Confirmed and accepted as of
the date first above written:

CITIGROUP GLOBAL MARKETS INC.
as Representative of the Underwriters

By: /s/ Richard L. Moriarty
Name: Richard L. Moriarty
Title: Managing Director

CREDIT SUISSE SECURITIES (USA) LLC
as Representative of the Underwriters

By: /s/ Eric A. Anderson
Name: Eric A. Anderson
Title: Managing Director

Schedule I

Underwriter	Principal Amount of Underwritten Securities To Be Purchased
Citigroup Global Markets Inc.	$ 17,500,000
Credit Suisse Securities (USA) LLC	$ 15,000,000
Deutsche Bank Securities Inc	$ 6,250,000
UBS Securities LLC	$ 6,250,000
Moelis & Company LLC	$ 5,000,000
Total	$ 50,000,000

Schedule II

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Beazer Homes Corp.	TN	Beazer Homes Holdings Corp.	100
Beazer/Squires Realty, Inc.	NC	Beazer Homes Corp.	100
Beazer Homes Sales, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Realty Corp.	GA	Beazer Homes Corp.	100
Beazer Mortgage Corporation	DE	Beazer Homes USA, Inc.	100
Beazer General Services, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Homes Holdings Corp.	DE	Beazer Homes USA, Inc.	100
Beazer Homes Texas Holdings, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Homes Texas, L.P.	DE	Beazer Homes Holdings Corp.; Beazer Homes Texas Holdings, Inc.	100
April Corporation	CO	Beazer Homes Holdings Corp.	100
Beazer SPE, LLC	GA	Beazer Homes Holdings Corp.	100
Beazer Homes Investments, LLC	DE	Beazer Homes Corp.	100
Beazer Realty, Inc.	NJ	Beazer Homes Corp.	100
Homebuilders Title Services of Virginia, Inc.	VA	Beazer Homes USA, Inc.	100
Homebuilders Title Services, Inc.	DE	Beazer Homes USA, Inc.	100
Texas Lone Star Title, L.P.	TX	Beazer Homes Sales, Inc.; Beazer Homes Texas Holdings, Inc.	100
Beazer Allied Companies Holdings, Inc.	DE	Beazer Homes Holdings Corp.	100
United Home Insurance Company A Risk Retention Group	VT	Beazer Homes Corp.; Beazer Homes Holdings Corp.; Beazer Homes Texas Holdings, Inc.	100
Security Title Insurance Company	VT	Beazer Homes USA, Inc	100

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Builders Homesite, Inc.	DE	Beazer Homes Holdings Corp. (Cooperative Consortium Among Builders)	(Common 2,206,230 shares; Series A-2 Preferred 1,691,410)
Paragon Title, LLC	IN	Beazer Homes Investments, LLC	100
Trinity Homes, LLC	IN	Beazer Homes Investments, LLC; Beazer Homes Indiana LLP	100
Beazer Homes Indiana LLP	IN	Beazer Homes Investments, LLC; Beazer Homes Indiana Holdings Corp.; Beazer Homes Corp.	100
Beazer Homes Indiana Holdings Corp.	DE	Beazer Homes Investments, LLC	100
Beazer Realty Services, LLC	DE	Beazer Homes Investments, LLC	100
Beazer Realty Los Angeles, Inc.	DE	Beazer Homes Holdings Corp.	100
Beazer Realty Sacramento, Inc.	DE	Beazer Homes Holdings Corp.	100
BH Building Products, LP	DE	Beazer Homes Texas, L.P.; BH Procurement Services, LLC	100
BH Procurement Services, LLC	DE	Beazer Homes Texas, L.P.	100
Beazer Commercial Holdings, LLC	DE	Beazer Homes Corp.	100
Beazer Clarksburg, LLC	MD	Beazer Homes Corp.	100
Arden Park Ventures, LLC	FL	Beazer Homes Corp.	100
Beazer Homes Capital Trust I	DE	Beazer Homes USA, Inc.	*
Beazer Homes Michigan, LLC	DE	Beazer Homes Corp.	100
Dove Barrington Development LLC	DE	Beazer Homes Corp.	100
Ridings Development LLC	DE	Beazer Homes Corp.; Centex Homes	99
Clarksburg Arora LLC	MD	Beazer Clarksburg, LLC	100

* Statutory trust of which Beazer Homes USA, Inc. is the beneficiary. However, Beazer Homes USA, Inc. does not exercise any control over Beazer Homes Capital Trust I.

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Clarksburg Skylark, LLC	MD	Clarksburg Arora LLC	100
Elysian Heights Potomia, LLC	VA	Beazer Homes Corp.	100

* Statutory trust of which Beazer Homes USA, Inc. is the beneficiary. However, Beazer Homes USA, Inc. does not exercise any control over Beazer Homes Capital Trust I.

Schedule III

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Imagine Built Homes, Ltd	TX	Beazers Homes Texas, L.P.; B.F. Managing Partners, LLC; BFF Partners LTD	33.33
Castle Star Development Company, LLC	CO	April Corporation; Tom Hall Building Corporation; North 180, LLC	49
Castle Star Commercial Investments, LLC	CO	April Corporation; Tadaptanam, LLC; Charles H. Sanford; Perry A. Cadman	49
FallBrook Partners, LLC	CO	Beazer Homes Holdings Corp.; Meritage Homes of Colorado, Inc.	50
Beach Boulevard Venture, LLC	FL	Beazer Homes Corp; Intervest Construction of JAX, Inc.	50
West Kernan, LLC	FL	Beazer Homes Corp; Intervest Construction of JAX, Inc.	50
South Edge, LLC	NV	Beazer Homes Holdings Corp; Focus South Group, LLC; MTH Homes Nevada, Inc.; Almeda Investments, LLC; Kimball Hill Homes Nevada; Pardee Homes of Nevada; Coleman-Toll Limited Partnership, LLC; Beazer Homes Holdings Corp.; KB Home Nevada Inc.	2.58
904 Georgetown Treatment Plant, LLC	NC	Beazer Homes Corp; North Star Management, Inc. Sandpiper Bay Land Company, Inc.	25
Belmont, LLC	FL	Beazer Homes Corp; Residential Funding Corporation	50
Long Lake Ranch, LLC	FL	Beazer Homes Corp; M/I Homes of Tampa, LLC	50
WCD Associates, LLC	IN	Beazer Homes Corp; MGB; Bill Olsen	37.5

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
Fair Chase Development, LLC	DE	Beazer Homes Corp; Centex Homes	50
Lansdowne Town Center, LLC	VA	Beazer Homes Corp.; Centex Homes; Van Metre Lansdowne Town Center, LLC	50
Creekside Development, LLC	VA	Beazer Homes Corp.; Centex Homes; Van Metre Creekside Investment, LLC	49
Lansdowne Community Development, LLC	VA	Beazer Homes Corp.; Centex Homes; WL Homes LLC, dba John Laing homes; Van Metre Lansdowne Investments, LLC	25

Schedule IV

Pricing Term Sheet

US$50,000,000
Beazer Homes USA, Inc.
7 ½% Mandatory Convertible Subordinate Notes due 2013

The information in this pricing term sheet supplements, updates and supercedes the information in the Preliminary Prospectus Supplement. Terms used but not otherwise defined herein shall have the meanings assigned to such terms cited in the Preliminary Prospectus Supplement.

Issuer:	Beazer Homes USA, Inc.
Title of Securities:	7 ½% Mandatory Convertible Subordinate Notes due 2013
Size:	$50,000,000 plus $7,500,000 over-allotment
Interest Rate:	7.50%
Premium:	22.00%
Conversion Date:	January 15, 2013
Call Protection:	Non-call life
Principal Amount:	$25 per note
Public Offering Price:	$25 per note; $50,000,000 total
Underwriting Discount:	$0.75 per note; $1,500,000 total
Proceeds to Issuer (before expenses):	$24.25 per note; $48,500,000 total ($55,775,000 total if the underwriters exercise their over-allotment option in full)
Threshold Appreciation Price:	$5.61
Initial Price:	$4.60
Minimum Conversion Rate:	4.4547 common shares per note
Maximum Conversion Rate:	5.4348 common shares per note

Ranking:	Subordinated
Conversion Settlement:	Shares of common stock
Dividend Protection:	Standard dividend protection
Covenant Event Conversion:	Company option to require all holders to convert at maximum rate if a "covenant event" is deemed to occur (consolidated tangible net worth of less than $85 million as of last day of immediately preceding fiscal quarter)
Joint Book-Running Managers:	Citigroup Global Markets Inc. and Credit Suisse Securities (USA) LLC
Joint Lead Managers:	Deutsche Bank Securities Inc. and UBS Securities LLC
Co-Manager:	Moelis & Company LLC

Allocation:

Underwriter	Principal Amount of Notes
Citigroup Global Markets Inc.	$17,500,000
Credit Suisse Securities (USA) LLC	$15,000,000
Deutsche Bank Securities Inc	$ 6,250,000
UBS Securities LLC	$ 6,250,000
Moelis & Company LLC	$ 5,000,000

Trade Date:	January 6, 2010
Settlement Date:	January 12, 2010
CUSIP and ISIN Numbers:	CUSIP: 07556Q 402 ISIN: US07556Q4029
Interest Payments:	Interest will accrue from January 12, 2010 and will be payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2010.
Distribution:	SEC Registered

Fundamental Change Conversion Rate. The following table sets forth the fundamental change conversion rate per note for each hypothetical stock price and fundamental change effective date set forth below:

	Stock Price on Effective Date														
Effective Date	$1.00	$3.00	$4.00	$4.50	$4.60	$4.75	$5.00	$5.25	$5.50	$5.61	$6.00	$7.00	$10.00	$15.00	$50.00
January 12, 2010	5.2063	4.6289	4.4833	4.4372	4.4302	4.4192	4.4041	4.3912	4.3804	4.3753	4.3633	4.3436	4.3373	4.3580	4.3882
January 15, 2011	5.3350	4.8158	4.6219	4.5551	4.5443	4.5284	4.5049	4.4847	4.4678	4.4613	4.4405	4.4074	4.3851	4.3968	4.4105
January 15, 2012	5.4061	5.0873	4.8262	4.7216	4.7024	4.6764	4.6373	4.6027	4.5732	4.5622	4.5270	4.4702	4.4292	4.4311	4.4329
January 15, 2013	5.4348	5.4348	5.4348	5.4348	5.4348	5.2632	5.0000	4.7619	4.5455	4.4547	4.4547	4.4547	4.4547	4.4547	4.4547

The exact stock price and fundamental change effective dates may not be set forth on the table, in which case:

- if the applicable stock price is between two stock price amounts on the table or the fundamental change effective date is between two dates on the table, the fundamental change conversion rate will be determined by straightline interpolation between the fundamental change conversion rates set forth for the higher and lower stock price amounts and the two dates, as applicable, based on a 365-day year;
- if the applicable stock price is in excess of $50.00 per share (subject to adjustment), then the fundamental change conversion rate will be the applicable minimum conversion rate, subject to adjustment; and
- if the applicable stock price is less than $1.00 per share (subject to adjustment), then the fundamental change conversion rate will be the applicable maximum conversion rate, subject to adjustment.

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, prospectuses may be obtained from: Citigroup Global Markets Inc., Brooklyn Army Terminal, 140 58th Street, 8th Floor, Brooklyn, NY 11220 (Attention: Prospectus Department; Telephone: (800) 831-9146; E-mail: batprospectusdept@citi.com) or Credit Suisse Securities (USA) LLC, Prospectus Department, One Madison Avenue, New York, NY 10010 (Telephone: (800) 221-1037).

Schedule V

Issuer Free Writing Prospectus (included in the Pricing Disclosure Package)

Issuer Free Writing Prospectus dated January 6, 2010

Exhibit 4.1

BEAZER HOMES USA, INC.

to

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of January 12, 2010

SUBORDINATED DEBT SECURITIES

BEAZER HOMES USA, INC.

Certain Sections of this Indenture relating to Sections 310
through 318, inclusive, of the Trust Indenture Act of 1939

Trust Indenture Act Section	Indenture Section
Section 310(a)(1)	6.9
(a)(2)	6.9
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	6.8
Section 311(a)	6.13
(b)	6.13
Section 312(a)	7.1
	7.2
(b)	7.2
(c)	7.2
Section 313(a)	7.3
(b)	7.3
(c)	7.3
(d)	7.3
Section 314(a)	7.4
(a)(4)	1.1
(b)	Not Applicable
(c)(1)	1.2
(c)(2)	1.2
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.2
Section 315(a)	6.1
(b)	6.2
(c)	6.1
(d)	6.1
(e)	5.14
Section 316(a)	1.1
(a)(1)(A)	5.2
	5.12
(a)(1)(B)	5.13
(a)(2)	Not Applicable
(b)	5.8
(c)	1.4
Section 317(a)(1)	5.3
(a)(2)	5.4
(b)	10.3
Section 318(a)	1.7

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

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

INDENTURE, dated as of January 12, 2010, between BEAZER HOMES USA, INC., a corporation duly organized and existing under the laws of the State of Delaware (the "***Company***"), having its principal office at 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30308 and U.S. Bank National Association, as Trustee (the "***Trustee***").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the "Securities") to be issued in one or more series as provided in this Indenture.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

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

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

(6) when used with respect to any Security, the words "convert", "converted" and "conversion" are intended to refer to the right of the Holder or the Company to convert or exchange, or the right of the Company to cause the conversion or exchange of, such Security into or for securities or other property in accordance with such terms, if any, as may hereafter be specified for such Security as contemplated by Section 3.1, and these words are not intended to refer to any right of the Holder or the Company to exchange such Security for other Securities of the same series and like tenor pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.7 or another similar provision of this Indenture, unless the context otherwise requires; and references herein to the terms of any Security that may be converted mean such terms as may be specified for such Security as contemplated in Section 3.1; and

(7) unless the context otherwise requires, any reference to "duly provided for" and other words of similar import with respect to any amount or property required to be paid or delivered, as applicable, shall include, without limitation, having made such amount or property available for payment or delivery.

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

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

"***Applicable Procedures***" of a Depositary means, with respect to any matter at any time, the policies and procedures of such Depositary, if any, that are applicable to such matter at such time.

"***Authenticating Agent***" means, when used with respect to Securities of any series, any Person authorized by the Trustee to act on behalf of the Trustee to authenticate the Securities of such series.

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

"***Board Resolution***" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee. Where any provision of this Indenture refers to action to be taken pursuant to a Board Resolution (including the establishment of any series of the Securities and the forms and terms thereof), such action may be taken by any officer or employee of the Company authorized to take such action by the Board of Directors as evidenced by a Board Resolution.

"***Business Day***", when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close; provided that, when used with respect to any Security, "Business Day" may have such other meaning, if any, as may be specified for such Security as contemplated by Section 3.1.

"***Capital Stock***" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of a limited liability company or similar entity, any membership or similar interests therein;

(3) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(4) in the case of a partnership, partnership interests (whether general or limited); and

(5) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

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

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

"***Company Order***" or "***Company Request***" means a written request or order signed in the name of the Company by any two of the following: a Chairman of the Board, a Chief Executive Officer, a President, a Vice President, a Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary of the Company, or any other

officer or officers of the Company designated in writing by or pursuant to authority of the Board of Directors and delivered to the Trustee from time to time.

"***Corporate Trust Office***" means the designated office of the Trustee at which at any particular time this Indenture shall be administered and which, at the date hereof, is located at c/o U.S. Bank Corporate Trust Services, 1349 West Peachtree Street NW, Suite 1050, Atlanta, Georgia 30309, or at such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor Trustee at which at any particular time this Indenuture shall be administered.

"***corporation***" means a corporation, association, company (including a limited liability company), joint-stock company, business trust or other similar entity.

"***Covenant Defeasance***" has the meaning specified in Section 13.3.

"***Credit Agreement***" means the Amended and Restated Credit Agreement dated as of August 5, 2009, among the Company, the lenders and letter of credit issuers party thereto, and Citibank, N.A., as agent and swingline lender, together with related documents thereto including any guarantee agreements and security documents, as amended, modified supplemented, restated, renewed, refunded, replaced, restructured repaid or refinanced from time to time (including any agreement extending the maturity thereof or increasing the amount of available borrowings thereunder or adding entities as additional borrowers or guarantors thereunder) whether with the original agents and lenders or otherwise and whether provided under the original Amended and Restated Credit Agreement or other credit agreements or otherwise.

"***Defaulted Interest***" has the meaning specified in Section 3.7.

"***Defeasance***" has the meaning specified in Section 13.2.

"***Depositary***" means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency that is designated to act as depositary for such Securities as contemplated by Section 3.1.

"***DTC***" has the meaning specified in Section 1.4.

"***Equity Interests***" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

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

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

"***Expiration Date***" has the meaning specified in Section 1.4.

"***GAAP***" means, at any time, (i) generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession in the United States or (ii) if at such time the Company is required to prepare its financial statements for reports filed with the Commission under Section 13 or 15(d) of the Exchange Act pursuant to standards other than those specified in clause (i) (which may include International Financial Reporting Standards), such other standards, in each case which are in effect at such time.

"***Global Security***" means a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 2.4 (or such legend as may be specified as contemplated by Section 3.1 for such Securities).

"***Guarantee***" means a guarantee of any Securities by a Guarantor as contemplated by Article XIV; provided that the term "Guarantee," when used with respect to any Security or with respect to the Securities of any series, means a guarantee of such Security or of the Securities of such series, respectively, by a Guarantor of such Security or of the Securities of such series, respectively, as contemplated by Article XIV.

"***Guarantor***" means any Person, if any, who shall have become a Guarantor under this Indenture pursuant to Section 9.1 hereof, in each case unless and until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, at which time references to such Guarantor shall mean such successor Person; provided that the term "Guarantor", when used, with respect to the Securities of any series, means the Persons, if any, who shall from time to time be the guarantors of Securities of such series as contemplated by Article XIV.

"***Guarantor's Board of Directors***" means, with respect to any Guarantor, either the board of directors or similar governing body or Person of such Guarantor or any duly authorized committee of such board or Person.

"***Guarantor's Board Resolution***" means, with respect to any Guarantor, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Guarantor to have been duly adopted by such Guarantor's Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee. Where any provision of this Indenture refers to action to be taken pursuant to a Guarantor's Board Resolution, such action may be taken by any officer or employee of such Guarantor authorized to take such action by such Guarantor's Board of Directors as evidenced by a Guarantor's Board Resolution.

"***Guarantor's Officers' Certificate***" means, with respect to any Guarantor, a certificate signed by any two of the following: a Chairman of the Board, a Chief Executive Officer, a President, a Vice President, a Treasurer, an Assistant Treasurer, a Secretary or an Assistant Secretary of such Guarantor, or any other officer or officers of such Guarantor designated in a writing by or pursuant to authority of such Guarantor's Board of Directors and delivered to the Trustee from time to time.

"***Guarantor Request***" or "***Guarantor Order***" means, with respect to any Guarantor, a written request or order signed in the name of such Guarantor by any two of the following: a Chairman of the Board, a Chief Executive Officer, a President, a Vice President, a Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary of such Guarantor, or any other officer or officers of such Guarantor designated in writing by or pursuant to authority of such Guarantor's Board of Directors and delivered to the Trustee from time to time. In the event that Guarantor Requests relating to the same matter shall be delivered by two or more Guarantors on the same date, such requests may be combined into a single document, provided that the requests made by each Guarantor therein shall be several and not joint requests of each such Guarantor.

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

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

"***Indenture***" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term "***Indenture***" shall also include the terms of any particular series or specific Securities within a series and of any Guarantees thereof established as contemplated by Section 3.1.

"***interest***", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

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

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

"***Notice of Default***" means a written notice of the kind specified in Section 5.1(4).

"***Officers' Certificate***" means a certificate signed by any two of the following: a Chairman of the Board, a Chief Executive Officer, a President, a Vice President, a Treasurer, an Assistant Treasurer, a Secretary or an Assistant Secretary of the Company, or any other officer or officers of the Company designated in a writing by or pursuant to authority of the Board of Directors and delivered to the Trustee from time to time.

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

"***Original Issue Discount Security***" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

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

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

(2) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Securities as to which Defeasance has been effected pursuant to Section 13.2;

(4) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Company; and

(5) Securities as to which any property deliverable upon conversion thereof has been delivered (or such delivery has been duly provided for), or as to which any other particular conditions have been satisfied, in each case as may be provided for such Securities as contemplated in Section 3.1;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other

action hereunder as of any date, (A) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 5.2, (B) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 3.1, (C) the principal amount of a Security denominated in one or more foreign currencies, composite currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 3.1, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) Securities owned by the Company, any Guarantor of the Securities or any other obligor upon the Securities or any Affiliate of the Company or any such Guarantor or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any Guarantor of such Securities or any other obligor upon the Securities or any Affiliate of the Company or a Guarantor of the Securities or such other obligor.

"***Paying Agent***" means any Person authorized by the Company to pay the principal of or any premium or interest on any Securities on behalf of the Company.

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

"***Place of Payment***", when used with respect to the Securities of any series and subject to Section 10.2, means the place or places where the principal of and any premium and interest on the Securities of that series are payable as specified as contemplated by Section 3.1.

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

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

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

"***Regular Record Date***" for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 3.1.

"***Responsible Officer***", when used with respect to the Trustee, means any officer of the Trustee within the corporate trust department, including any Vice President, assistant secretary, assistant treasurer, assistant cashier, trust officer, assistant trust officer or assistant controller assigned to the Corporate Trust Office, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of his knowledge of and familiarity with the particular subject, and who shall have direct responsibility for the administration of this Indenture.

"***Securities***" has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

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

"***Security Register***" and "***Security Registrar***" have the respective meanings specified in Section 3.5.

"***Senior Debt***" means: (a) indebtedness of the Company under or in respect of the Credit Agreement, whether for principal, interest (including interest accruing after the filing of a petition initiating any proceeding pursuant to any bankruptcy law, whether or not the claim for such interest is allowed as a claim in such proceeding), reimbursement obligations, fees, commissions, expenses, indemnities or other amounts; (b) the Senior Notes and (c) any other Indebtedness permitted under the terms of this Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is on a parity with or subordinated in right of payment to the Securities. Notwithstanding the foregoing, "Senior Debt" will not include: (i) Equity Interests; (ii) any liability for federal, state, local or other taxes due or owed by the Company; (iii) any Indebtedness of the Company to any of its Subsidiaries or Affiliates; (iv) any trade payables; or (v) any Indebtedness that is incurred in violation of this Indenture.

"***Senior Guarantor Debt***" means, with respect to any Guarantor: (a) indebtedness of such Guarantor under or in respect of the Credit Agreement, whether for principal, interest (including interest accruing after the filing of a petition initiating any proceeding pursuant to any bankruptcy law, whether or not the claim for such interest is allowed as a claim in such proceeding), reimbursement obligations, fees, commissions, expenses, indemnities or other amounts; (b) indebtedness of such Guarantor in respect of the guarantee of the Senior Notes; and (c) any other Indebtedness permitted under the terms of this Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is on a parity with or subordinated in right of payment to such Guarantor's Guarantee of the Securities. Notwithstanding the foregoing, "Senior Guarantor Debt" will not include: (i) Equity Interests; (ii) any liability for federal, state, local or other taxes due or owed by such Guarantor; (iii) any Indebtedness of such Guarantor to any of its Subsidiaries or Affiliates; (iv) any trade payables; or (v) any Indebtedness that is incurred in violation of this Indenture.

"***Special Record Date***" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7.

"***Senior Notes***" means, collectively, the Company's (1) 8 5/8% Senior Notes due 2011; (ii) 8 3/8% Senior Notes due 2012; (iii) 6-1/2% Senior Notes due 2013; (iv) 6-7/8% Senior Notes due 2015; (v) 8.125% Senior Notes due 2016; (vi) 12% Senior Secured Notes due 2017 and (vii) 4-5/8% Convertible Senior Notes due 2024.

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

"***Subsidiary***" means any Person a majority of the combined voting power of the total outstanding ownership interests in which is, at the time of determination, beneficially owned or held, directly or indirectly, by the Company or one or more other Subsidiaries. For this purpose, "voting power" means power to vote in an ordinary election of directors (or, in the case of a Person that is not a corporation, ordinarily to appoint or approve the appointment of Persons holding similar positions), whether at all times or only as long as no senior class of ownership interests has such voting power by reason of any contingency.

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

"***Trust Indenture Act***" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"***Uniform Commercial Code***" means the Uniform Commercial Code in effect in the State of Delaware or the State of New York, as applicable, in each case as amended from time to time.

"***U.S. Government Obligation***" has the meaning specified in Section 13.4.

"***Vice President***", when used with respect to the Company, any Guarantor or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

Section 1.2 Compliance Certificates and Opinions. Upon any application or request by the Company or a Guarantor to the Trustee to take any action under any provision of this Indenture, the Company or such Guarantor, as the case may be, shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act; provided, however, that no such opinion shall be required in connection with the issuance of Securities that are part of any series as to which such an opinion has been furnished. Each such certificate or opinion shall be given in the form of an Officers' Certificate, if to be given by an officer of the Company, or a Guarantor's Officers' Certificate, if to be given by an officer of any Guarantor, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

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

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

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

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

Section 1.3 Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company or a Guarantor may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or such Guarantor, as the case may be, stating that the information with respect to such factual matters is in the possession of the Company or such Guarantor, as the case may be, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

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

Section 1.4 Acts of Holders; Record Dates. Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders 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 or agents duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company and any Guarantor. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee, the Company and any Guarantor, if made in the manner provided in this Section.

Without limiting the generality of this Section, unless otherwise provided in or pursuant to this Indenture, (i) a Holder, including a Depositary or its nominee that is a Holder of a Global Security, may give, make or take, by an agent or agents duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted in or pursuant to this Indenture to be given, made or taken by Holders, and a Depositary or its nominee that is a Holder of a Global Security may duly appoint in writing as its agent or agents members of, or participants in, such Depositary holding interests in such Global Security in the records of such Depositary; and (ii) with respect to any Global Security the Depositary for which is The Depository Trust Company ("***DTC***"), any consent or other action given, made or taken by an "agent member" of DTC by electronic means in accordance with the Automated Tender Offer Procedures system or other Applicable Procedures of, and pursuant to authorization by, DTC shall be deemed to constitute the "Act" of the Holder of such Global Security, and such Act shall be deemed to have been delivered to the Company, any Guarantor and the Trustee upon the delivery by DTC of an "agent's message" or other notice of such consent or other action having been so given, made or taken in accordance with the Applicable Procedures of DTC.

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

The ownership of Securities shall be proved by the Security Register.

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

The Company or any Guarantor may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, provided that neither the Company nor any such Guarantor may set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving, making or taking of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to give, make or take the relevant action, whether or not such Holders remain Holders after such record date; provided, however, that no such action shall be effective hereunder unless given, made or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company or any Guarantor from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action given, made or taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the

date such action is given, made or taken. Promptly after any record date is set pursuant to this paragraph, the Company or any such Guarantor, as the case may be, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Sections 1.5 and 1.6.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving, making or taking of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(2) or (iv) any direction referred to in Section 5.12, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to give, make or take such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided, however, that no such action shall be effective hereunder unless given, made or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action given, made or taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is given, made or taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company and any Guarantor in writing and to each Holder of Securities of the relevant series in the manner set forth in Sections 1.5 and 1.6.

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

Without limiting the foregoing, a Holder entitled hereunder to give, make or take any action hereunder with regard to any particular Security may do so, in person or by an agent duly appointed in writing, with regard to all or any part of the principal amount of such Security.

Section 1.5 Notices, Etc., to Trustee, Company and Guarantors. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, (1) the Trustee by any Holder or by the Company or any Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (which may be by facsimile transmission) to or with the Trustee at its Corporate Trust Office, Attention: Beazer Homes Subordinated Securities (2010 Indenture), or any other address previously furnished in writing to the Company and the Holders by the Trustee, or (2) the Company or a Guarantor by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company or such Guarantor, as the case may be, addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.6 Notice to Holders; Waiver. Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the

Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

Where this Indenture provides for notice of any event to a Holder of a Global Security, such notice shall be sufficiently given if given to the Depositary for such Security (or its designee), pursuant to its Applicable Procedures, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice.

Section 1.7 Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act which is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 1.8 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.9 Successors and Assigns. All covenants and agreements in this Indenture by the Company and any Guarantor shall bind their respective successors and assigns, whether so expressed or not.

Section 1.10 Separability Clause. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11 Benefits of Indenture. Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Debt and any Senior Guarantor Debt and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture, except as may otherwise be provided pursuant to Section 3.1 with respect to any Securities of a particular series or under this Indenture with respect to such Securities.

Section 1.12 Governing Law. This Indenture, the Guarantees and the Securities and the rights and obligations of the parties hereto and thereto, including the interpretation, construction, validity and enforceability thereof, shall be governed by and construed and interpreted in accordance with the law of the State of New York.

Section 1.13 Legal Holidays. In any case where any Interest Payment Date, Redemption Date or Maturity of any Security, or any date on which a Holder has the right to convert his Security, shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any), or conversion of such Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Maturity, or on such date for conversion, as the case may be.

Section 1.14 No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret any other indenture, loan or other agreement of the Company or any Guarantor or any Subsidiaries of any thereof or of any other Person. Any such indenture, loan or other agreement may not be used to interpret this Indenture.

Section 1.15 No Personal Liability of Directors, Officers, Employees and Stockholders. No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such,

will have any liability for any obligations of the Company or any Guarantor, respectively, under the Securities or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 1.16 Language of Notices, Etc. Any request, demand, authorization, direction, notice, consent, waiver, other action or Act provided or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication.

Section 1.17 Force Majeure. Subject to Section 6.1, in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its 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 and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

ARTICLE II
SECURITY FORMS

Section 2.1 Forms Generally. The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, and, if the Securities of such series are to be guaranteed by the Guarantees of any Guarantor as provided in Section 3.1 and the terms of such Securities provide for the endorsement thereon or attachment thereto of Guarantees by such Guarantor, such Guarantees to be endorsed on or attached to such Securities shall be in substantially such form as shall be established by or pursuant to a Guarantor's Board Resolution of such Guarantor or in one or more indentures supplemented hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities or Guarantees, respectively, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities. If the form of any Guarantees by any Guarantor to be endorsed on Securities of any series is established by action taken pursuant to a Guarantor's Board Resolution of such Guarantor, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of such Guarantor and delivered to the Trustee at or prior to the delivery of the Guarantor Order contemplated by Section 3.3 for the authentication and delivery of such Securities with such Guarantee endorsed thereon. For purposes hereof, a Guarantee that is endorsed on, or otherwise attached to, a Security shall be deemed "endorsed" on such Security.

The definitive Securities and any Guarantees endorsed thereon shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers of the Company executing such Securities or, if such Guarantees by any Guarantor are executed by such Guarantor, by the officers of such Guarantor executing such Guarantees, respectively, as evidenced by their execution of such Securities or, if such Guarantees by any Guarantor are executed by such Guarantor, by the officers of such Guarantor executing such Guarantees, respectively.

Anything herein to the contrary notwithstanding, there shall be no requirement that any Security have endorsed thereon or attached thereto a Guarantee or a notation of a Guarantee, but such a Guarantee or notation of a Guarantee may be endorsed thereon or attached thereto as contemplated by this Section 2.1.

Section 2.2 Form of Face of Security.

BEAZER HOMES USA, INC.

No. _____$ _____ CUSIP No. _____

BEAZER HOMES USA, INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "***Company***", which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, [if the principal amount is to be paid in Dollars at Maturity, insert—the principal sum of _____Dollars on _____] [if the principal amount is to be paid in Dollars at Maturity and the Security is to bear interest prior to Maturity, insert — and to pay interest thereon from _____or from the most recent Interest Payment Date to which interest has been paid or duly provided for,] [if the principal amount is not to be paid in Dollars at Maturity and the Security is to bear interest prior to Maturity, insert—the Interest Payments] [semi-annually/quarterly] on [_____and _____] in each year, commencing _____, and at the Maturity thereof, at the rate of _____% per annum, until the [if applicable, insert—principal hereof is paid or made available for payment][if applicable, insert—the Stated Maturity Date] [if applicable, insert —, provided that any premium, and any such installment of interest, which is overdue shall bear interest at the rate of _____% per annum (to the extent that the payment of such interest shall be legally enforceable), from the date such overdue amount is due until such amount is paid or duly provided for, and such interest on any overdue amount shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the _____or _____(whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest so payable, but not punctually paid or duly provided for, will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid in any other lawful manner not inconsistent with the requirements of any securities exchange on which this Security may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

[If the Security is not to bear interest prior to Maturity, insert — The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of _____% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand.]

Payment of the [if applicable, insert—principal of (and premium, if any) and] [if applicable, insert — any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in New York, New York, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, against surrender of this Security in the case of any payment due at the Maturity of the principal thereof or any payment of interest becomes payable on a day other than an Interest Payment Date; provided, however, that if this Security is not a Global Security, (i) payment of interest on an Interest Payment Date will be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register; and all other payments will be made by check against surrender of this Security; (ii) all payments by check will be made in next-day funds (i.e., funds that become available on the day after the check is cashed); and (iii) notwithstanding clauses (i) and (ii) above, with respect to any payment of any amount due on this Security, if this Security is in a denomination of at least $1,000,000 and the Holder hereof at the time of surrender hereof or, in the case of any payment of interest on any Interest Payment Date, the Holder thereof on the related Regular Record Date delivers a written request to the Paying Agent to make such payment by wire transfer at least five Business Days before the date such payment becomes due, together with appropriate wire transfer instructions specifying an account at a bank in New York, New York, the Company shall make such payment by wire transfer of immediately available funds to such account at such bank in New York City, any such wire instructions, once properly given by a Holder as to this Security, remaining in effect as to such Holder and this Security unless and until new instructions are given in the manner described above and provided further, that notwithstanding anything in the foregoing to the contrary, if this Security is a Global Security, payment shall be made pursuant to the

Applicable Procedures of the Depositary as permitted in said Indenture.

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

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

BEAZER HOMES USA, INC.

By: _____
Name: _____
Title _____

Section 2.3 Form of Reverse of Security.

This Security is one of a duly authorized issue of subordinated securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an ***Indenture***, dated as of January 12, 2010 (herein called the "***Indenture***", which term shall have the meaning assigned to it in such instrument), among the Company, the Guarantors and U.S. Bank National Association, as Trustee (herein called the "***Trustee***," which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Guarantors, the Trustee, the holders of Senior Debt [if applicable, insert — and any Senior Guarantor Debt] and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [if applicable, insert — limited in aggregate principal amount to $_____].

This Security is the general, unsecured, subordinated obligation of the Company [if applicable, insert—and is guaranteed pursuant to a guarantee (the "***Guarantee***") by [*insert name of each Guarantor*] (the "***Guarantors***"). The Guarantee by each Guarantee is the general, unsecured, subordinated obligation of such Guarantor].

[If applicable, insert — The Securities of this series are subject to redemption upon not less than 30 days' nor more than 60 days' notice, at any time [if applicable, insert — on or after _____, 20_____], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [if applicable, insert — on or before _____, ____%, and if redeemed] during the 12-month period beginning of the years indicated,

Year	**Redemption Price**	**Year**	**Redemption Price**

and thereafter at a Redemption Price equal to % of the principal amount, together in the case of any such redemption with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If the Security is subject to redemption of any kind, insert — In the event of redemption of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Debt [if applicable, insert — and the Guarantees

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

[If applicable, insert — The Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the Indenture.]

[If the Security is not an Original Issue Discount Security, insert — If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[If the Security is an Original Issue Discount Security, insert — If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to — insert formula for determining the amount. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal, premium and interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and premium and interest, if any, on the Securities of this series shall terminate.]

Subject to following paragraph, the Indenture or the Securities (including any supplemental indenture or authorizing resolutions of the Board of Directors relating to a series of Securities) may be amended or supplemented with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Securities) of the Holders of at least a majority in principal amount of the 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 Securities) under, or compliance with any provision of, the Indenture may be waived with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Securities) of the Holders of a majority in principal amount of the Securities then outstanding. Without the consent of any Holder, the Company, the Guarantors and the Trustee may amend the Indenture or the Securities or waive any provision of the Indenture to cure any ambiguity, defect or inconsistency, to comply with Section 8.1; to provide for uncertificated Securities in addition to certificated Securities; to make any change that does not adversely affect the legal rights under the Indenture of any Holder; to comply with or qualify the Indenture 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. After an amendment under this paragraph becomes effective, the Company shall mail notice of such amendment to the affected Holders.

Without the consent of each Holder affected, the Company may not (i) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver, (ii) reduce the rate of or change the time for payment of interest, including default interest, on any Security, (iii) reduce the principal of or change the fixed maturity of any Security or alter the provisions with respect to redemption under the "Optional Redemption" section set forth in the Securities or with respect to mandatory offers to repurchase Securities pursuant to a supplemental indenture, (iv) make any Security payable in money other than that stated in the Security, (v) make any change in the Sections 5.13 or 5.8, (vi) modify the ranking or priority of the Securities or any Guarantee, (vii) release any Guarantor from any of its obligations under its Guarantee or the Indenture otherwise than in accordance with the terms of the Indenture, or (viii) waive a continuing default or Event of Default in the payment of principal of or interest on the Securities.

The right of any Holder to participate in any consent required or sought pursuant to any provision of the Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any 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.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than a majority of the principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity reasonably satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed [if applicable, insert — or alter or impair the obligation of each Guarantor, which is absolute and unconditional, to pay pursuant to its Guarantee].

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

The Securities of this series are issuable only in registered form without coupons in denominations of $1,000 and any integral multiple thereof, except as such denomination may be determined pursuant to Section 3.1. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

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

Prior to due presentment of this Security for registration of transfer, the Company, [if applicable, insert — any Guarantor,] the Trustee and any agent of the Company [if applicable, insert — any Guarantor] or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, [if applicable, insert — any Guarantor,] the Trustee nor any such agent shall be affected by notice to the contrary.

[If this Security is a Global Security, insert — This Security is a Global Security and is subject to the provisions of the Indenture relating to Global Securities, including the limitations therein on transfers and exchanges of Global Securities.]

This Security and the Indenture shall be governed by and construed in accordance with the law of the State of New York.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

Section 2.4 Form of Legend for Global Securities. Unless otherwise specified as contemplated by Section 3.1 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

Section 2.5 Form of Trustee's Certificate of Authentication. The Trustee's certificates of authentication shall be in substantially the following form:

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

Dated:

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Authorized Signatory

ARTICLE III
THE SECURITIES

Section 3.1 Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and, subject to Section 3.3, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

(1) the title of the series;

(2) the aggregate principal amount (or any limit on the aggregate principal amount) of the series and, if any Securities of a series are to be issued at a discount from their face amount, the method of computing the accretion of such discount;

(3) the interest rate or method of calculation of the interest rate;

(4) the date from which interest will accrue;

(5) the Regular Record Date for any such interest payable on Securities of the series on any Interest Payment Date;

(6) the Interest Payment Dates when, places where and manner in which principal and interest are payable;

(7) the Security Registrar and Paying Agent;

(8) the terms of any mandatory (including any sinking fund requirements) or optional redemption by the Company;

(9) the terms of any redemption at the option of Holders;

(10) the denominations in which Securities are issuable;

(11) whether Securities will be issued in registered or bearer form and the terms of any such forms of Securities;

(12) whether any Securities will be represented by a Global Security and the terms of any such Global Security;

(13) the currency or currencies (including any composite currency) in which principal or interest or both may be paid;

(14) if payments of principal or interest may be made in a currency other than that in which Securities are denominated, the manner for determining such payments;

(15) provisions for electronic issuance of Securities or issuance of Securities in uncertificated form;

(16) any Events of Default, covenants and/or defined terms in addition to or in lieu of those set forth in this Indenture;

(17) whether and upon what terms Securities may be defeased if different from the provisions set forth in this Indenture;

(18) the form of the Securities, which, unless the Authorizing Resolution or supplemental indenture otherwise provides, shall be in the form contained in Article II;

(19) any terms that may be required by or advisable under applicable law;

(20) the percentage of the principal amount of the Securities which is payable if the maturity of the Securities is accelerated in the case of Securities issued at a discount from their face amount;

(21) if the Securities of the series are to be guaranteed by any Guarantors, the names of the Guarantors of the Securities of the series and the terms of the Guarantees of the Securities of the series, if such terms differ from those set forth in Section 14.1, and any deletions from, or modifications or additions to, the provisions of Article XIV or any other provisions of this Indenture in connection with the Guarantees of the Securities of the series;

(22) the terms, if any, upon which an optional tender and/or mandatory conversion of the Securities are permitted; and

(23) any other terms in addition to or different from those contained in this Indenture.

If the Securities of the series are to be guaranteed by any Guarantor pursuant to Article XIV, there shall be established in or pursuant to a Guarantor's Board Resolution of such Guarantor and, subject to Section 3.3, set forth, or determined in the manner provided, in a Guarantor's Officers' Certificate of such Guarantor, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of the series, the terms of the Guarantees by such Guarantor with respect to the Securities of the series, if such terms differ from those set forth in Section 14.1.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 3.3 set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided pursuant to this Section 3.1 for any series, after issuance of Securities of such series, such series may be reopened for issuances of additional Securities of that series.

The terms of any Security of a series may differ from the terms of other Securities of the same series, if and to the extent provided pursuant to this Section 3.1. The matters referenced in any or all of Clauses (1) through (23) above may be established and set forth or determined as aforesaid with respect to all or any specific Securities of a series (in each case to the extent permitted by the Trust Indenture Act).

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

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

The Securities shall be subordinated in right of payment to Senior Debt as provided in Article XV.

Section 3.2 Denominations. The Securities of each series shall be issuable only in registered form without coupons and only in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of $1,000 and any integral multiple thereof.

Section 3.3 Execution, Authentication, Delivery and Dating. The Securities shall be executed on behalf of the Company by its Chairman of the Board, President or a Vice President of the Company (or any other officer of the Company designated in writing by or pursuant to authority of the Board of Directors and delivered to the Trustee from time to time). The signature of any of these officers on the Securities may be manual or facsimile. If the terms of the Securities of any series provide that any Guarantee by any Guarantor is to be endorsed on or otherwise attached to, or made part of, Securities of any series, and if the terms of such Securities provide for the execution of such Guarantee by such Guarantor (it being understood and agreed that the terms of Securities of any series may, but need not, provide for the execution of any Guarantee by any Guarantor), such Guarantee shall be executed on behalf of such Guarantor by the Chairman of the Board, President or a Vice President of such Guarantor (or any other officer of such Guarantor designated in writing by or pursuant to authority of the Guarantor's Board of Directors and delivered to the Trustee from time to time). The signature of any of these officers on any Guarantee may be manual or facsimile.

Securities and any Guarantees by any Guarantor endorsed thereon bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company or such Guarantor, as the case may be, shall bind the Company or such Guarantor, as the case may be, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company, together with, if the terms of such Securities provide for the endorsement thereon of any Guarantees by any Guarantor, such Guarantees endorsed hereon and, if such terms so provide, executed by such Guarantor, to the Trustee for authentication, together with a Company Order and, if any Guarantee by a Guarantor is to be endorsed on such Securities, a Guarantor Order of such Guarantor, for the authentication and delivery of such Securities with any such Guarantees endorsed thereon, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities with any such Guarantees endorsed thereon. If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions or the form or terms of any Guarantees thereof by any Guarantor have been established by or pursuant to one or more Guarantor's Board Resolutions of such Guarantor as permitted by Sections 2.1 and 3.1, in authenticating such Securities with any such Guarantees endorsed thereon, and accepting the additional responsibilities under this Indenture in relation to such Securities and such Guarantees, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating,

(1) if the form of such Securities or any Guarantee by any Guarantor endorsed thereon has been established by or pursuant to Board Resolution or Guarantor's Board Resolution of such Guarantor, as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;

(2) if the terms of such Securities or any Guarantee thereof by a Guarantor have been established by or pursuant to Board Resolution or Guarantor's Board Resolution of such Guarantor as permitted by Section 3.1, that such terms have been established in conformity with the provisions of this Indenture; and

(3) that when such Securities with any Guarantees endorsed thereon have been authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, such Securities and such Guarantee will constitute valid and legally binding obligations of the Company or such Guarantor, respectively, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and subject to any limitation with respect to payments in currency other than U.S. dollars.

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

Notwithstanding the provisions of Section 3.1 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate or Guarantor's Officers' Certificate otherwise required pursuant to Section 3.1 or the Company Order, any Guarantor Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

Each Security shall be dated the date of its authentication.

No Security, nor any Guarantee endorsed thereon, shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security with any Guarantees endorsed thereon has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.9, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Wherever herein it shall provide for the Company to execute, and the Trustee to authenticate and deliver, Securities of any series, if the terms of such Securities provide for the endorsement thereon of the Guarantees by any Guarantor, the Company shall cause such Securities so executed by the Company and authenticated and delivered by the Trustee to have such Guarantees endorsed thereon, and, if such terms require such Guarantees to be executed by such Guarantor, such Guarantees to be executed by such Guarantor.

Section 3.4 Temporary Securities. Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order and, if any Guarantees by a Guarantor are so to be endorsed on such Securities, a Guarantor Order of such Guarantor, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities or Guarantees, respectively, may determine, as evidenced by their execution of such Securities or Guarantees, respectively.

If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

Section 3.5 Registration, Registration of Transfer and Exchange. The Company shall cause to be kept at each office or agency of the Company designated as a Place of Payment pursuant to the first paragraph of Section 10.2 a register (the register maintained in each such office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "***Security Register***") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of a series at the office or agency of the Company in a Place of Payment for that series, the Company and, if applicable, the Guarantors shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount.

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

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 9.6 or 11.7 not involving any transfer.

If the Securities of any series (or of any series and specified tenor) are to be redeemed in whole or in part, the Company shall not be required (A) to issue, register the transfer of or exchange any Securities of that series (or of that series and specified tenor, as the case may be) during a period beginning at the opening of business 15 days before the day of selection of any such Securities for redemption under Section 11.3 and ending at the close of business on the day of such selection (or during such period as otherwise specified pursuant to Section 3.1 for such Securities), or (B) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part or (C) to register the transfer of or to exchange a Security between a record date and the next succeeding Interest Payment Date.

The provisions of Clauses (1), (2), (3) and (4) below shall apply only to Global Securities:

(1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(2) Notwithstanding any other provision in this Indenture, and subject to such applicable provisions, if any, as may be specified as contemplated by Section 3.1, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary has notified the Company that it (i) is unwilling or unable to continue as Depositary for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act, or (B) the Company has executed and delivered to the Trustee a Company Order stating that such Global Security shall be exchanged in whole for Securities that are not Global Securities (in which case such exchange shall promptly be effected by the Trustee). If the Company receives a notice of the kind specified in Clause (A) above or has delivered a Company Order of the kind specified in Clause (B) above, it may, in its sole discretion, designate a successor Depositary for such Global Security within 90 days after receiving such notice or delivery of such order, as the case may be. If the Company designates a successor Depositary as aforesaid, such Global Security shall promptly be exchanged in whole for one or more other Global Securities registered in the name of the successor Depositary, whereupon such designated successor shall be the Depositary for such successor Global Security or Global Securities and the provisions of Clauses (1), (2), (3) and (4) of this provision shall continue to apply thereto.

(3) Subject to Clause (2) above and to such applicable provisions, if any, as may be specified as contemplated by Section 3.1, any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depositary for such Global Security shall direct.

(4) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section, Section 3.4, 3.6, 9.6 or 11.7 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

Every Person who takes or holds any beneficial interest in a Global Security agrees that:

(1) the Company and the Trustee may deal with the Depositary as sole owner of the Global Security and as the authorized representative of such Person;

(2) such Person’s rights in the Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreement between such Person and the Depositary and/or direct and indirect participants of the Depositary;

(3) the Depositary and its participants make book-entry transfers of beneficial ownership among, and receive and transmit distributions of principal and interest on the Global Securities to, such Persons in accordance with the Applicable Procedures of the Depositary; and

(4) none of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 3.6 Mutilated, Destroyed, Lost and Wrongfully Taken Securities. If (a) any mutilated Security is surrendered to the Trustee or (b) both (i) there shall be delivered to the Company and the Trustee (A) a claim by a Holder as to the destruction, loss or wrongful taking of any Security of such Holder and a request thereby for a new replacement Security of the same series, and (B) such indemnity bond as may be required by them to save each of them and any agent of either of them harmless and (ii) such other reasonable requirements as may be

imposed by the Company as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a "protected purchaser" within the meaning of Section 8-405 of the Uniform Commercial Code, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such mutilated, destroyed, lost or wrongfully taken Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously Outstanding.

In case any such mutilated, destroyed, lost or wrongfully taken Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

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

Every new Security of any series issued pursuant to this Section in lieu of any destroyed, lost or wrongfully taken Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or wrongfully taken Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

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

Section 3.7 Payment of Interest; Interest Rights Preserved. Except as otherwise provided as contemplated by Section 3.1 with respect to any Securities of a series, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest (or, if no business is conducted by the Trustee at its Corporate Trust Office on such date, at 5:00 P.M. New York City time on such date).

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "***Defaulted Interest***") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest payable on any Securities of a series to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each of such Securities 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 in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of such Securities in the manner set forth in Section 1.6, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

(2) The Company may make payment of any Defaulted Interest on any Securities of a series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such

Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Except as may otherwise be provided in this Section 3.7 or as contemplated in Section 3.1 with respect to any Securities of a series, the Person to whom interest shall be payable on any Security that first becomes payable on a day that is not an Interest Payment Date shall be the Holder of such Security on the day such interest is paid.

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

In the case of any Security which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Security which is converted, interest whose Stated Maturity is after the date of conversion of such Security shall not be payable.

Notwithstanding the foregoing, the terms of any Security that may be converted may provide that the provisions of this paragraph do not apply, or apply with such additions, changes or omissions as may be provided thereby, to such Security.

Section 3.8 Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, any Guarantor and the Trustee and any agent of the Company, any Guarantor or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 3.7) any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, any Guarantor, the Trustee nor any agent of the Company, any Guarantor or the Trustee shall be affected by notice to the contrary.

Section 3.9 Cancellation. All Securities surrendered for payment, redemption, registration of transfer or exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be disposed of as directed by a Company Order; provided, however, that the Trustee shall not be required to destroy such canceled Securities.

Section 3.10 Computation of Interest. Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11 CUSIP Numbers. The Company in issuing the Securities may use CUSIP numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers in notices of redemption 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 Securities or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Securities. Any such redemption shall not be affected by any defect in or omission of such CUSIP numbers.

ARTICLE IV
SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture. This Indenture shall upon Company Request cease to be of further effect with respect to the Securities of any series and any Guarantees of such Securities (except as to any surviving rights of conversion, registration of transfer or exchange of any such Security expressly provided for herein or in the terms of such Security), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture with respect to such Securities, when

(1) either

(A) all such Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or wrongfully taken and which have been replaced or paid as provided in Section 3.6 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

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

(i) have become due and payable, or

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

(iii) are to 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, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose money in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

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

Notwithstanding the satisfaction and discharge of this Indenture with respect to Securities of any series, the obligations of the Company to the Trustee under Section 6.7, the obligations of the Trustee to any Authenticating Agent under Section 6.14, and, if money shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section with respect to such Securities, the obligations of the Company of such series under Section 10.2 and the obligations of the Trustee under Section 4.2, Section 6.6 and the last paragraph of Section 10.3 with respect to such Securities shall survive such satisfaction and discharge.

Section 4.2 Application of Trust Money. Subject to the provisions of the last paragraph of Section 10.3, all money deposited with the Trustee pursuant to Section 4.1 with respect to Securities of any series shall be held in trust and applied by it, in accordance with the provisions of such Securities 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 any premium and interest for whose payment such money has been deposited with the Trustee. All moneys deposited with the Trustee pursuant to Section 4.1 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be

returned to the Company upon Company Request, to the extent originally deposited by the Company. The Company may direct by a Company Order the investment of any money deposited with the Trustee pursuant to Section 4.1, without distinction between principal and income, in (1) United States Treasury Securities with a maturity of one year or less or (2) a money market fund that invests solely in short term United States Treasury Securities and from time to time the Company may direct the reinvestment of all or a portion of such money in other securities or funds meeting the criteria specified in Clause (1) or (2) of this sentence.

ARTICLE V
DEFAULTS AND REMEDIES

Section 5.1 Events of Default.

Except as may otherwise be provided pursuant to Section 3.1 for all or any specific Securities of any series, "Event of Default," wherever used herein with respect to the Securities of that series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article XV or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

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

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

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

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "***Notice of Default***" hereunder; or

(5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days (provided that, if any Person becomes the successor to the Company pursuant to Article VIII and such Person is organized and validly existing under the law of a jurisdiction outside the United States, each reference in this Clause (5) to an applicable Federal or State law of a particular kind shall be deemed to refer to such law or any applicable comparable law of such non-U.S. jurisdiction, for as long as such Person is the successor to the Company hereunder and is so organized and existing); or

(6) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or

proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action (provided that, if any Person becomes the successor to the Company pursuant to Article VIII and such Person is organized and validly existing under the law of a jurisdiction outside the United States, each reference in this Clause (6) to an applicable Federal or State law of a particular kind shall be deemed to refer to such law or any applicable comparable law of such non-U.S. jurisdiction, for as long as such Person is the successor to the Company hereunder and is so organized and existing); or

(7) if Article XIV has been made applicable with respect to such Securities, the Guarantee of the Securities of such series by any Guarantor shall for any reason cease to be, or shall for any reason be asserted in writing by such Guarantor or the Company not to be, in full force and effect and enforceable in accordance with its terms, except to the extent contemplated or permitted by this Indenture or by the terms of the Securities of such series established pursuant to Section 3.1; or

(8) any other Event of Default provided with respect to Securities of that series in accordance with Section 3.1.

Section 5.2 Acceleration of Maturity; Rescission and Annulment. Except as may otherwise be provided pursuant to Section 3.1 for all or any specific Securities of any series, if an Event of Default (other than an Event of Default specified in Section 5.1(5) or 5.1(6)) with respect to Securities of that series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount of all the Securities of that series (or, in the case of any Security of that series which specifies an amount to be due and payable thereon upon acceleration of the Maturity thereof, such amount as may be specified by the terms thereof) to be due and payable immediately, by a notice in writing to the Company and any Guarantor of the Securities of that series (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable. Except as may otherwise be provided pursuant to Section 3.1 for all or any specific Securities of any series, if an Event of Default specified in Section 5.1(5) or Section 5.1(6) with respect to Securities of that series at the time Outstanding occurs, the principal amount of all the Securities of that series (or, in the case of any Security of that series which specifies an amount to be due and payable thereon upon acceleration of the Maturity thereof, such amount as may be specified by the terms thereof) shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable.

Except as may otherwise be provided pursuant to Section 3.1 for all or any specific Securities of any series, at any time after such a declaration of acceleration with respect to Securities of that series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company, any Guarantor of the Securities of that series and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company or any such Guarantor has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest on all Securities of that series,

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

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

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

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

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

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee. The Company covenants that if

(1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 60 days, or

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

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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

Section 5.4 Trustee May File Proofs of Claim. In case of any judicial proceeding relative to the Company, any Guarantor or any other obligor upon the Securities, their property or their creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. The Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.7.

No provision of this Indenture 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 Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

Section 5.5 Trustee May Enforce Claims Without Possession of Securities. All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 5.6 Application of Money Collected. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7;

SECOND: Subject to Article XV, to the payment of the amounts then due and unpaid for principal of and any premium and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company, any Guarantor or to whomsoever may be lawfully entitled to receive the same as a court of competent jurisdiction may direct.

Section 5.7 Limitation on Suits. No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

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

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

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

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

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

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

Section 5.8 Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 3.7) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date), and, if the terms of such Security so provide, to convert such Security in accordance with its terms, and to institute suit for the enforcement of any such payment and, if applicable, any such right to convert, and such rights shall not be impaired without the consent of such Holder.

Section 5.9 Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, 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 had been instituted.

Section 5.10 Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.12 Control by Holders. The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that

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

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

(3) subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceeding so directed would involve the Trustee in personal liability.

Section 5.13 Waiver of Past Defaults. Except as may otherwise be provided pursuant to Section 3.1 for all or any specific Securities of any series, the Holders of not less than a majority in principal amount (including waivers obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of the Outstanding Securities of any series to be affected under this Indenture may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of or any premium or interest on any Security of such series, or

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

Upon any such waiver with respect to any series, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, with respect to such series for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. A waiver of any past default and its consequences given by or on behalf of any Holder of Securities in connection with a purchase of, or tender or exchange offer for, such Holder's Securities will not be rendered invalid by such purchase, tender or exchange.

Section 5.14 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, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs, including reasonable attorneys' fees and expenses, against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the

Company, any Guarantor or the Trustee or, if applicable, in any suit for the enforcement of the right to convert any Security in accordance with its terms.

Section 5.15 Waiver of Usury, Stay or Extension Laws. The Company and each Guarantor, if any, covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company and each Guarantor, if any (to the extent that it may lawfully do so), hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI
THE TRUSTEE

Section 6.1 Certain Duties and Responsibilities. (a) Except during the continuance of an Event of Default,

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

(2) 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; but 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 be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case 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 their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this Subsection shall not be construed to limit the effect of the first paragraph of this Section;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series, determined as provided in Section 5.12, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 6.2 Notice of Defaults. If a default occurs hereunder with respect to Securities of any series, the Trustee shall give the Holders of Securities of such series notice of such default as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 5.1(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term "***default***" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 6.3 Certain Rights of Trustee. Subject to the provisions of Section 6.1:

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

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any request or direction of a Guarantor mentioned herein shall be sufficiently evidenced by a Guarantor Request or Guarantor Order of such Guarantor, and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution and any resolution of a Guarantor's Board of Directors may be sufficiently evidenced by a Guarantor's Board Resolution;

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

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

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or 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 and, if applicable, the Guarantors, 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;

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

(8) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

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

(10) 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 Securities and this Indenture; and

(11) the rights, privileges, protections, immunities and benefits given to the Trustee, including its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder.

Section 6.4 Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee does not assume any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 6.5 May Hold Securities. The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company or any Guarantor, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.8 and 6.13, may otherwise deal with the Company or any Guarantor with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Section 6.6 Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company or any Guarantor.

Section 6.7 Compensation and Reimbursement.

The Company agrees

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

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

(3) to indemnify each of the Trustee or any predecessor Trustee and its officers, directors, agents and employees for, and to hold it harmless against, any and all losses, liabilities, damages, claims or expenses including taxes (other than taxes based upon, measured by or determined by the earnings or income of the Trustee) incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim (whether asserted by the Company, a Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on Securities.

Without limiting any rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1(5) or Section 5.1(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the termination of this Indenture and, for the avoidance of doubt, shall not be subject to the provisions of Article XV hereof.

Section 6.8 Conflicting Interests. If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by the Trust Indenture Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series.

Section 6.9 Corporate Trustee Required; Eligibility. There shall at all times be one (and only one) Trustee hereunder with respect to the Securities of each series, which may be Trustee hereunder for Securities of one or more other series. Each Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such, has a combined capital and surplus of at least $50,000,000 and has its Corporate Trust Office in the continental United States of America. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to the Securities of any series shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10 Resignation and Removal; Appointment of Successor. No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.11.

The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 60 days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the giving of a notice of removal pursuant to this paragraph, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

If at any time:

(1) the Trustee shall fail to comply with Section 6.8 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 6.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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

then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to all Securities, or (B) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 6.11. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.11, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 6.11, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 1.6. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 6.11 Acceptance of Appointment by Successor. In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company, any Guarantor and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, any Guarantor, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested

with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Upon request of any such successor Trustee, the Company and any Guarantor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

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

Section 6.12 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13 Preferential Collection of Claims Against Company. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

Section 6.14 Appointment of Authenticating Agent. The Trustee may appoint an Authenticating Agent or Agents with respect to any series of Securities which shall be authorized to act on behalf of the Trustee to authenticate the Securities of such Series issued upon original issue and upon exchange, registration of transfer, partial conversion or partial redemption or pursuant to Section 3.6, and Securities of such series so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities of such series by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent so appointed with respect to such series and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent so appointed with respect to such series. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

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

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent with respect to any series of Securities which shall be acceptable to the Company and shall give notice of such appointment to all Holders of Securities of such series in the manner provided in Section 1.6. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed by the Company for such payments, subject to the provisions of Section 6.7.

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

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

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
As Authenticating Agent

By: _____
Authorized Signatory

ARTICLE VII
HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders. The Company and any Guarantor will furnish or cause to be furnished to the Trustee

(1) semi-annually, not later than May 15 and November 15 in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of each series as of the immediately preceding May 1 or November 1 as the case may be, and

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

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

Section 7.2 Preservation of Information; Communications to Holders. The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

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

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

Section 7.3 Reports by Trustee. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than 60 days after each May 15th and shall be dated as of May 15 in each calendar year, commencing in 2010.

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company and any Guarantor. The Company and any Guarantor will notify the Trustee when any Securities are listed on any stock exchange and of any delisting thereof.

Section 7.4 Reports by Company. The Company and any Guarantor shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act, if any, at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act need not be filed with the Trustee until the 15th day after the same are actually filed with the Commission; and provided further that the filing of any such information, documents or reports by the Company on the EDGAR system maintained by the Commission (or any successor system thereto) shall constitute filing with the Trustee. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the compliance by the Company or any Guarantor with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates or Guarantor's Officers' Certificates, as the case may be).

ARTICLE VIII
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.1 Company May Consolidate, Etc., Only on Certain Terms. The Company shall not consolidate with or merge into any other Person or sell, convey, transfer or lease all or substantially all its properties and assets to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company, unless:

(1) in case the Company shall consolidate with or merge into another Person or sell, convey, transfer or lease all or substantially all its properties and assets to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by sale, conveyance or transfer, or which leases, all or substantially all the properties and assets of the Company shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and, for each Security that by its terms provides for conversion, shall have provided for the right to convert such Security in accordance with its terms;

(2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or any Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.2 Successor Substituted. Upon any consolidation of the Company with, or merger of the Company into, any other Person or any sale, conveyance, transfer or lease of all or substantially all the properties and assets of the Company in accordance with Section 8.1, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE IX
SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures Without Consent of Holders. Except as may otherwise be provided pursuant to Section 3.1 for all or any specific Securities of any series, without the consent of any Holders, the Company, when authorized by a Board Resolution, each of the Guarantors, if any, when authorized by a Guarantor's Board Resolution of such Guarantor, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company or a Guarantor and the assumption by any such successor of the covenants of the Company or such Guarantor herein and in the Securities or the Guarantees of such Guarantor, as the case may be; or

(2) to add to the covenants of the Company or any Guarantor for the benefit of the Holders of all or any Securities of any series (and if such covenants are to be for the benefit of less than all Securities of such series, stating that such covenants are expressly being included solely for the benefit of such Securities within such series) or to surrender any right or power herein conferred upon the Company or any Guarantor with regard to all or any Securities of any series (and if any such surrender is to be made with regard to less than all Securities of such series, stating that such surrender is expressly being made solely with regard to such Securities within such series); or

(3) to add any additional Events of Default for the benefit of the Holders of all or any Securities of any series (and if such additional Events of Default are to be for the benefit of less than all Securities of such series, stating that such additional Events of Default are expressly being included solely for the benefit of such Securities within such series); or

(4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form; or

(5) to add to, change or eliminate any of the provisions of this Indenture in respect of all or any Securities of any series or any Guarantees thereof (and if such addition, change or elimination is to apply with respect to less than all Securities of such series or Guarantees thereof, stating that it is expressly being made to apply solely with respect to such Securities within such series or Guarantees thereof), provided that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series or Guarantee thereof created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no such Security Outstanding; or

(6) to secure the Securities or any Guarantees; or

(7) to establish the form or terms of all or any Securities of any series and any Guarantees thereof as permitted by Sections 2.1 and 3.1; or

(8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11; or

(9) to add to or change any of the provisions of this Indenture with respect to any Securities that by their terms may be converted into securities or other property other than Securities of the same series and of like tenor, in order to permit or facilitate the issuance, payment or conversion of such Securities; or

(10) to add any Person as an additional Guarantor under this Indenture, to add additional Guarantees or additional Guarantors in respect of any Outstanding Securities under this Indenture, or to evidence the release and discharge of any Guarantor from its obligations under its Guarantees of any Securities and its obligations under this Indenture in respect of any Securities in accordance with the terms of this Indenture; or

(11) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action pursuant to this Clause (11) shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

The Trustee is hereby authorized to join with the Company and the Guarantors, if any, in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept any conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

After an amendment under this Section 9.1 becomes effective, the Company shall mail notice of such amendment to the affected Holders.

Section 9.2 Supplemental Indentures With Consent of Holders. Except as may otherwise be provided pursuant to Section 3.1 for all or any specific Securities of any series or Guarantees thereof, with the consent of the Holders of a majority in principal amount (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of the Outstanding Securities of all series affected by such supplemental indenture (considered together as one class for this purpose and such affected Securities potentially being Securities of the same or different series and, with respect to any series, potentially comprising fewer than all the Securities of such series), by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, each of the Guarantors, if any, when authorized by a Guarantor's Board Resolution of such Guarantor, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture or any Guarantees of such Securities; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities),

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or any other Security which would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2, or permit the Company to redeem any Security if, absent such supplemental indenture, the Company would not be permitted to do so, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or

(2) if any Security provides that the Holder may require the Company to repurchase or convert such Security, impair such Holder's right to require repurchase or conversion of such Security on the terms provided therein, or

(3) reduce the percentage in principal amount of the Outstanding Securities of any one or more series (considered separately or together as one class, as applicable, and whether comprising the same or different series or less than all the Securities of a series), the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(4) if any Security is guaranteed by the Guarantee of any Grantor, release such Guarantor from any of its obligations under such Guarantee except in accordance with the terms of this Indenture; or

(5) modify any of the provisions of this Section, Section 5.13 or Section 10.6, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "***the Trustee***" and concomitant changes in this Section and Section 10.6, or the deletion of this proviso, in accordance with the requirements of Sections 6.11 and 9.1(8).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular Securities or series of Securities, or which modifies the rights of the Holders of such Securities or series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of any other Securities or of any other series, as applicable.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof. A consent to any indenture supplemental hereto by or on behalf of any Holder of Securities given in connection with a purchase of, or tender or exchange offer for, such Holder's Securities will not be rendered invalid by such purchase, tender or exchange.

Section 9.3 Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel and Officers' Certificate and Guarantor's Officers' Certificate, as the case may be, stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.4 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.5 Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

Section 9.6 Reference in Securities to Supplemental Indentures. Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 9.7 Subordination Unimpaired. No supplemental indenture shall adversely affect the interests of any holder of Senior Debt then outstanding under Article XV or of any holder of Senior Guarantor Debt then outstanding under the last paragraph of Section 14.1 in any material respect unless each holder of Senior Debt or Senior Guarantor Debt so 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 or Senior Guarantor Debt) consents to such supplemental indenture in writing.

ARTICLE X
COVENANTS

Section 10.1 Payment of Principal, Premium and Interest. The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of and any premium and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

Section 10.2 Maintenance of Office or Agency. The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or upon the Company or any Guarantor in respect of the Securities of that series and this Indenture may be served. The Company will 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, and the Company and each Guarantor (if any) hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will 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.

With respect to any Global Security, and except as otherwise may be specified for such Global Security as contemplated by Section 3.1, the Corporate Trust Office of the Trustee shall be the Place of Payment where such Global Security may be presented or surrendered for payment or for registration of transfer or exchange, or where successor Securities may be delivered in exchange therefor, *provided*, *however*, that any such payment, presentation, surrender or delivery effected pursuant to the Applicable Procedures of the Depositary for such Global Security shall be deemed to have been effected at the Place of Payment for such Global Security in accordance with the provisions of this Indenture.

Section 10.3 Money for Securities Payments to Be Held in Trust. If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of or any premium or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to 11:00 A.M., New York City time, on each due date of the principal of or any premium or interest on any Securities of that series, deposit (or, if the Company has deposited any trust funds with a trustee pursuant to Section 13.4(1), cause such trustee to deposit) with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

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

provisions of this Section, that such Paying Agent will (1) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (2) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

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

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

Section 10.4 Corporate Existence. Subject to Article VIII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 10.5 Statement by Officers as to Default. (a) The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge;

(b) So long as any Securities of a series to which Article XIV has been made applicable are Outstanding, each Guarantor of such Securities will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, a Guarantor's Officers' Certificate of such Guarantor, stating whether or not to the best knowledge of the signers thereof such Guarantor is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if such Guarantor shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.6 Waiver of Certain Covenants. Except as otherwise provided pursuant to Section 3.1 for all or any Securities of any series, the Company may, with respect to all or any Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in Section 10.4 or in any covenant provided pursuant to Section 3.1(18), 9.1(2), 9.1(6) or 9.1(7) for the benefit of the Holders of such series or in Article VIII if, before the time for such compliance, the Holders of a majority in principal amount (including waivers obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of all Outstanding Securities affected by such waiver (considered together as one class for this purpose and such affected Securities potentially being Securities of the same or different series and, with respect to any particular series, potentially comprising fewer than all the Securities of such series) shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until

such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect. A waiver of compliance given by or on behalf of any Holder of Securities in connection with a purchase of, or tender or exchange offer for, such Holder's Securities will not be rendered invalid by such purchase, tender or exchange.

ARTICLE XI
REDEMPTION OF SECURITIES

Section 11.1 Applicability of Article. Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.1 for such Securities) in accordance with this Article.

Section 11.2 Election to Redeem; Notice to Trustee. The election of the Company to redeem any Securities shall be established in or pursuant to a Board Resolution or in another manner specified as contemplated by Section 3.1 for such Securities. In case of any redemption at the election of the Company of less than all the Securities of any series (including any such redemption affecting only a single Security), the Company shall, at least 20 Business Days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities (1) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (2) pursuant to an election of the Company that is subject to a condition specified in the terms of the Securities of the series to be redeemed, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

Section 11.3 Selection by Trustee of Securities to Be Redeemed. If less than all the Securities of any series are to be redeemed (unless all the Securities of such series and of a specified tenor are to be redeemed or unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 40 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security of such series, provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 40 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as it may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and each Security Registrar in writing of the Securities selected for redemption as aforesaid and, in case of any Securities selected for partial redemption as aforesaid, the principal amount thereof to be redeemed.

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

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 11.4 Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 1.6 not less than 15 days nor more than 60 days prior to the Redemption Date (or within such period as otherwise specified as contemplated by Section 3.1 for the relevant Securities), to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall identify the Securities to be redeemed (including CUSIP numbers, if any) and shall state:

(1) the Redemption Date,

(2) the Redemption Price,

(3) if less than all the Outstanding Securities of any series consisting of more than a single Security are to be redeemed, the identification (and, in the case of partial redemption of any such Securities, the principal amounts) of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed,

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,

(5) the place or places where each such Security is to be surrendered for payment of the Redemption Price,

(6) for any Securities that by their terms may be converted, the terms of conversion, the date on which the right to convert the Security to be redeemed will terminate and the place or places where such Securities may be surrendered for conversion, and

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

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

Section 11.5 Deposit of Redemption Price. Prior to 11:00 A.M., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date, other than any Securities called for redemption on that date which have been converted prior to the date of such deposit. The Company may direct by a Company Order the investment of any money deposited with the Trustee pursuant to this Section 11.5, without distinction between principal and income, in (1) United States Treasury Securities with a maturity of one year or less or (2) a money market fund that invests solely in short term United States Treasury Securities and from time to time the Company may direct the reinvestment of all or a portion of such money in other securities or funds meeting the criteria specified in Clause (1) or (2) of this sentence. For the avoidance of doubt, the Trustee will have no liability with respect to investments made in accordance with the Company Order, including, without limitation, for any losses incurred in connection with such investments. In the event that losses are incurred, the Company shall, on or prior to 11:00 A.M. New York City time on the Redemption Date, deposit with the Trustee or Paying Agent such additional funds as are necessary so that the total amount of funds then on deposit with the Trustee or Paying Agent, as applicable, is equal to the initial amount of funds deposited by the Company pursuant to this Section 11.5 prior to investment. Any earnings resulting from any investment of funds pursuant to the terms of this Section 11.5 shall be paid by the Trustee to or at the direction of the Company.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section

3.7 or in the terms of such Security) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

Section 11.6 Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 3.1, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

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

Section 11.7 Securities Redeemed in Part. Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE XII
SINKING FUNDS

Section 12.1 Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 3.1 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any Securities is herein referred to as a "***mandatory sinking fund payment***," and any payment in excess of such minimum amount provided for by the terms of such Securities is herein referred to as an "***optional sinking fund payment***." If provided for by the terms of any Securities, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities as provided for by the terms of such Securities.

Section 12.2 Satisfaction of Sinking Fund Payments with Securities. The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been converted in accordance with their terms or which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as and to the extent provided for by the terms of such Securities; provided that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as specified in the Securities so to be redeemed (or at such other prices as may be specified for such Securities as contemplated in Section 3.1), for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 12.3 Redemption of Securities for Sinking Fund. Not less than 45 days (or such shorter period as shall be satisfactory to the Trustee) prior to each sinking fund payment date for any Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to the terms of such Securities, the portion thereof, if any, which is to be satisfied by

payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities pursuant to Section 12.2 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

ARTICLE XIII
DEFEASANCE AND COVENANT DEFEASANCE

Section 13.1 Company's Option to Effect Defeasance or Covenant Defeasance. Unless otherwise designated pursuant to Section 3.1(17), the Securities of any series of Securities shall be subject to defeasance or covenant defeasance pursuant to such Section 13.2 or 13.3, in accordance with any applicable requirements provided pursuant to Section 3.1 and upon compliance with the conditions set forth below in this Article. The Company may elect, at its option, at any time, to have Section 13.2 or Section 13.3 applied to any Securities or any series of Securities so subject to defeasance or covenant defeasance. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 3.1 for such Securities.

Section 13.2 Defeasance and Discharge. Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, the Company shall be deemed to have been discharged from its obligations, and the provisions of Article XV (and the provisions of the last paragraph of Section 14.1) shall cease to be effective, with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called "***Defeasance***"). For this purpose, such Defeasance means that the Company and the Guarantors of the Securities shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all their other respective obligations under such Securities and this Indenture insofar as such Securities or such Guarantees are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 13.4(1) and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities when payments are due, (2) the obligations of the Company and the Guarantors of the Securities of such series with respect to such Securities under Sections 3.4, 3.5, 3.6, 10.2 and 10.3, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article. Subject to compliance with this Article, the Company may exercise its option (if any) to have this Section applied to any Securities notwithstanding the prior exercise of its option (if any) to have Section 13.3 applied to such Securities. Upon the effectiveness of defeasance with respect to any series of Securities, each Guarantor of the Securities of such series shall (except as provided in clause (2) of the preceding sentence) be automatically and unconditionally released and discharged from all of its obligations under its Guarantee of the Securities of such series and all of its other obligations under this Indenture in respect of the Securities of such series, without any action by the Company, any Guarantor or the Trustee and without the consent of the Holders of any Securities.

Section 13.3 Covenant Defeasance. Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, (1) the Company shall be released from its obligations under Section 10.4 and any covenants provided pursuant to Section 3.1(16), 9.1(2), 9.1(6) or 9.1(7) for the benefit of the Holders of such Securities, and (2) the occurrence of any event specified in Sections 5.1(4) (with respect to Section 10.4 and any such covenants provided pursuant to Section 3.1(16), 9.1(2), 9.1(6) or 9.1(7)) and 5.1(8) shall be deemed not to be or result in an Event of Default and (3) the provisions of Article XV (and the provisions of the last paragraph of Section 14.1) shall cease to be effective, in each case with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called "***Covenant Defeasance***"). For this purpose, such Covenant Defeasance means that, with respect to such Securities, the Company and any Guarantor may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 5.1(4)) or Article XV or the last paragraph of Section 14.1, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or Article or by reason of any reference in any such Section or

Article to any other provision herein or in any other document, but the remainder of this Indenture and such Securities and any Guarantees thereof shall be unaffected thereby.

Section 13.4 Conditions to Defeasance or Covenant Defeasance. The following shall be the conditions to the application of Section 13.2 or Section 13.3 to any Securities or any series of Securities, as the case may be:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee which satisfies the requirements contemplated by Section 6.9 and agrees to comply with the provisions of this Article 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 benefits of the Holders of such Securities, (A) money in an amount, or (B) 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 one day before the due date of any payment, money in an amount, or (C) such other obligations or arrangements as may be specified as contemplated by Section 3.1 with respect to such Securities, or (D) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on such Securities on the respective Stated Maturities, in accordance with the terms of this Indenture and such Securities. As used herein, "***U.S. Government Obligation***" means (x) any security which is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in Clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(2) In the event of an election to have Section 13.2 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(3) In the event of an election to have Section 13.3 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(4) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that neither such Securities nor any other Securities of the same series, if then listed on any securities exchange, will be delisted as a result of such deposit.

(5) No event which is, or after notice or lapse of time or both would become, an Event of Default with respect to such Securities or any other Securities (other than such an event or Event of Default solely with respect to such Securities resulting from the borrowing of funds to be applied to such deposit) shall have occurred and be continuing at the time of such deposit.

(6) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which it is bound.

(7) The Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of such Securities over the other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding creditors of the Company.

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

Section 13.5 Deposited Money and U.S. Government Obligations to Be Held in Trust; Miscellaneous Provisions. Subject to the provisions of the last paragraph of Section 10.3, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section and Section 13.6, the Trustee and any such other trustee are referred to collectively as the "***Trustee***") pursuant to Section 13.4 in respect of any Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent or any Guarantor of the Securities of the applicable series or any Subsidiary or Affiliate of the Company or any such Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal and any premium and interest, but money and U.S. Government Obligations so held in trust need not be segregated from other funds except to the extent required by law. Money and U.S. Government Obligations (including the proceeds thereof) so held in trust shall not be subject to the provisions of Article XV, provided that the applicable conditions of Section 13.4 have been satisfied.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 13.4 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Anything in this Article to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 13.4 with respect to any Securities which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

Section 13.6 Reinstatement. If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article with respect to any Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the respective obligations under this Indenture and such Securities and, if applicable, Guarantees of such Securities from which the Company and the applicable Guarantors have been discharged or released pursuant to Section 13.2 or 13.3 shall be revived and reinstated as though no deposit had occurred pursuant to this Article with respect to such Securities, until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 13.5 with respect to such Securities in accordance with this Article; provided, however, that if the Company or any Guarantor makes any payment of principal of or any premium or interest on any such Security following such reinstatement of its obligations, the Company or such Guarantor, as the case may be, shall be subrogated to the rights (if any) of the Holders of such Securities to receive such payment from the money so held in trust.

ARTICLE XIV
GUARANTEES

Section 14.1 Guarantees. Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed by such Guarantors as shall be established pursuant to Section 3.1 with respect to the

Securities of such series. The Persons who shall initially be Guarantors of the Securities of any such series may include any and all such Persons as the Company may determine; provided that, prior to the authentication and delivery upon original issuance of Securities that are to be guaranteed by a Person, the Company, the Trustee and such Person shall enter into a supplemental indenture pursuant to Section 9.1 hereof whereby such Person shall become a Guarantor under this Indenture.

Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed in accordance with the terms of such Guarantees as established pursuant to Section 3.1 with respect to such Securities and such Guarantees thereof and (except as otherwise specified as contemplated by Section 3.1 for such Securities and such Guarantees thereof) in accordance with this Article.

Each Guarantor of any Security hereby fully and unconditionally guarantees to each Holder of such Security, and to the Trustee on behalf of such Holder, the due and punctual payment of the principal of, and premium, if any, and interest, if any, on such Security when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of such Security and of this Indenture. In case of the failure of the Company punctually to make any such payment, such Guarantor hereby agrees to cause such payment to be made punctually when and as the same shall become due and payable, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, and as if such payment were made by the Company.

The Guarantor of any Security hereby agrees that its obligations hereunder shall be absolute and unconditional irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of such Security or this Indenture, any failure to enforce the provisions of such Security or this Indenture, or any waiver, modification or indulgence granted to the Company with respect thereto, by the Holder of such Security or the Trustee or any other circumstance which may otherwise constitute a legal or equitable discharge or defense of a surety or guarantor; provided, however, that notwithstanding the foregoing, no such waiver, modification or indulgence shall, without the consent of any Guarantor, increase the principal amount of such Security, or increase the interest rate thereon, change any redemption provisions thereof (including any change to increase any premium payable upon redemption thereof) or change the Stated Maturity of any payment thereon, or increase the principal amount of any Original Issue Discount Security that would be due and payable upon a declaration of acceleration or the maturity thereof pursuant to Section 5.2 of this Indenture.

The Guarantor of any Security hereby waives the benefits of diligence, presentment, demand for payment, any requirement that the Trustee or any of the Holders exhaust any right or take any action against the Company or any other Person, 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 or notice with respect to any Security or the indebtedness evidenced thereby and all demands whatsoever, and covenants that its obligations hereunder will not be discharged in respect of such Security except by complete performance of the obligations of such Guarantor contained in such Security and in this Indenture. Any Guarantee of any Guarantor hereunder shall constitute a guaranty of payment and not of collection. The Guarantor of any Security hereby agrees that, in the event of a default in payment of principal, or premium, if any, or interest, if any, on such Security, whether at its Stated Maturity, by declaration of acceleration, call for redemption or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Security, subject to the terms and conditions set forth in this Indenture, directly against such Guarantor to enforce the obligation of such Guarantor hereunder without first proceeding against the Company.

The obligations of the Guarantor of any Security hereunder with respect to such Security shall be continuing and irrevocable until the date upon which the entire principal of, premium, if any, and interest, if any, on such Security has been, or has been deemed pursuant to the provisions of Article Four of this Indenture to have been, paid in full or otherwise discharged.

The Guarantor of any Security shall be subrogated to all rights of the Holders of such Security against the Company in respect of any amounts paid by the Guarantor on account of such Security pursuant to the provisions of this Indenture; provided, however, that such Guarantor shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until the principal of, and premium, if any, and interest, if any, on all Securities issued hereunder that are due and payable shall have been paid in full.

The Guarantee by any Guarantor of any Security shall remain in full force and effect and continue notwithstanding any petition filed by or against the Company for liquidation or reorganization, the Company becoming insolvent or making an assignment for the benefit of creditors or a receiver or trustee being 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 reinstated, as the case may be, if at any time payment of such Security, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any Holder of such Security, 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 on a Security, such Security shall, to the fullest extent permitted by law, be reinstated and deemed paid only by such amount paid and not so rescinded, reduced, restored or returned.

No Guarantor shall consolidate with or merge into any other Person or sell, convey or transfer all or substantially all its properties and assets to any Person, and no Guarantor shall permit any Person to consolidate with or merge into such Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is an Affiliate of the Company, and no Guarantor shall lease all or substantially all its properties and assets to any Person (whether or not such an Affiliate), unless, in any such case:

(1) in case such Guarantor shall consolidate with or merge into another Person or sell, convey, transfer or lease all or substantially all its properties and assets to any Person, the Person formed by such consolidation or into which such Guarantor is merged or the Person which acquires by sale, conveyance or transfer, or which leases, all or substantially all the properties and assets of such Guarantor shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the performance or observance of every covenant of this Indenture and any Guarantees on the part of such Guarantor to be performed or observed;

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

(3) such Guarantor has delivered to the Trustee a Guarantor's Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation of any Guarantor with, or merger of such Guarantor into, any other Person or any sale, conveyance, transfer or lease of all or substantially all the properties and assets of such Guarantor in accordance with this paragraph, the successor Person formed by such consolidation or into which such Guarantor is merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, such Guarantor under this Indenture with the same effect as if such successor Person had been named as such Guarantor herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and any Guarantees of such Guarantor.

Upon (i) a consolidation or merger of any Guarantor with or into, or a sale, conveyance or transfer of all or substantially all the properties and assets of any Guarantor to, any other Person or any consolidation or merger of any Person with or into any Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is not an Affiliate of the Company or (ii) any sale, conveyance or transfer (including by way of merger) by the Company or any Subsidiary thereof of all or substantially all the Capital Stock of any Guarantor to any Person that is not an Affiliate of the Company, such Guarantor shall be deemed to be automatically and unconditionally released and discharged from all its obligations under its Guarantees and under this Article XIV without any further action required on the part of the Trustee or any Holder. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Section 14.1. The Company may, at its option, at any time and from time to time, cause any Guarantor to be

automatically and unconditionally released and discharged from all its obligations under its Guarantees with respect to Securities of all series guaranteed by Guarantees of such Guarantor and under this Article XIV upon (i) any conditions for such release provided with respect to Securities of such series in accordance with Section 3.1 having been satisfied and (ii) delivery by the Company to the Trustee of a Company Order relating to such release and discharge. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Section 14.1.

Anything in this Indenture, the Securities or any Guarantee to the contrary notwithstanding, the obligations of any Guarantor under its Guarantees and this 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 its Guarantees and this Indenture not constituting a fraudulent advance or fraudulent transfer under any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or other law affecting the rights of creditors generally.

No Guarantee by any Guarantor of any Security, whether or not such Guarantee is or is to be endorsed thereon, shall be valid and obligatory for any purpose with respect to such Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.

The obligations of each Guarantor under its Guarantees pursuant to this Article XIV are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Guarantor Debt of such Guarantor, in each case on the same basis as the indebtedness represented by the Securities and the payment of the principal of (and premium, if any) and interest on the Securities are subordinate and subject in right of payment to the prior payment in full of all Senior Debt, mutatis mutandis. For the purposes of the foregoing sentence, the Trustee and the Holders shall have the right to receive or retain payments by any Guarantor only at such times as they may receive or retain payments and distributions in respect of the Securities pursuant to this Indenture, including Article XV hereof.

ARTICLE XV
SUBORDINATION OF SECURITIES

Section 15.1 Securities Subordinate to Senior Debt. The Company covenants and agrees, and each Holder of a Security, by his acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article, the indebtedness represented by the Securities and the payment of the principal of (and premium, if any) and interest on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

Notwithstanding the foregoing, if a deposit referred to in Section 13.4(1) is made pursuant to Section 13.2 or Section 13.3 with respect to any Securities (and provided all other conditions set out in Section 13.2 or Section 13.3, as applicable, shall have been satisfied with respect to such Securities), then no money or U.S. Government Obligations so deposited, and no proceeds thereon, will be subject to any rights of holders of Senior Debt, including any such rights arising under this *Article XV*.

Section 15.2 Payment Over of Proceeds Upon Dissolution, Etc. In the event of (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Company, then and in any such event the holders of Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt (including any interest accruing thereon after the commencement of any such case or proceeding), or provision shall be made for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, before the Holders of the Securities are entitled to receive any payment on account of principal of (or premium, if any) or interest on the Securities, and to that end the holders of Senior Debt shall be entitled to receive, for application to the payment thereof, any payment or distribution of any kind or character, whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other

indebtedness of the Company being subordinated to the payment of the Securities, which may be payable or deliverable in respect of the Securities in any such case, proceeding, dissolution, liquidation or other winding up event.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities, before all Senior Debt is paid in full or payment thereof provided for, and if such fact shall, at or prior to the time of such payment or distribution, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all Senior Debt in full, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt. Any taxes that have been withheld or deducted from any payment or distribution in respect of the Securities, or any taxes that ought to have been withheld or deducted from any such payment or distribution that have been remitted to the relevant taxing authority, shall not be considered to be an amount that the Trustee or the Holder of any Security receives for purposes of this Section.

For purposes of this Article only, the words “cash, property or securities” shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation or other entity, provided for by a plan of reorganization or readjustment which are subordinated in right of payment to all Senior Debt which may at the time be outstanding to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, or the sale, conveyance, transfer or lease by the Company of all or substantially all its properties and assets to, another Person upon the terms and conditions set forth in Article VIII, or the liquidation or dissolution of the Company following any such sale, conveyance or transfer, shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of such properties and assets, as the case may be, shall, as a part of such consolidation, merger, sale, conveyance, transfer or lease, comply with the conditions set forth in Article VIII.

Section 15.3 Prior Payment to Senior Debt Upon Acceleration of Securities. In the event that any Securities are declared due and payable in connection with an Event of Default before their Stated Maturity, then and in such event the holders of Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt or provision shall be made for such payment in cash, before the Holders of the Securities are entitled to receive any payment (including any payment which may be payable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities) by the Company on account of the principal of (or premium, if any) or interest on the Securities or on account of the purchase or other acquisition of Securities; provided, however, that nothing in this Section shall prevent the satisfaction of any sinking fund payment in accordance with Article XII by delivering and crediting pursuant to Section 12.2 Securities which have been acquired (upon redemption or otherwise) prior to such declaration of acceleration.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

Section 15.4 No Payment When Senior Debt in Default. Subject to the last paragraph of this Section, (a) (i) in the event and during the continuation of any default in the payment of principal of (or premium, if any) or interest on any Senior Debt beyond any applicable grace period with respect thereto, or (ii) in the event that any event of default with respect to any Senior Debt shall have occurred and be continuing permitting the holders of such Senior Debt (or a trustee on behalf of the holders thereof) to declare such Senior Debt due and payable prior to the date on which it would otherwise have become due and payable, whether or not such Senior Debt has been so

accelerated (provided that, in the case of Clause (i) or Clause (ii), if such default in payment or event of default shall have been cured or waived or shall have ceased to exist and any such declaration of acceleration shall have been rescinded or annulled, then such default in payment or event of default, as the case may be, shall be deemed not to have occurred for the purposes of this Section), or (b) in the event that any judicial proceeding shall be pending with respect to any such default in payment or event of default that shall be deemed to have occurred for the purpose of this Section, then no payment (including any payment which may be payable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities) shall be made by the Company on account of principal of (or premium, if any) or interest on the Securities or on account of the purchase or other acquisition of Securities; provided, however, that nothing in this Section shall prevent the satisfaction of any sinking fund payment in accordance with Article XII by delivering and crediting pursuant to Section 12.2 Securities which have been acquired (upon redemption or otherwise) prior to such default in payment.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

No default in payment or event of default with respect to any Senior Debt shall be deemed to be a default in payment or event of default of the kind specified in Clause (a)(i) or (a)(ii) of this Section, and no judicial proceeding with respect to any such default in payment or event of default shall be deemed to be a judicial proceeding of the kind specified in Clause (b) of this Section, if (x) the Company shall be disputing the occurrence or continuation of such default in payment or event of default, or any obligation purportedly giving rise to such default in payment or event of default, and (y) no final judgment holding that such default in payment or event of default has occurred and is continuing shall have been issued. For this purpose, a “final judgment” means a judgment that is issued by a court having jurisdiction over the Company or its property, is binding on the Company or its property, is in full force and effect and is not subject to judicial appeal or review (including because the time within which a party may seek appeal or review has expired), provided that, if any such judgment has been issued but is subject to judicial appeal or review, it shall nevertheless be deemed to be a final judgment unless the Company shall in good faith be prosecuting such appeal or a proceeding for such review and shall have obtained a stay of execution pending such appeal or review. Notwithstanding the foregoing, this paragraph shall not apply to any default in payment or event of default with respect to any Senior Debt as to which the Company has waived the application of this paragraph in the instrument evidencing such Senior Debt or by which such Senior Debt is created, incurred, assumed or guaranteed by the Company.

Section 15.5 Payment Permitted in Certain Situations. Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time except during the pendency of any case, proceeding, dissolution, liquidation or other winding up, assignment for the benefit of creditors or other marshalling of assets and liabilities of the Company referred to in Section 15.2 or under the conditions described in Section 15.3 or Section 15.4, from making payments at any time of or on account of the principal of (and premium, if any) or interest on the Securities, or on account of the purchase or other acquisition of Securities, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of (and premium, if any) or interest on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

Section 15.6 Subrogation to Rights of Holders of Senior Debt. Subject to the payment in full of all Senior Debt or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article (equally and ratably with the holders of indebtedness of the Company which by its express terms is subordinated to Indebtedness of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation) to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of (and premium, if any) and interest on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to

the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

Section 15.7 Provisions Solely to Define Relative Rights. The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article of the holders of Senior Debt, is intended to rank equally with all other general obligations of the Company), to pay to the Holders of the Securities the principal of (and premium, if any) and interest on the Securities as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt; or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

Section 15.8 Trustee to Effectuate Subordination. Each Holder of a Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 15.9 No Waiver of Subordination Provisions. No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

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

Section 15.10 Notice to Trustee. The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.1, shall be entitled in all respects to assume that no such facts exist.

Subject to the provisions of Section 6.1, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 15.11 Reliance on Judicial Order or Certificate of Liquidating Agent. Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.1, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

Section 15.12 Trustee Not Fiduciary For Holders of Senior Debt. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders or creditors if it shall in good faith pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article or otherwise. With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Debt shall be read into this Indenture against the Trustee.

Section 15.13 Rights of Trustee as Holder of Senior Debt; Preservation of Trustees Rights. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Debt which may at any time be held by it, to the same extent as any other holder of Senior Debt and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.6.

Section 15.14 Article Applicable to Paying Agents. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “Trustee” as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee.

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

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

BEAZER HOMES USA, INC.

By: /s/ Allan P. Merrill
Name: Allan P. Merrill
Title: Executive Vice President and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION

By: /s/ William Bryan Echols
Name: William Bryan Echols
Title: Vice President

Exhibit 4.2

FIRST SUPPLEMENTAL INDENTURE

Dated as of January 12, 2010

between

BEAZER HOMES USA, INC.

and

U.S. BANK NATIONAL ASSOCIATION, as Trustee

7½% MANDATORY CONVERTIBLE SUBORDINATED NOTES DUE 2013

First Supplement to Indenture Dated as of January 12, 2010

Table of Contents

FIRST SUPPLEMENTAL INDENTURE, dated as of January 12, 2010 (this "**Supplemental Indenture**," together with the Base Indenture (as defined below), the "**Indenture**"), between Beazer Homes USA, Inc., a Delaware corporation (the "**Company**"), and U.S. Bank National Association, acting as indenture trustee (the "**Trustee**").

RECITALS OF THE COMPANY

WHEREAS, the Company and U.S. Bank National Association executed and delivered the indenture, dated as of January 12, 2010 (the "**Base Indenture**").

WHEREAS, the Company desires and has requested the Trustee pursuant to Section 9.1 of the Base Indenture to join with it in the execution and delivery of this Supplemental Indenture in order to supplement the Base Indenture as and to the extent set forth herein to provide for the issuance and the terms of the Company's 7½% Mandatory Convertible Subordinated Notes due 2013 (the "**Notes**") in the aggregate principal amount of $57,500,000.

WHEREAS, Section 9.1(7) of the Base Indenture provides that a supplemental indenture may be entered into by the Company and the Trustee without the consent of any Holders to establish the form or terms of all or any Securities (as defined in the Base Indenture) of any series as permitted by Sections 2.1 and 3.1 of the Base Indenture.

WHEREAS, the execution and delivery of this Supplemental Indenture have been duly authorized by a Board Resolution of the Company, and all things necessary to make the Notes, when the Notes are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company have been done. Further, all things necessary to duly authorize the issuance of the Common Stock issuable upon the conversion of the Notes, and to duly reserve for issuance the number of shares of Common Stock issuable upon such conversion, have been done.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATIONS

Section 1.01 *Nature of Supplemental Indenture*. This Supplemental Indenture supplements the Base Indenture and does, and shall be deemed to, form a part of, and shall be construed in connection with and as part of, the Indenture for any and all purposes.

Section 1.02 Establishment of New Series. Pursuant to Article III of the Base Indenture, there is hereby established the Notes having the terms set forth in the Base Indenture as supplemented, amended or replaced by the terms of this Supplemental Indenture and as set forth in the form of Note attached to this Supplemental Indenture as Exhibit A, which is incorporated herein as a part of this Supplemental Indenture.

Section 1.03 Definitions. For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Trust Indenture Act or the Base Indenture;

(b) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and nouns and pronouns of the masculine gender include the feminine and neuter genders;

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

(d) the following terms have the meanings given to them in this Section 1.03(d):

"**Acceleration Cash Obligation**" has the meaning set forth in Section 5.02.

"**Acceleration Date**" has the meaning set forth in Section 5.02.

"**Acceleration Event**" has the meaning set forth in Section 5.02.

"**Acceleration Obligations**" means the Acceleration Cash Obligation and the Acceleration Stock Obligation.

"**Acceleration Stock Obligation**" has the meaning set forth in Section 5.02.

"**Agent**" means any Registrar, Paying Agent, or Conversion Agent.

"**Applicable Market Value**" has the meaning set forth in Section 3.01 with respect to Common Stock and the meaning set forth in Section 4.01(e) with respect to Exchange Property.

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

"**Base Indenture**" has the meaning ascribed to it in the first paragraph under the caption "Recitals of the Company."

"**Business Day**" means any day other than a Saturday or Sunday, a legal holiday or a day on which banking institutions or trust companies in the place of payment are authorized or obligated by law to close.

"**Closing Price**" with respect to Exchange Property has the meaning set forth in Section 4.01(e) and with respect to a share of the Common Stock on any given date:

(1) the closing price on that date or, if no closing price is reported, the last reported sale price of shares of Common Stock on the NYSE on that date; or

(2) if the Common Stock is not traded on the NYSE, the closing price on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is so traded or, if no closing price is reported, the last reported sale price of the Common Stock on the principal U.S. national or regional securities exchange on which the Common Stock is so traded; or

(3) if the Common Stock is not traded on a U.S. national or regional securities exchange, the last quoted bid price on that date for the Common Stock in the over-the-counter market as reported by Pink OTC Markets Inc. or a similar organization; or

(4) if the Common Stock is not so quoted by Pink OTC Markets Inc. or a similar organization, the market value of the Common Stock on that date as determined by the Board of Directors.

All references herein to the closing price of Common Stock and the last reported sale price of Common Stock on the NYSE shall be such closing price and such last reported sale price as reflected on the website of the NYSE (www.nyse.com) and as reported by Bloomberg Professional Service; provided that in the event that there is a discrepancy between the closing price and the last reported sale price as reflected on the website of the NYSE and as reported by

Bloomberg Professional Service, the closing price and the last reported sale price on the website of the NYSE shall govern.

"**Common Stock**" means the common stock of the Company, par value $0.001 per share.

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

"**Conversion Agent**" has the meaning set forth in Section 2.3(a)(i) of the Base Indenture, as amended by Section 2.01.

"**Conversion Date**" means the Early Conversion Date or the Mandatory Conversion Date.

"**Conversion Rate**" means the number of shares of Common Stock deliverable upon conversion of each Note on the applicable Conversion Date.

"**Covenant Event**" has the meaning set forth in Section 3.04(b).

"**Covenant Event Interest Make-Whole Amount**" has the meaning set forth in Section 3.04(b).

"**Current Market Price**" per share of Common Stock on any date means for the purposes of determining an adjustment to the Fixed Conversion Rate:

(a) for purposes of adjustments pursuant to Section 4.01(a)(ii), Section 4.01(a)(iv) in the event of an adjustment not relating to a Spin-Off, and Section 4.01(a)(v), the average of the Closing Prices over the five consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date with respect to the issuance or distribution requiring such computation;

(b) for purposes of adjustments pursuant to Section 4.01(a)(iv) in the event of an adjustment relating to a Spin-Off, the average of the Closing Prices over the first ten consecutive Trading Days commencing on and including the fifth Trading Day following the Ex-Date for such distribution; and

(c) for purposes of adjustments pursuant to Section 4.01(a)(vi), the average of the Closing Prices over the five consecutive Trading Day period ending on the seventh Trading Day after the Tender Offer Expiration Date of the relevant tender offer or exchange offer.

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

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

"**Disqualified Stock**" has the meaning set forth in the Secured Notes Indenture.

"**DTC**" means The Depository Trust Company, New York, New York, and any successor thereto.

"**Early Conversion**" has the meaning set forth in Section 3.02.

"**Early Conversion Date**" has the meaning set forth in Section 3.06(c).

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

"**Exchange Property**" has the meaning set forth in Section 4.01(e)(iv).

"**Ex-Date**" when used with respect to any issuance or distribution, means the first date on which shares of the Common Stock trade without the right to receive such issuance or distribution.

"**Fair Market Value**" means the fair market value as determined in good faith by the Board of Directors (or an authorized committee thereof), whose determination shall be conclusive and set forth in a resolution of the Board of Directors (or such authorized committee).

"**Fixed Conversion Rates**" means the Maximum Conversion Rate and the Minimum Conversion Rate.

"**Fundamental Change**" has the meaning set forth in Section 3.03(c).

"**Fundamental Change Conversion Period**" has the meaning set forth in Section 3.03(a).

"**Fundamental Change Conversion Rate**" has the meaning set forth in Section 3.03(a).

"**Fundamental Change Effective Date**" has the meaning set forth in Section 3.03(a).

"**Fundamental Change Interest Make-Whole Amount**" has the meaning set forth in Section 3.03(g).

"**Global Note**" means a Note that is a Global Security.

"**Holder**" means, with respect to a Note, the Person in whose name the Note is registered in the Security Register.

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

"**Indenture**" has the meaning ascribed to it in the first paragraph of this Supplemental Indenture.

"**Initial Price**" has the meaning set forth in Section 3.01(ii).

"**Intangible Assets**" has the meaning set forth in the Secured Notes Indenture.

"**Interest Payment Date**" means each January 15, April 15, July 15 and October 15 of each year, commencing April 15, 2010.

"**Interest Payments**" or "**Interest**" means the interest payments payable by the Company on the Interest Payment Dates in respect of each Note, calculated based on the Interest Rate and the principal amount of such Note.

"**Interest Rate**" means a rate per annum of 7.50%.

"**Interest Record Date**" means, with respect to any Interest Payment payable on any Interest Payment Date, the date fifteen calendar days immediately preceding the relevant Interest Payment Date.

"**Issue Date**" means January 12, 2010.

"**Mandatory Conversion Date**" means the date designated as a conversion date pursuant to Section 3.01, Section 3.04, and Section 5.02.

"**Mandatory Conversion Rate**" has the meaning set forth in Section 3.01.

"**Material Subsidiary**" has the meaning set forth in the Secured Notes Indenture.

"**Maximum Conversion Rate**" has the meaning set forth in Section 3.01(iii).

"**Minimum Conversion Rate**" has the meaning set forth in Section 3.01(i).

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

"**Notes**" has the meaning set forth in the second paragraph under the caption "Recitals of the Company."

"**NYSE**" means the New York Stock Exchange, Inc., together with any successor thereto.

"**Paying Agent**" has the meaning set forth in Section 2.01. The Paying Agent shall initially be the Trustee.

"**Preferred Stock**" has the meaning set forth in the Secured Notes Indenture.

"**Present Value of Interest Payments**" means the present value of all remaining Interest Payments on the Notes through and including the Stated Maturity Date computed using a discount rate equal to the Treasury Yield plus 50 basis points

"**Registrar**" has the meaning set forth in Section 2.01. The Registrar shall initially be the Trustee.

"**Reorganization Event**" has the meaning set forth in Section 4.01(e)(iv).

"**Responsible Officer**", when used with respect to the Trustee, means any officer within the corporate trust department (or any successor group) who shall have direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"**Restricted Subsidiaries**" has the meaning set forth in the Secured Notes Indenture.

"**Secured Notes Indenture**" means the Indenture, dated as of September 11, 2009, among Beazer Homes USA, Inc., the Subsidiary Guarantors named on Schedule I thereto, U.S. Bank National Association, as Trustee, and Wilmington Trust FSB, as Notes Collateral Agent, governing the Company's 12% Senior Secured Notes due 2017.

"**Spin-Off**" means a dividend or other distribution to all or substantially all holders of Common Stock consisting of Capital Stock of, or similar equity interests in, or relating to a Subsidiary or other business unit of the Company.

"**Stated Maturity Date**" means January 15, 2013.

"**Stock Price**" has the meaning set forth in Section 3.03(e).

"**Supplemental Indenture**" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

"**Tender Offer Expiration Date**" has the meaning set forth in Section 4.01(a).

"**Tender Offer Expiration Time**" has the meaning set forth in Section 4.01(a)(vi).

"**Threshold Appreciation Price**" has the meaning set forth in Section 3.01.

"**Trading Day**" means a day on which the Common Stock:

(1) is not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business; and

(2) has traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

"**Treasury Yield**" means the weekly average yield at the time of computation for United States Treasury securities at constant maturity as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Conversion Date (or, if such Statistical Release is no longer published, any publicly available source for similar market data) most nearly equal to the then-remaining term to January 15, 2013; provided, however, that if the then-remaining term to January 15, 2013 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate will be obtained by straightline interpolation between the two most comparable constant maturities.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, and any statute successor thereto, in each case as amended form time to time, together with the rules and regulations promulgated thereunder.

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

"**Underwriters**" has the meaning set forth in the Underwriting Agreement.

"**Underwriting Agreement**" means the Underwriting Agreement, dated as of January 6, 2010, between the Company and the Underwriters named therein relating to the Notes.

Section 1.04 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE, AND EACH HOLDER OF A SECURITY BY ITS ACCEPTANCE THEREOF, 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 EACH OF THIS INDENTURE OR THE NOTES.

Nothing in this Section 1.04 shall affect the right of any party hereto to serve process in any manner permitted by law, or limit any right to bring proceedings against any other party hereto in the courts of any jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

Section 1.05 *Counterparts*. This Supplemental Indenture may be executed in any number of counterparts by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

Section 1.06 *No Recourse Against Others*. No director, officer, employee, incorporator or shareholder of the Company, as such, shall have any liability for any obligations of the Company under the Notes or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

Section 1.07 *Company Responsible for Making Calculations*. The Company will be responsible for making all calculations and determinations called for under this Indenture. These calculations and determinations include, but are not limited to, determination of the Closing Prices of Common Stock, the Applicable Market Value, the Conversion Rate, whether a Fundamental Change has occurred, whether adjustments to the Fixed Conversion Rates, Initial Price, Threshold Appreciation Price or Applicable Market Value are required under this Indenture, the amount of the Interest Payments payable on the Notes and the amount of the Acceleration Obligations, if applicable. The Company or its agent will make these calculations and determinations in good faith, and, absent manifest error, such calculations and determinations will be final and binding on the Holders, and the Trustee shall have no responsibility with respect thereto. The Company shall provide a schedule of these calculations and determinations to the Trustee, and the Trustee shall be entitled to rely upon the accuracy of these calculations without independent verification thereof. The Trustee will forward these calculations and determinations to any Holder upon the written request of such Holder.

Section 1.08 *Company-owned Notes Disregarded*. In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action, only Notes that a Responsible Officer actually knows are so owned shall be so disregarded.

Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 1.08 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not the Company or any Affiliate of the Company. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of the Company or any Affiliate of the Company, and, subject to this Section 1.08, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 1.09 Relationship with Base Indenture. The terms and provisions contained in the Base Indenture shall constitute, and are hereby expressly made, a part of this Supplemental Indenture and the Company and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of the Base Indenture conflicts with the express provisions of this Supplemental Indenture, the provisions of this Supplemental Indenture shall govern and be controlling.

The Trustee accepts the amendments of the Base Indenture effected by this Supplemental Indenture and agrees to execute the trust created by the Base Indenture as hereby amended, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liabilities and responsibilities of the Trustee in the performance of the trust created by the Base Indenture, and without limiting the generality of the foregoing, the Trustee shall not be responsible in any manner whatsoever for or with respect to any of the recitals or statements contained herein, all of which recitals or statements are made solely by the Company, or for or with respect to (a) the validity or sufficiency of this Supplemental Indenture or any of the terms or provisions hereof, (b) the proper authorization hereof by the Company, (c) the due execution hereof by the Company or (d) the consequences (direct or indirect and whether deliberate or inadvertent) of any amendment herein provided for, and the Trustee makes no representation with respect to any such matters.

ARTICLE II

FORM AND ADMINISTRATION OF THE NOTES

Section 2.01 Form of Notes Generally; Denomination; Registrar, Conversion Agent and Paying Agent. Article II of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

"FORM AND ADMINISTRATION OF THE NOTES

Section 2.1 Form of Notes Generally; Denomination.

(a) The Notes shall be in substantially the form set forth in Exhibit A to the First Supplemental Indenture, dated as of January 12,

2010, between the Company and the Trustee (the "First Supplemental Indenture"), which Exhibit is incorporated in and made part of this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. The Company and the Trustee shall approve the form of the Notes and any such notations, legends or endorsements on them.

(b) The aggregate principal amount of the Notes outstanding at any time may not exceed $57,500,000.

(c) Upon initial issuance, the Notes shall be represented by one or more Global Notes. The Notes shall be issuable only in registered form without coupons in denominations of $25 and any integral multiple thereof and shall be deposited with the Trustee as custodian for DTC and registered in the name of DTC or its nominee.

Section 2.2 Form of Trustee's Certificate of Authentication. The Trustee's certificate of authentication shall be substantially in the form set forth in Exhibit A to the First Supplemental Indenture, which Exhibit is incorporated in and made part of this Indenture.

Section 2.3 Registrar, Conversion Agent and Paying Agent.

(a) The Company shall maintain an office or agency in New York City, New York where:

(i) the Notes may be presented or surrendered for conversion (the Person performing such functions at such office or agency, the "**Conversion Agent**"),

(ii) the Notes may be presented or surrendered for registration of transfer or for exchange (the Person performing such functions at such office or agency, the "**Registrar**"),

(iii) the Notes may be presented for Interest Payments (the Person performing such functions at such office or agency, the "**Paying Agent**"), and

(iv) notices and demands in respect of the Notes and this Indenture may be served.

(b) The Company shall enter into an appropriate agency agreement with any Agent not party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent.

(c) The duly appointed Registrar, Conversion Agent and Paying Agent for the Notes shall initially be U.S. Bank National Association. The Company may, in its sole discretion, remove the Registrar, Conversion Agent and Paying Agent in accordance with the agreement between the Company and the Registrar, Conversion Agent and Paying Agent, as the case may be; provided that if the Company removes U.S. Bank National Association, the Company shall appoint a successor Registrar, Conversion Agent and Paying Agent, as the case may be, who shall accept such appointment prior to the effectiveness of such removal. Upon any such removal or appointment, the Company shall send notice thereof by first-class mail, postage prepaid, to the Holders."

ARTICLE III

PAYMENT AND DELIVERY OBLIGATIONS UNDER THE NOTES

Section 3.01 Mandatory Conversion on the Stated Maturity Date. The Notes shall automatically convert (unless previously converted) on the Stated Maturity Date, into a number of shares of Common Stock equal to the Mandatory Conversion Rate. In addition to the shares of Common Stock issuable upon conversion of each Note at its maturity, Holders will have the right to receive an amount in cash equal to all accrued and unpaid Interest on such Notes up to (but excluding) the Stated Maturity Date.

The Conversion Rate in respect of each $25 principal amount of the Notes shall be as set forth below, subject in each case to adjustment as set forth in Section 3.03, Section 3.04 and Section 4.01 (the "**Mandatory Conversion Rate**"):

(i) if the Applicable Market Value is greater than or equal to $5.61 (the "**Threshold Appreciation Price**"), then the Conversion Rate will be 4.4547 shares of Common Stock per Note (the "**Minimum Conversion Rate**");

(ii) if the Applicable Market Value is less than the Threshold Appreciation Price but greater than $4.60 (the "**Initial Price**"), then the Conversion Rate will be the quotient obtained by dividing $25 by the Applicable Market Value; and

(iii) if the Applicable Market Value is less than or equal to the Initial Price, then the Conversion Rate will be 5.4348 shares of Common Stock per Note (the "**Maximum Conversion Rate**").

The "**Applicable Market Value**" means, with respect to Common Stock the average of the Closing Prices of Common Stock over the 20 consecutive Trading Day period ending on the third Trading Day immediately preceding the Mandatory Conversion Date.

Section 3.02 Conversion at the Option of the Holder. (a) Holders shall have the right to convert their Notes, in whole or in part, at any time prior to Stated Maturity Date ("**Early Conversion**"), into shares of Common Stock at the Minimum Conversion Rate (other than during a Fundamental Change Conversion Period), subject in each case to adjustment as set forth in Section 4.01.

(b) In addition to the number of shares of Common Stock issuable upon such conversion, each Holder that elects to convert its Notes prior to the Stated Maturity Date shall have the right to receive an amount in cash equal to all accrued and unpaid Interest on such converted Notes up to the Interest Payment Date that is on or immediately preceding the date of such Early Conversion. Accrued and unpaid Interest from such Interest Payment Date to (but not including) the Early Conversion Date, will be deemed to be paid in full rather than cancelled, extinguished or forfeited. Except as described herein, upon any optional conversion of the Notes, the Company shall make no payment or allowance for unpaid Interest on the Notes.

(c) If Notes are converted after any regular Interest Record Date but prior to the related Interest Payment Date, Holders of such Notes at the close of business on such Interest Record Date will receive the Interest Payment on the related Interest Payment Date notwithstanding the optional conversion.

Section 3.03 Conversion Upon Fundamental Change. (a) If a Fundamental Change occurs prior to January 15, 2013, the Company shall provide for the conversion of the Notes by:

(i) permitting Holders to submit their Notes for conversion at any time during the period (the "**Fundamental Change Conversion Period**") beginning on the effective date of such Fundamental Change (the "**Fundamental Change Effective Date**") and ending on the earlier of (A) the Stated Maturity Date and (B) the date that is 20 days after the Fundamental Change Effective Date, in either case, at the Conversion Rate (the "**Fundamental Change Conversion Rate**") set forth in clauses (d) and (e) below; and

(ii) paying to converting Holders the Fundamental Change Interest Make-Whole Amount or increasing the Conversion Rate in lieu thereof as set forth in clause (g) below.

(b) The Company shall notify Holders, to the extent practicable, at least 20 days prior to the anticipated effective date of such Fundamental Change, of the anticipated Fundamental Change Effective Date and the corresponding Fundamental Change Conversion

Period, but in any event not later than two Business Days following the Company becoming aware of the occurrence of a Fundamental Change. In addition, if the Company elects to deliver the Fundamental Change Interest Make-Whole Amount in shares of Common Stock, such notice shall indicate such election.

(c) A "**Fundamental Change**" shall be deemed to have occurred at any time after the Notes are originally issued upon the occurrence of any of the following:

(i) the Common Stock or other common stock into which the Notes are convertible is neither listed for trading on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States; or

(ii) the consummation of any acquisition (whether by means of a liquidation, share exchange, tender offer, consolidation, recapitalization, reclassification, merger of us or any sale, lease or other transfer of the consolidated assets of the Company and its Subsidiaries) or a series of related transactions or events pursuant to which: (A) 90% or more of the Common Stock is exchanged for, converted into or constitutes solely the right to receive cash, securities or other property; and (B) more than 10% of the cash, securities or other property consists of cash, securities or other property that are not, or upon issuance will not be, traded on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States.

(d) The following table sets forth the Fundamental Change Conversion Rate per Note for each hypothetical stock price and Fundamental Change Effective Date set forth below:

	Stock Price														
Fundamental Change Effective Date	$1.00	$3.00	$4.00	$4.50	$4.60	$4.75	$5.00	$5.25	$5.50	$5.61	$6.00	$7.00	$10.00	$15.00	$50.00
January 12, 2010	5.2063	4.6289	4.4833	4.4372	4.4302	4.4192	4.4041	4.3912	4.3804	4.3753	4.3633	4.3436	4.3373	4.3580	4.3882
January 15, 2011	5.3350	4.8158	4.6219	4.5551	4.5443	4.5284	4.5049	4.4847	4.4678	4.4613	4.4405	4.4074	4.3851	4.3968	4.4105
January 15, 2012	5.4061	5.0873	4.8262	4.7216	4.7024	4.6764	4.6373	4.6027	4.5732	4.5622	4.5270	4.4702	4.4292	4.4311	4.4329
January 15, 2013	5.4348	5.4348	5.4348	5.4348	5.4348	5.2632	5.0000	4.7619	4.5455	4.4547	4.4547	4.4547	4.4547	4.4547	4.4547

(e) The Fundamental Change Conversion Rate will be determined by reference to the table in clause (d) above, based on the Fundamental Change Effective Date and the stock price in the Fundamental Change (the "**Stock Price**"), which will be:

(i) in the case of a Fundamental Change described in Section 3.03(c)(ii) in which the holders of Common Stock receive only cash in the Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock; and

(ii) otherwise, the average of the Closing Prices of Common Stock over the 10 consecutive Trading Day period ending on the Trading Day preceding the Fundamental Change Effective Date.

(f) The exact Stock Price and Fundamental Change Effective Date may not be set forth on the table, in which case:

(i) if the applicable Stock Price is between two Stock Price amounts on the table or the Fundamental Change Effective Date is between two dates on the table, the Fundamental Change Conversion Rate shall be determined by straightline interpolation between the Fundamental Change Conversion Rates set forth for the higher and lower Stock Price amounts and the two dates, as applicable, based on a 365-day year;

(ii) if the applicable Stock Price is in excess of $50 per share (subject to adjustment as set forth in Section 4.01(c)), then the Fundamental Change Conversion Rate shall be the Minimum Conversion Rate, subject to adjustment as set forth in Section 4.01(c); and

(iii) if the applicable Stock Price is less than $1.00 per share (subject to adjustment as set forth in Section 4.01(c)), then the Fundamental Change Conversion Rate shall be the Maximum Conversion Rate, subject to adjustment as set forth in Section 4.01(c).

(g) For any Notes that are converted during the applicable Fundamental Change Conversion Period, in addition to the shares of Common Stock delivered upon conversion, the Company shall either:

(i) pay the Holders of such Notes, in cash, the sum (the "**Fundamental Change Interest Make-Whole Amount**") of (A) an amount equal to any accrued and unpaid Interest on the Notes, and (B) the Present Value of Interest Payments on the Notes; or

(ii) increase the number of shares of Common Stock to be issued upon conversion by a number of shares of Common Stock equal to the Fundamental Change Interest Make-Whole Amount divided by the Stock Price.

Section 3.04 *Covenant Event at the Option of the Company; No Redemption*. (a) Following the occurrence of a Covenant Event and during the continuation thereof, the Company may require Holders to convert all, but not less than all, of the Notes then outstanding for shares of Common Stock at the Maximum Conversion Rate. The Company shall provide a notice of a Covenant Event and its election to specify a related Mandatory Conversion Date as soon as practicable following the end of the fiscal quarter on which the Covenant Event has occurred (but in no event later than 10 days following the Company making such financial statement for such fiscal quarter publicly available), specifying the applicable Mandatory Conversion Date, which notice shall be issued not less than 15 nor more than 45 calendar days prior to the Mandatory Conversion Date, by mail to the Trustee, the Paying Agent and each Holder of Notes. Such notice shall specify whether the Company elected to deliver the Covenant Event Interest Make-Whole Amount in cash or shares of Common Stock.

(b) In addition to the shares of Common Stock delivered upon conversion pursuant to this Section 3.04 and any other amounts that may then be due to Holders upon conversion (including for the avoidance of doubt under Section 3.03(d), (e) and (f)), the Company shall either:

(i) pay the Holders of such Notes, in cash, the sum (the "**Covenant Event Interest Make-Whole Amount**") of (A) an amount equal to any accrued and unpaid Interest on the converted Notes, and (B) the Present Value of all remaining Interest Payments on the converted Notes through and including the Stated Maturity Date, calculated as set forth in Section 3.03, or

(ii) increase the number of shares of Common Stock to be issued on conversion by a number of shares of Common Stock equal to the Covenant Event Interest Make-Whole Amount divided by the average of the Closing Prices of Common Stock over the 5 consecutive Trading Day period ending on the third Trading Day immediately preceding the Mandatory Conversion Date.

A "**Covenant Event**" shall have been deemed to occur and continue during any quarter if the Consolidated Tangible Net Worth of the Company shall be less than $85,000,000 as of the last day of the Company's immediately preceding fiscal quarter.

(c) The Company may not redeem or cause the conversion of the Notes before the Stated Maturity Date, except as described under in this Section 3.04.

Section 3.05 *Conversion Procedures Upon Any Mandatory Conversion*. The Persons entitled to receive the shares of Common Stock issuable upon any mandatory conversion of the Notes (either on the Stated Maturity Date or as a result of a Covenant Event or Event of Default) will be treated as the record holder(s) of such shares as of 5:00 p.m., New York City time, on the Mandatory Conversion Date. Prior to 5:00 p.m. New York City time on the Mandatory Conversion Date, the shares of Common Stock issuable upon

conversion of the Notes will not be deemed to be outstanding for any purpose and Holders will have no rights with respect to such shares of Common Stock by virtue of holding the Notes, including voting rights, rights to respond to tender offers and rights to receive any dividends or other distributions on the Common Stock.

Section 3.06 Conversion Procedures Upon Optional Conversion. If a Holder elects to convert its Notes prior to the Stated Maturity Date, in the manner described in Section 3.02 and Section 3.03, the Holder must observe the following conversion procedures:

(a) If a Holder holds a beneficial interest in a Global Note, to convert the Holder must deliver to DTC the appropriate instruction form for conversion pursuant to DTC's conversion program and, if required, pay all taxes or duties, if any.

(b) If a Holder holds Notes in certificated form, to convert the Holder must:

(i) complete and manually sign the conversion notice on the back of the Note or a facsimile of the conversion notice;

(ii) deliver the completed conversion notice and the certificated Notes to be converted to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents; and

(iv) if required, pay all transfer or similar taxes or duties, if any.

(c) The conversion will be effective on the date on which a Holder has satisfied all of the foregoing requirements, to the extent applicable (the "**Early Conversion Date**"). A Holder will not be required to pay any taxes or duties relating to the issuance or delivery of Common Stock if such Holder exercises its conversion rights, but such Holder will be required to pay any transfer or similar tax or duty that may be payable relating to any transfer involved in the issuance or delivery of Common Stock in a name other than the name of such Holder. A certificate representing Common Stock will be issued and delivered only after all applicable taxes and duties, if any, payable by the Holder have been paid in full.

(d) The person or persons entitled to receive the Common Stock issuable upon Early Conversion or in connection with a Fundamental Change shall be treated for all purposes as the record holder(s) of such shares of Common Stock as of 5:00 p.m., New York City time, on the applicable Early Conversion Date. Prior to such applicable Early Conversion

Date, shares of Common Stock issuable upon conversion of any Notes shall not be deemed outstanding for any purpose, and Holders shall have no rights with respect to the Common Stock (including voting rights, rights to respond to tender offers for the Common Stock and rights to receive any dividends or other distributions on the Common Stock) by virtue of holding Notes.

(e) In case any Notes in a denomination greater than $25 shall be surrendered for partial Early Conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Notes so surrendered, without charge, new Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

(f) Upon the Early Conversion of an interest in a Global Note, the Trustee (or other Conversion Agent appointed by the Company) shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any Early Conversions of Notes effected through any Conversion Agent other than the Trustee.

(g) The Company shall deliver the shares of Common Stock and the amount of cash, if any, to which the Holder converting pursuant to Section 3.02 is entitled on or prior to the third Trading Day immediately following the Early Conversion Date.

Section 3.07 Interest Payments. The first paragraph of Section 3.7 of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

"The Company shall pay, on each Interest Payment Date, the Interest Payments payable in respect of principal amount of each Note to the Person in whose name a Note is registered at 5:00 p.m., New York City time, on the Interest Record Date relating to such Interest Payment Date. If any Interest Payment Date is not a Business Day, the Company will pay the related Interest Payment on the next Business Day (without any interest or other payment resulting from the delay). Interest Payments will be computed on the basis of a 360-day year of twelve 30-day months and, in the case of any incomplete month, the actual number of days elapsed during the month. If the Stated Maturity Date or any Conversion Date for the Notes falls on a day that is not a Business Day, the Company will pay the Interest Payment on the next Business Day (without any interest or other payment resulting from the delay). Interest Payments will include accrued Interest from the Issue Date, or from the most recent date to which Interest Payments have been paid, as the case may be, up to (but excluding) the Interest Payment Date or the Stated Maturity Date or Conversion Date, as the case may be. The Interest Payments will be payable at the office of the Paying Agent in New York City maintained for that purpose, by wire transfer of immediately available funds to an account appropriately designated by the Holder entitled

thereto or by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register."

Section 3.08 No Fractional Shares. (a) No fractional shares of Common Stock shall be issued to Holders upon conversion.

(b) In lieu of any fractional shares of Common Stock otherwise issuable in respect of the aggregate principal amount of Notes of any Holder that are converted, that Holder shall be entitled to receive an amount in cash (computed to the nearest cent) equal to the same fraction of:

(i) in the case of a mandatory conversion or conversion in connection with a Fundamental Change, the average of the Closing Prices of Common Stock over the 10 consecutive Trading Days immediately preceding the Conversion Date; or

(ii) in the case of each Early Conversion, the Closing Price per share of Common Stock on the second Trading Day immediately preceding the Conversion Date.

(c) The number of full shares of Common Stock shall be computed on the basis of the aggregate principal amount of the Notes surrendered by such Holder.

Section 3.09 Charges and Taxes. The Company will pay all stock transfer and similar taxes attributable to the delivery of the Common Stock pursuant to the Notes; provided, however, that the Company shall not be required to pay any such tax or taxes that may be payable in respect of any registration of a share of Common Stock in a name other than that of the registered Holder surrendered in respect of the Notes evidenced thereby, other than in the name of the Trustee, as custodian for such Holder, and the Company shall not be required to deliver such share certificates unless and until the Person or Persons requesting the transfer or registration thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

ARTICLE IV

ADJUSTMENTS

Section 4.01 Anti-Dilution Adjustments to the Fixed Conversion Rates. (a) Each Fixed Conversion Rate shall be subject to the following adjustments:

(i) *Stock Dividends and Distributions*. If the Company issues Common Stock to all or substantially all of the holders of Common Stock as a dividend or other distribution, each Fixed Conversion Rate in effect at 5:00 p.m., New York City

time, on the date fixed for determination of the holders of Common Stock entitled to receive such dividend or other distribution will be divided by a fraction:

(A) the numerator of which is the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination, and

(B) the denominator of which is the sum of the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination and the total number of shares of Common Stock constituting such dividend or other distribution.

Any adjustment made pursuant to this clause (i) will become effective immediately after 5:00 p.m., New York City time, on the date fixed for such determination. If any dividend or distribution described in this clause (i) is declared but not so paid or made, each Fixed Conversion Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to make such dividend or distribution, to such Fixed Conversion Rate that would be in effect if such dividend or distribution had not been declared. For the purposes of this clause (i), the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination shall not include shares held in treasury by the Company but shall include any shares issuable in respect of any scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not pay any dividend or make any distribution on shares of Common Stock held in treasury by the Company.

(ii) *Issuance of Stock Purchase Rights*. If the Company issues to all or substantially all holders of Common Stock rights or warrants (other than rights or warrants issued pursuant to a dividend reinvestment plan or share purchase plan or other similar plans), entitling such holders, for a period of up to 45 calendar days from the date of issuance of such rights or warrants, to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price, each Fixed Conversion Rate in effect at 5:00 p.m., New York City time, on the date fixed for determination of the holders of Common Stock entitled to receive such rights or warrants will be increased by multiplying such Fixed Conversion Rate by a fraction:

(A) the numerator of which is the sum of the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination and the number of shares of Common Stock issuable pursuant to such rights or warrants, and

(B) the denominator of which is the sum of the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination and the number of shares of Common Stock equal to the quotient of the aggregate offering price payable to exercise such rights or warrants divided by the Current Market Price.

Any adjustment made pursuant to this clause (ii) will become effective immediately after 5:00 p.m., New York City time, on the date fixed for such determination. In the event that such rights or warrants described in this clause (ii) are not so issued, each Fixed Conversion Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to issue such rights or warrants, to such Fixed Conversion Rate that would then be in effect if such issuance had not been declared. To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights or warrants upon the exercise of such rights or warrants, each Fixed Conversion Rate shall be readjusted to such Fixed Conversion Rate that would then be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate offering price payable to exercise such rights or warrants, there shall be taken into account any consideration received for such rights or warrants and the value of such consideration (if other than cash, to be determined by the Board of Directors (or an authorized committee thereof), whose determination shall be conclusive). For the purposes of this clause (ii), the number of shares of Common Stock at the time outstanding shall not include shares held in treasury by the Company but shall include any shares issuable in respect of any scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not issue any such rights or warrants in respect of shares of Common Stock held in treasury by the Company.

(iii) *Subdivisions and Combinations of the Common Stock*. If outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock or combined into a lesser number of shares of Common Stock, each Fixed Conversion Rate in effect at 5:00 p.m., New York City time, on the effective date of such subdivision or combination shall be multiplied by a fraction:

(A) the numerator of which is the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such subdivision or combination, and

(B) the denominator of which is the number of shares of Common Stock outstanding immediately prior to such subdivision or combination.

Any adjustment made pursuant to this clause (iii) shall become effective immediately after 5:00 p.m., New York City time, on the effective date of such subdivision or combination.

(iv) *Debt or Asset Distribution*. (A) If the Company distributes to all or substantially all holders of Common Stock evidences of its indebtedness, shares of capital stock, securities, cash or other assets (excluding (1) any dividend or distribution covered by Section 4.01(a)(i), (2) any rights or warrants covered by Section 4.01(a)(ii), (3) any dividend or distribution covered by Section 4.01(a)(v) and (4) any Spin-Off to which the provisions set forth in Section 4.01(a)(iv)(B) apply), each Fixed Conversion Rate in effect at 5:00 p.m., New York City time, on the date fixed for the determination

of holders of Common Stock entitled to receive such distribution will be multiplied by a fraction:

1. the numerator of which is the Current Market Price, and

2. the denominator of which is the Current Market Price minus the Fair Market Value, on such date fixed for determination, of the portion of the evidences of indebtedness, shares of capital stock, securities, cash or other assets so distributed applicable to one share of Common Stock.

(B) In the case of a Spin-Off, each Fixed Conversion Rate in effect at 5:00 p.m., New York City time, on the date fixed for the determination of holders of Common Stock entitled to receive such distribution will be multiplied by a fraction:

1. the numerator of which is the sum of (x) the Current Market Price and (y) the Fair Market Value of the portion of those shares of capital stock or similar equity interests so distributed which is applicable to one share of Common Stock as of the fifteenth Trading Day after the Ex-Date for such distribution (or, if such shares of capital stock or equity interests are listed on a national or regional securities exchange, the average of the Closing Prices of such securities for the ten consecutive Trading Day period ending on such fifteenth Trading Day), and

2. the denominator of which is the Current Market Price.

Any adjustment made pursuant to this clause (iv) shall become effective immediately after 5:00 p.m., New York City time, on the date fixed for the determination of the holders of Common Stock entitled to receive such distribution. In the event that such distribution described in this clause (iv) is not so made, each Fixed Conversion Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such dividend or distribution, to such Fixed Conversion Rate that would then be in effect if such distribution had not been declared. If an adjustment to each Fixed Conversion Rate is required under this clause (iv) during any settlement period in respect of the Notes that have been tendered for conversion, delivery of the shares of Common Stock issuable upon conversion will be delayed to the extent necessary in order to complete the calculations provided for in this clause (iv).

(v) *Cash Distributions*. If the Company distributes an amount exclusively in cash to all or substantially all holders of Common Stock (excluding (1) any cash that is distributed in a Reorganization Event to which Section 4.01(e) applies, (2) any dividend or distribution in connection with the liquidation, dissolution or

winding up of the Company or (3) any consideration payable in as part of a tender or exchange offer by the Company or any Subsidiary of the Company), each Fixed Conversion Rate in effect at 5:00 p.m., New York City time, on the date fixed for determination of the holders of Common Stock entitled to receive such distribution will be multiplied by a fraction:

(A) the numerator of which is the Current Market Price, and

(B) the denominator of which is the Current Market Price minus the amount per share of Common Stock of such distribution.

Any adjustment made pursuant to this clause (v) shall become effective immediately after 5:00 p.m., New York City time, on the date fixed for the determination of the holders of Common Stock entitled to receive such distribution. In the event that any distribution described in this clause (v) is not so made, each Fixed Conversion Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such distribution, to such Fixed Conversion Rate which would then be in effect if such distribution had not been declared.

(vi) *Self Tender Offers and Exchange Offers*. If the Company or any Subsidiary of the Company successfully completes a tender or exchange offer pursuant to a Schedule TO or registration statement on Form S-4 for Common Stock (excluding any securities convertible or exchangeable for Common Stock), where the cash and the value of any other consideration included in the payment per share of Common Stock exceeds the Current Market Price, each Fixed Conversion Rate in effect at 5:00 p.m., New York City time, on the date of expiration of the tender or exchange offer (the "**Tender Offer Expiration Date**") will be multiplied by a fraction:

(A) the numerator of which shall be equal to the sum of:

a. the aggregate cash and Fair Market Value on the Tender Offer Expiration Date of any other consideration paid or payable for shares of Common Stock validly tendered or exchanged and not withdrawn as of the Tender Offer Expiration Date; and

b. the product of the Current Market Price and the number of shares of Common Stock outstanding immediately after the last time tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Tender Offer Expiration Time**") on the Tender Offer Expiration Date; and

(B) the denominator of which shall be equal to the product of the Current Market Price and the number of shares of Common Stock outstanding immediately prior to the Tender Offer Expiration Time on the Tender Offer Expiration Date.

Any adjustment made pursuant to this clause (vi) shall become effective immediately after 5:00 p.m., New York City time, on the seventh Trading Day immediately following the Tender Offer Expiration Date. In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then each Fixed Conversation Rate shall be readjusted to such Fixed Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made. Except as set forth in the preceding sentence, if the application of this clause (vi) to any tender offer or exchange offer would result in a decrease in each Fixed Conversation Rate, no adjustment shall be made for such tender offer or exchange offer under this clause (vi). If an adjustment to each Fixed Conversion Rate is required pursuant to this clause (vi) during any settlement period in respect of the Notes that have been tendered for conversion, delivery of the related conversion consideration will be delayed to the extent necessary in order to complete the calculations provided for in this clause (vi).

(vii) Except with respect to a Spin-Off, in cases where the Fair Market Value of assets (including cash), debt securities or certain rights, warrants or options to purchase securities of the Company as to which Section 4.01(a)(iv) or Section 4.01(a)(v) apply, applicable to one share of Common Stock, distributed to holders of Common Stock equals or exceeds the average of the Closing Prices of the Common Stock over the five consecutive Trading Day period ending on the Trading Day before the Ex-Date for such distribution, rather than being entitled to an adjustment in each Fixed Conversion Rate, Holders shall be entitled to receive upon conversion, in addition to a number of shares of Common Stock equal to the applicable conversion rate in effect on the applicable Conversion Date, the kind and amount of assets (including cash), debt securities or rights, warrants or options comprising the distribution that such Holder would have received if such Holder had converted its Notes immediately prior to the date fixed for determination of the holders of Common Stock entitled to receive the distribution calculated by multiplying the kind and amount of assets (including cash), debt securities or rights, warrants or options comprising such distribution by the number of shares of Common Stock equal to the Minimum Conversion Rate in effect on the applicable Conversion Date.

(viii) *Rights Plans*. To the extent that the Company has a rights plan in effect with respect to the Common Stock on any Conversion Date, upon conversion of any Notes, Holders shall receive, in addition to the Common Stock, the rights under such rights plan, unless, prior to such Conversion Date, the rights have separated from the Common Stock, in which case each Fixed Conversion Rate shall be adjusted at the time of separation of such rights as if the Company made a distribution to all holders of the Common Stock as described in Section 4.01(a)(iv), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(b) *Adjustment for Tax Reasons*. The Company may make such increases in each Fixed Conversion Rate, in addition to any other increases required by this Section 4.01, as

the Company deems advisable to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of rights or warrants to acquire shares of Common Stock) or from any event treated as such for income tax purposes or for any other reasons; provided that the same proportionate adjustment must be made to each Fixed Conversion Rate.

(c) *Calculation of Adjustments; Adjustments to Threshold Appreciation Price, Initial Price and Stock Price*. (i) All adjustments to each Fixed Conversion Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock. Prior to the Mandatory Conversion Date, no adjustment in a Fixed Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent therein; provided, that any adjustments which by reason of this Section 4.01(c)(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment; provided, however that with respect to adjustments to be made to the Fixed Conversion Rates in connection with cash dividends paid by the Company, the Fixed Conversion Rates shall be adjusted regardless of whether such aggregate adjustments amount to one percent or more of the Fixed Conversion Rates no later than March 15 of each calendar year; provided, further that on the earlier of the Mandatory Conversion Date, an Early Conversion Date and the Effective Date of a Fundamental Change, adjustments to each Fixed Conversion Rate shall be made with respect to any such adjustment carried forward and which has not been taken into account before such date.

(ii) If an adjustment is made to the Fixed Conversion Rates pursuant to Sections 4.01(a) or 4.01(b), an inversely proportional adjustment shall also be made to the Threshold Appreciation Price and the Initial Price solely for purposes of determining which of clauses (i), (ii) and (iii) of Section 3.01 shall apply on the Mandatory Conversion Date. Such adjustment shall be made by dividing each of the Threshold Appreciation Price and the Initial Price by a fraction, the numerator of which shall be either Fixed Conversion Rate immediately after such adjustment pursuant to Sections 4.01(a) or 4.01(b) and the denominator of which shall be such Fixed Conversion Rate immediately before such adjustment. The Company shall make appropriate adjustments to the Closing Prices prior to the relevant Ex-Date, effective date or Tender Offer Expiration Date, as the case may be, used to calculate the Applicable Market Value to account for any adjustments to the Initial Price, the Threshold Appreciation Price and the Fixed Conversion Rates that become effective during the 20 consecutive Trading Day period used for calculating the Applicable Market Value.

(iii) If:

(A) the record date for a dividend or distribution on Common Stock occurs after the end of the 20 consecutive Trading Day period used for calculating the Applicable Market Value and before the Mandatory Conversion Date; and

(B) such dividend or distribution would have resulted in an adjustment of the number of shares of Common Stock issuable to the Holders had

such record date occurred on or before the last Trading Day of such 20-Trading Day period,

then the Company shall deem the Holders to be holders of record of Common Stock for purposes of that dividend or distribution. In this case, the Holders would receive the dividend or distribution on Common Stock together with the number of shares of Common Stock issuable upon the Mandatory Conversion Date.

(iv) If an adjustment is made to the Fixed Conversion Rates pursuant to Sections 4.01(a) or 4.01(b), a proportional adjustment shall be made to each Stock Price column heading set forth in the table included in Section 3.03(d). Such adjustment shall be made by multiplying each Stock Price included in such table by a fraction, the numerator of which is the Minimum Conversion Rate immediately prior to such adjustment and the denominator of which is the Minimum Conversion Rate immediately after such adjustment. Each of the Conversion Rates in the table included in Section 3.03(d) will be subject to adjustment in the same manner as each Fixed Conversion Rate as set forth in this Section 4.01.

(v) No adjustment to the Fixed Conversion Rates shall be made if Holders may participate in the transaction that would otherwise give rise to an adjustment. In addition, the applicable Conversion Rate shall not be adjusted:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(B) upon the issuance of any shares of Common Stock or rights or warrants to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its subsidiaries;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the Issue Date; or

(D) for a change in the par value or no par value of the Common Stock.

(d) *Notice of Adjustment*. Whenever the Fixed Conversion Rates and the Fundamental Change Conversion Rates are to be adjusted, the Company shall:

(i) compute such adjusted Fixed Conversion Rates and Fundamental Change Conversion Rates and prepare and transmit to the Trustee and any Conversion Agent an Officers' Certificate setting forth such adjusted Fixed Conversion Rates and Fundamental Change Conversion Rates, the method of calculation thereof in

reasonable detail and the facts requiring such adjustment and upon which such adjustment is based;

(ii) within five Business Days following the occurrence of an event that requires an adjustment to the Fixed Conversion Rates and the Fundamental Change Conversion Rates (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and

(iii) within five Business Days following the determination of such adjusted Fixed Conversion Rates and Fundamental Change Conversion Rates provide, or cause to be provided, to the Holders a statement setting forth in reasonable detail the method by which the adjustment to such Fixed Conversion Rates and Fundamental Change Conversion Rates, as applicable, was determined and setting forth such adjusted Fixed Conversion Rates or Fundamental Change Conversion Rates.

(e) *Reorganization Events*. In the event of:

(i) any consolidation or merger of the Company with or into another Person (other than a merger or consolidation in which the Company is the continuing corporation and in which the Common Stock outstanding immediately prior to the merger or consolidation is not exchanged for cash, securities or other property of the Company or another Person);

(ii) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Company;

(iii) any reclassification of Common Stock into securities including securities other than Common Stock; or

(iv) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition),

in each case, as a result of which the Company's Common Stock would be converted into, or exchanged for, securities, cash or property (each, a "**Reorganization Event**"), each Note outstanding immediately prior to such Reorganization Event shall, without the consent of Holders, become convertible into the kind of securities, cash and other property (the "**Exchange Property**") that such Holder would have been entitled to receive if such Holder had converted its Notes into Common Stock immediately prior to such Reorganization Event. For purposes of the foregoing, the type and amount of Exchange Property in the case of any Reorganization Event that causes the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election) will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election. The number of units of Exchange Property for each Note converted following the Effective Date of such Reorganization Event shall be determined based on the Mandatory Conversion Rate, Minimum Conversion Rate or

Fundamental Change Conversion Rate, as the case may be, then in effect on the applicable Conversion Date (without any interest thereon and without any right to dividends or distributions thereon which have a record date that is prior to the Conversion Date). The applicable Conversion Rate shall be (1) in the case of an Early Conversion Date, the Minimum Conversion Rate, and (2) otherwise, the Mandatory Conversion Rate as determined under Section 3.01 based upon the Applicable Market Value.

For purposes of this Section 4.01(e), "**Applicable Market Value**" shall be deemed to refer to the Applicable Market Value of the Exchange Property and such value shall be determined (A) with respect to any publicly traded securities that compose all or part of the Exchange Property, based on the Closing Price of such securities, (B) in the case of any cash that composes all or part of the Exchange Property, based on the amount of such cash and (C) in the case of any other property that composes all or part of the Exchange Property, based on the value of such property, as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose. For purposes of this Section 4.01(e), the term "**Closing Price**" shall be deemed to refer to the closing sale price, last quoted bid price or mid-point of the last bid and ask prices, as the case may be, of any publicly traded securities that comprise all or part of the Exchange Property. For purposes of this Section 4.01(e), references to Common Stock in the definition of "Trading Day" shall be replaced by references to any publicly traded securities that comprise all or part of the Exchange Property.

The above provisions of this Section 4.01(e) shall similarly apply to successive Reorganization Events and the provisions of Section 4.01 shall apply to any shares of capital stock of the Company (or any successor) received by the holders of Common Stock in any such Reorganization Event.

The Company (or any successor) shall, within 20 days of the occurrence of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitute the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 4.01(e).

ARTICLE V
EVENTS OF DEFAULT; ACCELERATION; REMEDIES

Section 5.01 Events of Default. Section 5.1 of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

"*Section 5.1 Events of Default* (a) Each of the following events is an "**Event of Default**" (whatever the reason for such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the failure of the Company to pay any Interest Payment on any Note when the same becomes due and payable and the continuance of such failure for a period of 30 days;

(ii) the failure of the Company to issue the required number of shares of Common Stock upon conversion of any Note at maturity, upon acceleration or otherwise;

(iii) the failure by the Company to comply with any of its agreements or covenants in, or provisions of, the Notes or the 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 $25.0 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 $25.0 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 $25.0 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; or

(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.

(b) A Default under Section 5.1(a)(iii) hereof shall not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of not less than 25% of the aggregate principal amount of the then outstanding Notes notify the Company and the Trustee, of the Default and the Company does not cure the Default within 60 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, it ceases."

Section *5.02 Acceleration Event*. Section 5.2 of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

"*Section 5.2 Acceleration Event*. (a) The Holders may not enforce the provisions of the Indenture or the Notes except as provided in the Indenture.

(b) If an Event of Default shall have occurred and be continuing, 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 (other than an Event of Default specified in Section 5.1(a)(vii) and (viii), in which case no declaration of acceleration or notice shall be required). Upon such acceleration (the "**Acceleration Event**"), the Notes will automatically convert into shares of Common Stock as set forth in Section 3.01 of the First Supplemental Indenture at the Maximum Conversion Rate; such obligation (the "**Acceleration Stock**

Obligation"), together with (i) all accrued and unpaid Interest up to, but excluding, the date of acceleration (the "**Acceleration Date**") and (ii) the Present Value of Interest Payments on the Notes ((i) and (ii) together, the "**Acceleration Cash Obligation**"), shall become immediately due and payable. The Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee and the Company may waive such default or Event of Default (other than any default or Event of Default in Interest Payments) on the Notes. Holders of a majority in principal amount of the then outstanding Notes may rescind an Acceleration Event and its consequence (except an Acceleration Event due to nonpayment of Interest on the Notes under Section 5.1(a)(i)) if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived."

Section 5.03 Collection of Interest and Suits for Enforcement by Trustee. Section 5.3 of the Base Indenture is hereby amended with respect to the Notes as follows:

(a) Clause (2) is hereby amended and restated in its entirety with respect to the Notes as follows: "(2) default is made in delivery of shares of Common Stock and/or cash (if any) on any Conversion Date under Article III of the First Supplemental Indenture or the delivery of Acceleration Obligations under Section 5.02 of the First Supplemental Indenture,".

(b) The phrases "principal and any premium and" and "on any overdue principal and premium and" in the proviso immediately following clause (2) shall not apply to the Notes.

Section 5.04 Application of Money Collected. Section 5.6 of the Base Indenture is hereby amended with respect to the Notes as follows:

(a) The phrase "principal or any premium or" in the first paragraph thereof shall not apply to the Notes.

(b) The phrases "principal of and any premium and", "principal and any premium and", and ", respectively" in the paragraph thereof commencing with the word "SECOND" shall not apply to the Notes.

Section 5.05 Unconditional Right of Holders to Receive Interest Payments under the Notes and to Convert; Right of Holders to Institute Suit. Section 5.8 of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

"*Section 5.8 Unconditional Right of Holders to Receive Interest Payments under the Notes and to Convert; Right of Holders to Institute Suit*. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the

right, which is absolute and unconditional, to receive payment of interest on such Security in accordance with its terms, and to convert such Security in accordance with its terms, and to institute suit for the enforcement of any such payment and, if applicable, any such right to convert, and such rights shall not be impaired without the consent of such Holder."

ARTICLE VI

SATISFACTION AND DISCHARGE

Section 6.01 Satisfaction and Discharge of the Supplemental Indenture. The satisfaction and discharge provisions set forth in this Article VI shall, with respect to the Notes, supersede the entirety of Article IV of the Base Indenture, and all references in the Base Indenture to Article IV thereof and satisfaction and discharge provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Article VI and the satisfaction and discharge provisions set forth in this Article VI, respectively. When the Company shall deliver to the Trustee for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether upon conversion at Stated Maturity or otherwise) and the Company shall deposit with the Trustee, in trust, or deliver to the Holders, as applicable, cash and shares of Common Stock sufficient to pay all amounts due on all of such Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including Interest due and all amounts due upon conversion, accompanied by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional reasonably satisfactory to the Trustee (which may include any of the Underwriters), and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Supplemental Indenture shall cease to be of further effect (except as to rights hereunder of Holders of the Notes to receive all amounts owing upon the Notes and the other rights, duties and obligations of Holders of the Notes, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and the rights, obligations and immunities of the Trustee hereunder), and the Trustee, upon receipt of a Company Request accompanied by an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Supplemental Indenture with respect to the Notes have been complied with, and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Supplemental Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Supplemental Indenture or the Notes.

Section 6.02 Application of Trust Money. Subject to Section 6.04, all monies deposited with the Trustee pursuant to Section 6.01 shall be held in trust for the sole benefit of the Holders, and such monies shall be applied by the Trustee to the payment, either

directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Notes for the payment of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest, if any. The Company may direct by Company Order the investment of any money deposited with the Trustee pursuant to Section 6.01 in (1) United States Treasury Securities with a maturity date of one year or less or (2) a money market fund that invests solely in short term United States Treasury Securities and from time to time the Company may direct the reinvestment of all or a portion of such money in other securities or funds meeting the criteria specified in clause (1) or (2) of this sentence.

Section 6.03 Paying Agent to Repay Monies Held. Upon the satisfaction and discharge of this Indenture, all monies then held by any Paying Agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to the Company or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies.

Section 6.04 Return of Unclaimed Monies. Subject to the requirements of applicable law, any monies deposited with or paid to the Trustee for payment of Interest on the Notes and not applied but remaining unclaimed by the Holders of the Notes for two years after the date upon which the Interest on such Notes shall have become due and payable, shall be repaid to the Company by the Trustee on demand and all liability of the Trustee shall thereupon cease with respect to such monies; and the Holder of any of the Notes shall thereafter look only to the Company for any payment that such Holder of the Notes may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 6.05 Reinstatement. If the Trustee or the Paying Agent is unable to apply any money in accordance with Section 6.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Supplemental Indenture, the Base Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 6.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with Section 6.02; provided, however , that if the Company makes any payment of interest on or principal of any Note following 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 held by the Trustee or Paying Agent.

ARTICLE VII

THE TRUSTEE

Section 7.01 Amendments to the Base Indenture. Article VI of the Base Indenture is hereby amended with respect to the Notes as follows:

(a) The reference in Section 6.2 of the Base Indenture to Section 5.1(4) thereof shall be deemed a reference to Section 5.1(a)(iii) thereof, as amended by Section 5.01 of this Supplemental Indenture;

(b) the following text shall be inserted after the first sentence of Section 6.2 of the Base Indenture: “Notwithstanding the preceding sentence, except in the case of an Event of Default described in Section 5.1(a)(vii) or Section 5.1(a)(viii), the Trustee may withhold the notice if and so long the Trustee determines in good faith that withholding such notice is in the best interest of the Holders of Notes.”

(c) The reference in Section 6.7(3) of the Base Indenture to Section 5.1(5) thereof shall be deemed reference to Section 5.1(a)(vii) thereof, as amended by Section 5.01, and the reference in Section 6.7(3) of the Base Indenture to Section 5.1(6) thereof shall be deemed a reference to Section 5.1(a)(viii) thereof, as amended by Section 5.01 of this Supplemental Indenture.

ARTICLE VIII

SUPPLEMENTAL INDENTURES

Section 8.01 Amendments or Supplements Without Consent of Holders. In addition to any permitted amendment or supplement to the Indenture pursuant to Section 9.1 of the Base Indenture, the Company and the Trustee, at any time and from time to time, may amend or supplement the Indenture or the Notes without notice to or the consent of any Holder of the Notes:

(a) In order to comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act; or

(b) to conform this Supplemental Indenture and the form or terms of the Notes to the section entitled “Description of the Notes” as set forth in the final prospectus supplement related to the offering and sale of the Notes dated January 6, 2010.

Section 8.02 Amendments, Supplements or Waivers With Consent of Holders. Notwithstanding the foregoing provision and Section 10.6 of the Base Indenture and in addition to the provisions of Section 9.2 of the Base Indenture, no amendment or waiver, including a waiver in relation to a past Event of Default shall, without the consent of each Holder affected thereby, other than to conform this Supplemental Indenture and the form or terms of the Notes to the section entitled “Description of the Notes” as set forth in the final prospectus supplement related to the offering and sale of the Notes dated January 6, 2010:

(a) make any change that adversely affects the conversion rights of any Notes; or

(b) reduce any Fixed Conversion Rates, Fundamental Change Conversion Rate, Fundamental Change Interest Make-Whole Amount, Covenant Event Interest

Make-Whole Amount, or amend or modify in any manner adverse to the Holders the Company's obligation to make any delivery or payment upon conversion, whether through an amendment or waiver of provisions in the covenants or definitions related thereto or otherwise.

ARTICLE IX

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 9.01 Amendments to the Base Indenture. Section 8.1(1) of the Base Indenture is hereby amended with respect to the Notes by deleting the phrase "the principal of and any premium and".

ARTICLE X

COVENANTS

Section 10.01 Amendments to the Base Indenture.

(a) Section 10.1 of the Base Indenture is hereby amended with respect to the Notes by deleting the phrase "the principal of and any premium and".

(b) Section 10.3 of the Base Indenture is hereby amended with respect to the Notes by deleting the phrase "the principal of or any premium or" in the first and fifth paragraphs and by deleting the phrase "principal, premium or" in the fifth paragraph thereof.

(c) The Company shall deliver to the Trustee a quarterly statement regarding compliance with the 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 the Indenture.

ARTICLE XI

HOLDERS' LIST AND REPORTS

Section 11.01 *Amendments to the Base Indenture*. Section 7.1(1) of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

"(1) quarterly, not later than January 15, April 15, July 15 and October 15 in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of the immediately preceding January 1, April 1, July 1 or October 1 as the case may be, and"

ARTICLE XII

INAPPLICABLE PROVISIONS OF THE BASE INDENTURE

Section 12.01 *Redemption of Securities*. The provisions of Article XI of the Base Indenture shall not apply to the Notes.

Section 12.02 *Sinking Funds; Defeasance and Covenant Defeasance; Guarantees*. The provisions of Articles XII and XIII of the Base Indenture shall not apply to the Notes.

Section 12.03 *Guarantees*. The provisions of Article XIV of the Base Indenture shall not apply to the Notes.

[SIGNATURES ON THE FOLLOWING PAGE]

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

BEAZER HOMES USA, INC.

By: /s/ Allan P. Merrill
Name: Allan P. Merrill
Title: Executive Vice President and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ William Bryan Echols
Name: William Bryan Echols
Title: Vice President

EXHIBIT A

[FORM OF FACE OF NOTE]

[THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS NOMINEE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (THE "**DEPOSITARY**"), THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE 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) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.][1]

1 This language should be included if the Note is a Global Security.

No. ____ CUSIP No. 07556Q 402

BEAZER HOMES USA, INC.

7½% MANDATORY CONVERTIBLE SUBORDINATED NOTE DUE 2013

PRINCIPAL AMOUNT: $ [As revised by the Schedule of Increases and Decreases in Global Note attached hereto][2]

This Note certifies that is the registered Holder of the Note in the aggregate principal amount set forth above. This Note consists of the rights of the Holder under such Note and obligations of Beazer Homes USA, Inc., a Delaware corporation (the "**Company**," which term shall include any successor corporation under the Indenture (as defined on the reverse hereof)). All capitalized terms used herein which are defined in the Indenture have the meaning set forth therein.

The Company promises to pay, on each Interest Payment Date, the Interest Payments payable in respect of the principal amount of each Note to the Person in whose name a Note is registered at 5:00 p.m., New York City time, on the Interest Record Date relating to such Interest Payment Date. If any Interest Payment Date is not a Business Day, the Company will pay the related Interest Payment on the next Business Day (without any interest or other payment resulting from the delay). Interest Payments will be computed on the basis of a 360-day year of twelve 30-day months and, in the case of any incomplete month, the actual number of days elapsed during the month. If the Stated Maturity Date or any Conversion Date for the Notes falls on a day that is not a Business Day, the Company will pay the Interest Payment on the next Business Day (without any interest or other payment resulting from the delay). Interest Payments will include accrued Interest from the Issue Date, or from the most recent date to which Interest Payments have been paid, as the case may be, up to (but excluding) the Interest Payment Date or the Stated Maturity Date or Conversion Date, as the case may be. Any Interest which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "***Defaulted Interest***") will forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid (a) to the Person in whose name this Note (or its Predecessor Security) is registered at the close of business on a Special Record Date or (b) at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

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2 Include bracketed language if Note is a Global Security.

Interest Payments on the Notes will be payable at the office of the Paying Agent in New York City, by wire transfer of immediately available funds or by check mailed to the address of the Person entitled thereto as such address appears on the Security Register.

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

BEAZER HOMES USA, INC.

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION
OF TRUSTEE

This is one of the Notes designated herein and referred to in the within mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Dated: _____

(FORM OF REVERSE OF NOTE)

This Note is governed by an Indenture, dated as of January 12, 2010, and a First Supplemental Indenture, dated as of January 12, 2010, each as may be supplemented from time to time in accordance with the terms thereof (together, the "**Indenture**"), between the Company and U.S. Bank National Association, as Trustee (including its successors thereunder, the "**Trustee**"), to which Indenture reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders and of the terms upon which the Notes are, and are to be, executed and delivered.

This Note is one of a duly authorized issue of 7½% Mandatory Convertible Subordinated Notes due 2013 (the "**Notes**"), limited in aggregate principal amount of $57,500,000. Unless converted prior to the Stated Maturity Date, this Note obligates the Company to deliver to the Holder of this Note, with respect to each $25 principal amount, on the Stated Maturity Date a number of shares of Common Stock equal to the Conversion Rate.

Holders also have the right to convert their Notes, in whole or in part, at any time prior to the Stated Maturity Date, into shares of Common Stock at the Minimum Conversion Rate (unless such conversion takes place during a Fundamental Change Conversion Period), in addition to accrued and unpaid interest to the Interest Payment Date that is on or immediately preceding the date of such optional conversion.

If a Fundamental Change occurs prior to the Stated Maturity Date, Holders may convert their Notes into Common Stock during the Fundamental Change Conversion Period at the Fundamental Change Conversion Rate. In addition to any Common Stock delivered upon conversion during a Fundamental Change Conversion Period, the Company will either pay Holders of such Notes a cash Fundamental Change Interest Make-Whole Amount or increase the number of shares of Common Stock to be delivered upon conversion in an amount equal to the Fundamental Change Interest Make-Whole Amount divided by the Stock Price.

The Company also has the right to require Holders to convert all of the Notes outstanding for shares of Common Stock at the Maximum Conversion Rate in the event of a Covenant Event. In addition to any Common Stock delivered upon mandatory conversion following a Covenant Event and any other amounts which may then be due to Holders, the Company will pay Holders a cash Covenant Event Interest Make-Whole Amount or increase the number of shares of Common Stock to be delivered upon conversion in an amount equal to the Covenant Event Interest Make-Whole Amount divided by the average of the Closing Prices of Common Stock over the 5 consecutive Trading Day period ending on the third Trading Day immediately preceding the Mandatory Conversion Date.

The "**Conversion Rate**" with respect to each $25 principal amount of this Note, subject in each case to adjustment as set forth in the Indenture and rounded upward or downward to the nearest 1/10,000th of a share (or if there is not a nearest 1/10,000th of a share, to the next lower 1/10,000th of a share), is equal to:

(1) if the Applicable Market Value (as defined below) is greater than or equal to $5.61 (the "**Threshold Appreciation Price**"), 4.4547 shares of Common Stock per Note (the "**Minimum Conversion Rate**");

(2) if the Applicable Market Value is less than the Threshold Appreciation Price but greater than $4.60 (the "**Initial Price**"), the quotient obtained by dividing $25 by the Applicable Market Value; and

(3) if the Applicable Market Value is less than or equal to the Initial Price, 5.4348 shares of Common Stock per Note (the "**Maximum Conversion Rate**").

No fractional shares of Common Stock will be issued upon conversion of this Note, as provided in Section 3.08 of the Supplemental Indenture.

The "**Applicable Market Value**" means the average of the Closing Prices of Common Stock over the 20 consecutive Trading Day period ending on the third Trading Day immediately preceding the Mandatory Conversion Date.

"**Closing Price**" with respect to Exchange Property shall be deemed to refer to the closing sale price, last quoted bid price or mid-point of the last bid and ask prices, as the case may be, of any publicly traded securities that comprise all or part of the Exchange Property, and with respect to a share of the Common Stock on any date of determination means:

(1) the closing price on that date or, if no closing price is reported, the last reported sale price, of shares of Common Stock on the NYSE on that date; or

(2) if the Common Stock is not traded on the NYSE, the closing price on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is so traded or, if no closing price is reported, the last reported sale price of the Common Stock on the principal U.S. national or regional securities exchange on which the Common Stock is so traded; or

(3) if the Common Stock is not traded on a U.S. national or regional securities exchange, the last quoted bid price on that date for the Common Stock in the over-the-counter market as reported by Pink OTC Markets Inc. or a similar organization; or

(4) if the Common Stock is not so quoted by Pink OTC Markets Inc. or a similar organization, the market value of the Common Stock on that date as determined by the Board of Directors.

For purposes of the definition of the Closing Price of the Exchange Property, references to Common Stock in the definition of "Trading Day" shall be replaced by references to any publicly traded securities that comprise all or part of the Exchange Property.

All references herein to the closing price of Common Stock and the last reported sale price of the Common Stock on the New York Stock Exchange shall be such closing price and such last reported sale price as reflected on the website of the NYSE (www.nyse.com) and as reported by Bloomberg Professional Service; provided that in the event that there is a discrepancy between the closing price and the last reported sale price as reflected on the website of the NYSE and as reported by Bloomberg Professional Service, the closing price and the last reported sale price on the website of the NYSE shall govern.

A "**Trading Day**" means a day on which the Common Stock:

(1) is not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business; and

(2) has traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

The Notes are issuable only in registered form without coupons in denominations of $25 and any integral multiple thereof. The transfer of any Note will be registered and Notes may be exchanged as provided in the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents permitted by the Indenture. No service charge shall be required for any such registration of transfer or exchange, but the Company and the Trustee may require payment of a sum sufficient to cover any tax or other governmental charges payable in connection therewith.

The Company agrees to treat, and by its acceptance or acquisition of this Note or beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, this Note intend and agree to treat this Note as equity in the Company rather than as a debt instrument or as a prepaid forward contract to purchase the Common Stock for all United States federal, state and local tax purposes.

Subject to certain exceptions, the provisions of the Indenture may be amended with the consent of the Holders of a majority of the aggregate principal amount of the Outstanding Notes.

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner of this Note for the purpose of receiving Interest Payments, for the purpose of conversion and for all other purposes whatsoever, whether or not such Note be overdue and notwithstanding any notice to the contrary, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Notes shall not, prior to the conversion thereof, entitle the Holder to any of the rights of a holder of Common Stock.

A copy of the Indenture is available for inspection at the offices of the Trustee.

SCHEDULE OF EXCHANGES OF NOTES[3]

The following exchanges, increases/decreases in principal amount, repurchases or conversions of a part of this Global Note have been made:

Date of Exchange	Amount of Decrease in Principal Amount of this Global Note	Amount of Increase in Principal Amount of this Global Note	Principal Amount of this Global Note Following Such Decrease or Increase	Signatory of Authorized Signatory of Trustee or Custodian

3 This schedule should be included only if the Note is a Global Security.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	as tenants in common
UNIF GIFT MIN ACT:	_____ Custodian _____ (cust) (minor)
	Under Uniform Gifts to Minors Act of _____
	_____
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT FORM[4]

To assign this Note, fill in the form below:

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or other Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____

_____

_____
Signature(s)

Signature(s) must be guaranteed by an an institution which is a member of one of the following recognized signature Guarantee Programs:

(i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.

_____
Signature(s)

4 This form should be included only if the Note is a certificated Security.

CONVERSION INSTRUCTIONS[5]

The undersigned Holder directs that a certificate for Common Stock deliverable upon conversion of this Note (or the portion thereof below designated) be registered in the name of, and delivered, together with a check in payment for any fractional share, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto.

Dated: _____

Signature
Signature Guarantee: _____
(if assigned to another Person)

If shares are to be registered in the name of and delivered to a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

Principal amount to be converted (in a minimum principal amount of $25 or an integral multiple thereof, if less than all):
$ _____

_____
Name

Address

Social Security or other Taxpayer Identification Number, if any

_____
Name

Address

5 This form should be included only if the Note is a certificated Security.

Exhibit 4.4

FIRST AMENDMENT TO
SECTION 382 RIGHTS AGREEMENT

This First Amendment to the Section 382 Rights Agreement (this "Amendment") is entered into as of January 7, 2010, by and between Beazer Homes USA, Inc., a Delaware corporation (the "Company"), and American Stock Transfer & Trust Company, LLC, a New York limited liability trust company (the "Rights Agent").

WITNESSETH:

WHEREAS, the Company and the Rights Agent entered into that certain Section 382 Rights Agreement, dated July 31, 2009 (the "Rights Agreement"), to implement a stockholder rights plan as more fully described therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Rights Agreement;

WHEREAS, the Company's Board of Directors has determined that it is advisable and in the best interests of the Company and its stockholders to amend the Rights Agreement as set forth herein;

WHEREAS, Section 26 of the Rights Agreement provides, among other things, that prior to the Distribution Date, the Company may supplement or amend any provision of the Rights Agreement without the approval of any holders of Common Stock, and that upon the delivery of a certificate from an appropriate officer of the Company which states that such proposed supplement or amendment is in compliance with the terms of Section 26 of the Rights Agreement, the Rights Agent shall execute such supplement or amendment;

WHEREAS, the Distribution Date has not occurred as of the date hereof;

WHEREAS, the Company desires to amend the Rights Agreement as set forth herein; and

WHEREAS, the Company has delivered to the Rights Agent, concurrently with the execution and delivery of this Amendment, a certificate from an appropriate officer of the Company stating that this Amendment complies with Section 26 of the Rights Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the Company and the Rights Agent hereby agree as follows:

1. Amendment to Section 7(a). Section 7(a) of the Rights Agreement is hereby amended by deleting such Section 7(a) in its entirety and replacing it with the following:

"(a) Subject to Section 7(e) and Section 27 hereof, the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein including, without limitation, the restrictions on exercisability set forth in Section 9(c), Section 11(a)(iii) and Section 23(a) hereof) in whole or in part at any time after the Distribution Date upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof duly executed, to the

Rights Agent at the principal office or offices of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of one one-thousandth of a share of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercisable, at or prior to the earliest of (i) the close of business on July 31, 2019 (the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof, (iii) the time at which all of the Rights (other than Rights that have become void pursuant to the provisions of Section 7(e) hereof) are exchanged for Common Stock or other assets or securities as provided in Section 27 hereof, (iv) the close of business on the effective date of the repeal of Section 382 or any successor statute if the Board of Directors of the Company determines that this Agreement is no longer necessary or desirable for the preservation of Tax Benefits, (v) the close of business on the first day of a taxable year of the Company to which the Board of Directors of the Company determines that no Tax Benefits may be carried forward, (vi) the first anniversary of adoption of the Agreement if shareholder approval of the Agreement has not been received by or on such date, or (vii) at 9 A.M. (Eastern Time) on January 7, 2010 (the earliest of (i) and (ii) and (iii) and (iv) and (v) and (vi) and (vii) being herein referred to as the "Expiration Date")."

2. Amendments to Exhibits. The Exhibits to the Rights Agreement shall be deemed amended and restated to reflect this Amendment, including all necessary and conforming changes.

3. Remaining Terms. All other provisions of the Rights Agreement that are not expressly amended hereby shall continue in full force and effect. Notwithstanding the foregoing, the Rights Agent and the Company acknowledge and agree that upon the Expiration Date (as amended hereby), the Rights Agreement shall terminate and be of no further force and effect.

4. Counterparts. This Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

5. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the State of New York and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts to be made and performed entirely within such state.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first set forth above.

Attest:

By: /s/ Deborah M. Danzig
Name: Deborah M. Danzig
Title: Vice President and Compliance Officer

BEAZER HOMES USA, INC.

By: /s/ Kenneth F. Khoury
Name: Kenneth F. Khoury
Title: Executive Vice President and General Counsel

Attest:

By: /s/ Felix Orihuela
Name: Felix Orihuela
Title: Vice President

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC

By: /s/ Herbert J. Lemmer
Name: Herbert J. Lemmer
Title: Vice President

Exhibit 5.1

TROUTMAN SANDERS LLP
Attorneys at Law
Bank of America Plaza
600 Peachtree Street, NE, Suite 5200
Atlanta, Georgia 30308-2216
404.885.3000 telephone
troutmansanders.com

January 12, 2010

Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 1200
Atlanta, Georgia 30328

Ladies and Gentlemen:

You have requested our opinion as special counsel to Beazer Homes USA, Inc., a Delaware corporation (the "Company"), with respect to certain matters in connection with the offering by the Company of 22,425,000 shares (the "Shares") of the Company's common stock, par value $0.001 (the "Common Stock"), including 2,925,000 shares of Common Stock pursuant to the option granted to the Underwriters to purchase up to an additional 2,925,000 shares of Common Stock to cover over-allotments, pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-163110) (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), the related prospectus, dated January 4, 2010 (the "Base Prospectus"), and the prospectus supplement relating to the Shares, dated January 6, 2010 (the "Prospectus Supplement" and collectively with the Base Prospectus, the "Prospectus"), filed with the Commission pursuant to Rule 424(b) of the rules and regulations promulgated under the Act. This opinion is being provided at your request for incorporation by reference in the Registration Statement.

In connection with this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such instruments, certificates, records and documents, and have reviewed such questions of law, as we have deemed necessary or appropriate for purposes of this opinion. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted as copies and the authenticity of the originals of such latter documents. As to any facts material to our opinion, we have relied upon the aforesaid instruments, certificates, records and documents and inquiries of your representatives.

Based upon the foregoing examination, we are of the opinion that the Shares have been duly authorized and, when issued by you in the manner contemplated by the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

We are, in this opinion, opining only on the Delaware General Corporation Law (including the relevant statutory provisions, the applicable provisions of the Delaware

Constitution and the reported judicial decisions interpreting these laws) and the federal law of the United States. We are not opining on "blue sky" or other state securities laws.

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.

We hereby consent to the filing of this opinion as an exhibit to the Current Report on Form 8-K dated as of the date hereof filed by the Company and incorporated by reference into the Registration Statement and to the statements with respect to our name wherever it appears in the Registration Statement and the Prospectus. In giving the foregoing consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations of the Commission thereunder. This opinion is being rendered solely for the benefit of the Company in connection with the matters addressed herein. This opinion may not be relied upon by you for any other purpose, or furnished or quoted to or relied upon by any other person, firm or entity for any purpose, without our prior written consent.

Very truly yours,

/s/ Troutman Sanders LLP

Exhibit 5.2

TROUTMAN SANDERS LLP
Attorneys at Law
Bank of America Plaza
600 Peachtree Street, NE, Suite 5200
Atlanta, Georgia 30308-2216
404.885.3000 telephone
troutmansanders.com

TROUTMAN SANDERS

January 12, 2010

Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 1200
Atlanta, Georgia 30328

Ladies and Gentlemen:

You have requested our opinion as special counsel to Beazer Homes USA, Inc., a Delaware corporation (the "Company"), with respect to certain matters in connection with the offering by the Company of (i) $57,500,000 aggregate principal amount of the Company's 7½% Mandatory Convertible Subordinated Notes due 2013 (the "Convertible Notes"), including $7,500,000 aggregate principal amount of Convertible Notes pursuant to the option granted to the Underwriters to purchase up to an additional $7,500,000 aggregate principal amount of the Convertible Notes to cover over-allotments, and (ii) the shares of the Company's common stock, par value $0.001 per share (the "Common Stock"), issuable upon conversion of the Convertible Notes (the "Shares"), pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-163110) (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), the related prospectus, dated January 4, 2010 (the "Base Prospectus"), and the prospectus supplement relating to the Convertible Notes, dated January 6, 2010 (the "Prospectus Supplement" and collectively with the Base Prospectus, the "Prospectus"), filed with the Commission pursuant to Rule 424(b) of the rules and regulations promulgated under the Act. This opinion is being provided at your request for incorporation by reference in the Registration Statement.

The Convertible Notes are to be issued under the Indenture, dated as of January 12, 2010 (the "Base Indenture"), as supplemented by the First Supplemental Indenture, dated as of January 12, 2010 (together with the Base Indenture, the "Indenture"), each between the Company and U.S. Bank National Association, as trustee.

In connection with this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such instruments, certificates, records and documents, and have reviewed such questions of law, as we have deemed necessary or appropriate for purposes of this opinion. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted as copies and the authenticity of the originals of

such latter documents. As to any facts material to our opinion, we have relied upon the aforesaid instruments, certificates, records and documents and inquiries of your representatives.

Based upon the foregoing examination, we are of the opinion that:

1. The Convertible Notes, upon proper execution, delivery and authentication in accordance with the provisions of the Indenture are valid and binding obligations of the Company, enforceable against the Company in accordance with and subject to their terms and the terms of the Indenture, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and similar laws of general applicability relating to or affecting the enforcement of creditors' rights and by general equitable principles (whether considered in a proceeding at law or in equity), and except that no opinion is expressed as to the availability of the remedy of specific performance; and

2. The Shares have been duly authorized and validly reserved for issuance and, when issued upon conversion of the Convertible Notes and in accordance with the terms of the Convertible Notes, will be validly issued, fully paid and nonassessable.

No opinion is given as to the enforceability of any provision in the Indenture or Convertible Notes that purports to waive any obligation of good faith, fair dealing, diligence, materiality or reasonableness, that insulates any person from the consequences of its own misconduct, that makes a person's determinations conclusive, that requires waivers and modifications to be in writing in all circumstances, that states that all provisions are severable, that waives trial by jury or that makes a choice of forum. In addition, no opinion is given as to any provision in the Indenture or the Convertible Notes purporting to waive rights to objections, legal defenses, statutes or limitations or other benefits that cannot be waived in advance under applicable law.

We are, in this opinion, opining only on the laws of the State of New York, the Delaware General Corporation Law (including the relevant statutory provisions, the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting these laws) and the federal law of the United States. We are not opining on "blue sky" or other state securities laws.

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.

We hereby consent to the filing of this opinion as an exhibit to the Current Report on Form 8-K dated as of the date hereof filed by the Company and incorporated by reference into the Registration Statement and to the statements with respect to our name wherever it appears in the Registration Statement and the Prospectus. In giving the foregoing consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations of the Commission thereunder. This opinion may not be relied upon by you for any other purpose, or furnished or quoted to or relied upon by any other person, firm or entity for any purpose, without our prior written consent.

Very truly yours,

/s/ Troutman Sanders LLP

Exhibit 99.1

Press Release
For Immediate Release

Beazer Homes Announces Closing of Offerings and Redemption of Senior Notes due 2011

Atlanta, Ga., January 12, 2010 - Beazer Homes USA, Inc. (NYSE:BZH) (www.beazer.com) announced today the closing of its concurrent underwritten public offerings of 22,425,000 shares of its common stock and $57.5 million aggregate principal amount of its 7 1/2% Mandatory Convertible Subordinated Notes due 2013, which included the full exercise of the underwriters' over-allotment option for each offering. The Company received net proceeds of $153,772,250 from the offerings, after underwriting discounts and commissions.

In addition, on January 7, 2010, the Company called for the full redemption of its 8 5/8% Senior Notes due 2011. The Company will use the net proceeds from the offerings to replenish funds used to redeem its Senior Notes and for other general corporate purposes including, without limitation, funding (or replenishing cash that has been used to fund) repurchases of Company indebtedness.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction. Copies of the prospectus related to this offering may be obtained from the following: Citigroup Global Markets Inc., Brooklyn Army Terminal, 140 58th Street, 8th Floor, Brooklyn, NY 11220 (Attention: Prospectus Department; Telephone: (800) 831-9146; E-mail: batprospectusdept@citi.com) or Credit Suisse Securities (USA) LLC, Prospectus Department, One Madison Avenue, New York, NY 10010 (Telephone: (800) 221-1037).

Beazer Homes USA, Inc., headquartered in Atlanta, is one of the country's ten largest single-family homebuilders with continuing operations in Arizona, California, Delaware, Florida, Georgia, Indiana, Maryland, Nevada, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. Beazer Homes is listed on the New York Stock Exchange under the ticker symbol "BZH."

CONTACT: Beazer Homes USA, Inc.
Jeff Hoza
Vice President, Treasurer
770-829-3700
jhoza@beazer.com