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): July 10, 2012

BEAZER HOMES USA, INC.

(Exact name of registrant as specified in its charter)

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

1000 Abernathy Road, Suite 260
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:

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

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

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

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

Item 8.01. Other Events.

On July 10, 2012, Beazer Homes USA, Inc. (the "Company") entered into (i) an agreement (the "Common Stock Underwriting Agreement") among the Company and Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Deutsche Bank Securities Inc., UBS Securities LLC, KKR Capital Markets LLC and Moelis & Company LLC, as underwriters (the "Underwriters") pursuant to which the Company agreed to sell and the Underwriters agreed to purchase from the Company, 22,000,000 shares of the Company's common stock, par value $.001 per share, and (ii) an agreement (the "Units Underwriting Agreement") among the Company and the Underwriters pursuant to which the Company agreed to sell and the Underwriters agreed to purchase from the Company, 4,000,000 of its 7.50% tangible equity units (the "Units").

Each Unit is comprised of a prepaid stock purchase contract (the "Purchase Contract") and a senior amortizing note due July 15, 2015 (the "Amortizing Note") issued by the Company, which has an initial principal amount of $5.1086 per Amortizing Note and a scheduled final installment payment date of July 15, 2015. The Company issued the Units under a Purchase Contract Agreement, dated July 16, 2012, between the Company and U.S. Bank National Association, as trustee under the Supplemental Indenture (as defined below) and purchase contract agent. Unless settled earlier, on July 15, 2015, each Purchase Contract will automatically settle and the Company will deliver a number of shares of Common Stock based on the applicable market value, which is the average of the daily closing prices of the Common Stock on each of the 20 consecutive trading days ending on, and including, the third trading day immediately preceding July 15, 2015, as follows (subject to adjustment):

- if the applicable market value equals or exceeds $3.55, holders will receive 7.0373 shares per Purchase Contract;
- if the applicable market value is greater than $2.90 but less than $3.55, holders will receive a number of shares having a value, based on the applicable market value, equal to $25; and
- if the applicable market value is less than or equal to $2.90, holders will receive 8.6207 shares per Purchase Contract.

At any time prior to the third trading day immediately preceding July 15, 2015, the holder of a Purchase Contract may settle its purchase contract early, and the Company will deliver 7.0373 shares of Common Stock, subject to adjustment. In addition, if a fundamental change (as defined in the Purchase Contract Agreement) occurs and the Purchase Contract holder elects to settle its Purchase Contract early in connection with such fundamental change, such holder will receive a number of shares of Common Stock based on the fundamental change early settlement rate, as described in the Purchase Contract Agreement. The Company may elect to settle all outstanding Purchase Contracts prior to the July 15, 2015 settlement date at the early mandatory settlement rate (as defined in the Purchase Contract Agreement), upon a date fixed by the Company upon not less than five or more than 30 business days' notice. Except for cash in lieu of fractional shares, the Purchase Contract holders will not receive any cash distributions under the Purchase Contracts.

The Amortizing Notes were issued under an Indenture, dated April 17, 2002 (the "Base Indenture"), as supplemented by the Sixteenth Supplemental Indenture, dated as of July 16, 2012 (the "Supplemental Indenture"), each between the Company and U.S. Bank National Association, as trustee. The Amortizing Notes will pay the holders equal quarterly installments of $0.4688 per Amortizing Note (or in the case of the installment payment due on October 15, 2012, $0.4635), which in the aggregate will be equivalent to a 7.50% cash payment per year with respect to each $25 stated amount of Units. The Amortizing Notes will be the Company's unsecured senior obligations and will rank equally with all of its other unsecured senior indebtedness. If the Company elects to settle the Purchase Contracts early, holders of the Amortizing Notes will have the right to require the Company to repurchase such holders' Amortizing Notes, except in certain circumstances as described in the Purchase Contract Agreement.

Each Unit may be separated into its constituent Purchase Contract and Amortizing Note after the initial issuance date of the Units, and the separate components may be combined to create a Unit.

Copies of the Common Stock Underwriting Agreement, Units Underwriting Agreement, Purchase Contract Agreement and Supplemental Indenture are attached hereto as Exhibits 1.1, 1.2, 4.1 and 4.4, respectively, and are incorporated herein by reference. The foregoing summaries do not purport to be complete and are qualified in their entirety by reference to each of the Common Stock Underwriting Agreement, Units Underwriting Agreement, Purchase Contract Agreement and Supplemental Indenture.

The Company is filing this Current Report on Form 8-K so as to file with the Securities and Exchange Commission certain items related to the Offerings that are to be incorporated by reference into its Registration Statement on Form S-3 (Registration No. 333-172483).

Item 1.01 Entry into a Material Definitive Agreement.

The information set forth above under Item 8.01 is hereby incorporated by reference into this Item 1.01.

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 above under Item 8.01 is hereby incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

1.1	Underwriting Agreement dated July 10, 2012 between Beazer Homes USA, Inc. and the underwriters a party thereto
1.2	Underwriting Agreement dated July 10, 2012 between Beazer Homes USA, Inc. and the underwriters a party thereto
4.1	Purchase Contract Agreement dated July 16, 2012 between Beazer Homes USA, Inc. and U.S. Bank National Association
4.2	Form of Unit (included in Exhibit 4.1)
4.3	Form of Purchase Contract (included in Exhibit 4.1)
4.4	Sixteenth Supplemental Indenture dated July 16, 2012 between Beazer Homes USA, Inc. and U.S. Bank National Association
4.5	Form of Amortizing Note (included in Exhibit 4.4)
5.1	Opinion of King & Spalding LLP
5.2	Opinion of King & Spalding LLP
23.1	Consent of King & Spalding LLP (included in Exhibit 5.1)
23.2	Consent of King & Spalding LLP (included in Exhibit 5.2)

Signatures

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

Date: July 16, 2012

BEAZER HOMES USA, INC.

By: /s/ Kenneth F. Khoury
Kenneth F. Khoury
Executive Vice President, Chief Administrative Officer and General Counsel

EXHIBIT INDEX

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Exhibit 1.1

BEAZER HOMES USA, INC.

22,000,000 Shares
Common Stock
(par value $.001 per share)

UNDERWRITING AGREEMENT

July 10, 2012
New York, New York

July 10, 2012
New York, New York

Credit Suisse Securities (USA) LLC
Goldman, Sachs & Co.
Deutsche Bank Securities Inc.
UBS Securities LLC
KKR Capital Markets LLC
Moelis & Company LLC
As Representatives of the Several Underwriters

c/o Credit Suisse Securities (USA) LLC
Eleven Madison Avenue,
New York, New York 10010-3629

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005

UBS Securities LLC
299 Park Avenue
New York, New York 10171-0026

KKR Capital Markets LLC
9 West 57th
Suite 4160
New York, NY 10019

Moelis & Company LLC
399 Park Avenue, 5th Floor
New York, NY 10022

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 Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Deutsche Bank Securities Inc., UBS Securities LLC, KKR Capital Markets LLC and Moelis & Company LLC are acting as representatives (the "**Representatives**"), an aggregate of 22,000,000 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 3,300,000 shares of Common Stock (the "**Option Securities**"; the Option Securities, together with the Underwritten Securities, being hereafter called the "**Securities**").

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. 333-172483) 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 7:00 a.m. (Eastern time) on July 11, 2012.

"**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 Preliminary Prospectus used most recently prior to the Applicable Time, (ii) the information set forth on Schedule IV hereto, (iii) the Issuer Free Writing Prospectuses, if any, identified in Schedule V hereto, and (iv) 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. 333-172483), 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. 333-172483) 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 included therein) 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 included therein) 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 $2.755 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 3,300,000 Option Securities at the same purchase price per share as the Underwriters shall pay for the Underwritten Securities. 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 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 July 16, 2012 (such date and time, the "**Closing Date**") at the offices of Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071 (such transactions being referred to herein collectively as the "**Closing**"). 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 Eleven Madison Avenue, New York, New York 10010-3629, 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(es), 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 any 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 included in the Pricing Disclosure Package 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 any 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 in 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 (or such new 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 latest Preliminary Prospectus, any 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 its 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 it or any of its 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 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 disclose 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 up to 4,600,000 7.50% Tangible Equity Units (the "**Units**") of the Company (which includes an additional 600,000 Units if the underwriters therefor exercise their over-allotment option in full) 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 Underwriters 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 and addressed to the Representatives (the "**Lock-up Agreements**").

(r) Not to direct five percent or more of the net offering proceeds (not including underwriting compensation) from the sale, contemplated hereby, of the Securities to any Underwriter or its affiliates or associated persons in the manner contemplated by Rule 5121 of the Financial Industry Regulatory Authority, Inc.

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. 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 amended or supplemented in accordance with Section 4(b), if applicable), as of its date or 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, any 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 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 March 31, 2012, 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, the 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.

(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, do 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 U.S. 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 March 31, 2012, 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 March 31, 2012, 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 March 31, 2012, 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 registered public accounting firm 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 believes to be reliable and accurate in all material respects and represent its 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.

(nn) None of the Company, its Subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate (as defined in Rule 405 under the Act, "**Affiliate**") of the Company or any of its Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its Subsidiaries and, to the knowledge of the Company, its or its Subsidiaries' Affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(oo) The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(pp) None of the Company or any of its Subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

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 consents 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 required to be stated therein or 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 the Company's 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 required to be stated therein or 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 or of any such controlling person 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 or of any such controlling person shall have the same rights to contribution as 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 or other settlement date, as applicable, 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, any 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 March 31, 2012, 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 March 31, 2012, 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 the Company 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 King & Spalding 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 Latham & Watkins 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, an independent registered public accounting firm with respect to 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) Latham & Watkins 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 in Section 3(a)(62) of the Exchange 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 shall be in full force and effect.

(q) The Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

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 or other settlement date, as applicable.

9. Underwriters' Information. The Company and the Underwriters severally acknowledge that the statements set forth in (i) the last paragraph of the cover page of the Preliminary Prospectus and the Final Prospectus regarding delivery of the Securities, and (ii) the paragraphs under the caption "Underwriting" in the Preliminary Prospectus and the Final Prospectus related to selling concessions, 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, a 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 Securities 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 number of Underwritten Securities set forth opposite their names in Schedule I hereto bears to the aggregate number 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 number of Underwritten Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate number 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(e), 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:

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Fax: 404-572-5133
Attention: William Calvin Smith, Esq.

If to any Underwriter:

Credit Suisse Securities (USA) LLC
11 Madison Avenue

New York, New York 10010
Fax: 212-325-4296
Attention: LCD-IBD

Goldman, Sachs & Co.
200 West Street
New York, New York 10282
Attention: Registration Department

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005
Attention: Syndicate

UBS Securities LLC
1285 Avenue of the Americas
New York, New York 10019
Attention: Syndicate / Michael Ryan (fax: (212) 713-3371)

KKR Capital Markets LLC
9 West 57th
Suite 4160
New York, NY 10019
Attention: Syndicate

and

Moelis & Company LLC
399 Park Avenue, 5th Floor
New York, NY 10022
Attention: Syndicate

with copy to:

Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Fax: 213-891-8763
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, agents, employees, affiliates, officers and directors 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.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

BEAZER HOMES USA, INC.

By: /s/ Robert L. Salomon
Name: Robert L. Salomon
Title: Executive Vice President and Chief Financial Officer

[SIGNATURE PAGE TO COMMON STOCK OFFERING UNDERWRITING AGREEMENT]

Confirmed and accepted as of
the date first above written:

CREDIT SUISSE SECURITIES (USA) LLC
GOLDMAN, SACHS & CO.
DEUTSCHE BANK SECURITIES INC.
UBS SECURITIES LLC
KKR CAPITAL MARKETS LLC
MOELIS & COMPANY LLC
As Representatives of the Several Underwriters

By:

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Katie Stein
Name: Katie Stein
Title: Director

GOLDMAN, SACHS & CO.

By: /s/ Michael Hickey
Name: Michael Hickey
Title: Vice President

DEUTSCHE BANK SECURITIES INC.

By: /s/ Warren Estey
Name: Warren Estey
Title: Managing Director

By: /s/ Isobel van Daesdonk
Name: Isobel van Daesdonk
Title: Director

UBS SECURITIES LLC

By: /s/ Aderemi Jacobs
Name: Aderemi Jacobs
Title: Associate Director

By: /s/ Karl Knapp
Name: Karl Knapp
Title: Vice Chairman

KKR CAPITAL MARKETS LLC

By: /s/ Peter Glaser
Name: Peter Glaser
Title: Authorized Signatory

MOELIS & COMPANY LLC

By: /s/ Dominick Petrosino
Name: Dominick Petrosino
Title: Managing Director

Schedule I

Underwriter	Number of Underwritten Securities To Be Purchased
Credit Suisse Securities (USA) LLC	6,380,000
Goldman, Sachs & Co.	6,380,000
Deutsche Bank Securities Inc.	3,520,000
UBS Securities LLC	3,520,000
KKR Capital Markets LLC	1,100,000
Moelis & Company LLC	1,100,000
Total	22,000,000

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
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
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

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
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
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
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

Information Conveyed to Accounts

Number of Shares Offered: 22,000,000

Offering Price to the Public: $2.90 per share

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

Issuer Free Writing Prospectus, dated July 11, 2012, relating to the Securities

Lock-Up Agreement Signatories

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

Opinion of King & Spalding LLP

Schedule I

Beazer Homes Texas Holdings, Inc.
Beazer Homes Holdings Corp.
Beazer Homes Sales, Inc.
Beazer General Services, Inc.
Beazer Homes Indiana Holdings Corp.
Beazer Homes Corp.

Exhibit B

Form of Lock-Up Agreement

July , 2012

Beazer Homes USA, Inc.
Public Offerings of Common Stock
and Tangible Equity Units

Credit Suisse Securities (USA) LLC
Goldman, Sachs & Co.
Deutsche Bank Securities Inc.
UBS Securities LLC
KKR Capital Markets LLC
Moelis & Company LLC
As Representatives of the several Underwriters

Re: Beazer Homes USA, Inc.
Public Offerings of Common Stock and Tangible Equity Units

Ladies and Gentlemen:

This letter is being delivered to you in connection with (i) the proposed Underwriting Agreement (the "**Common Stock Underwriting Agreement**"), between Beazer Homes USA, Inc., a Delaware corporation (the "**Company**"), and Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Deutsche Bank Securities Inc., UBS Securities LLC, KKR Capital Markets LLC and Moelis & Company LLC, as representatives of a group of Underwriters named therein (the "**Representatives**"), relating to an underwritten public offering of Common Stock, par value $.001 per share (the "**Common Stock**"), of the Company and (ii) the proposed Underwriting Agreement (the "**Unit Underwriting Agreement**" and, together with the Common Stock Underwriting Agreement, the "**Underwriting Agreements**"), between the Company and the Representatives, relating to an underwritten public offering of Tangible Equity Units (the "**Units**"), of the Company.

In order to induce you and the other Underwriters to enter into the Underwriting Agreements, the undersigned will not, without the prior written consent of the Representatives, (1) offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned), or (2) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Securities and Exchange Commission (other than a registration statement on Form S-8) in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules and

regulations of the Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 90 days after the date of the Underwriting Agreements (the "**Lock-Up Period**"), other than in the case of clauses (1) and (2) transfers (i) as a bona fide gift or gifts; (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned; *provided* that any such transfer shall not involve a disposition for value; (iii) by will or intestate succession upon the death of the undersigned; *provided*, *further*, that (a) in the case of any transfer pursuant to clauses (i) through (iii) above, each donee or transferee, other than charitable organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, shall sign and deliver a lock up letter substantially in the form of this letter applicable for the remainder of the Lock-Up Period referred to herein; and (b) in the case of any transfer pursuant to clause (i) or (ii) above, no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Lock-Up Period (other than a filing on Form 5); (iv) pursuant to written trading plans designed to comply with Rule 10b5-1 of the Exchange Act ("**10b5-1 Plans**") that were existing on or prior to the date hereof or the entry into new 10b5-1 Plans, provided that (a) no sales or other distributions pursuant to a new 10b5-1 Plan may occur until the expiration of the Lock-Up Period and (b) no public announcement or filing under the Exchange Act regarding the establishment of such new plan shall be required of or voluntarily made by or on behalf of the undersigned or the Company; or (v) to the Company in order to pay (a) the exercise price associated with the exercise of options that expire during the Lock-Up Period or (b) taxes associated with any shares of restricted stock that vest during the Lock-Up Period. For purposes of this agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin.

If for any reason both Underwriting Agreements shall be terminated prior to the applicable Closing Date (as defined in the applicable Underwriting Agreement), the agreement set forth above shall likewise be terminated.

Yours very truly,

Print Name: _____

Address: _____

_____

_____

Exhibit 1.2

BEAZER HOMES USA, INC.

4,000,000 7.50% Tangible Equity Units

UNDERWRITING AGREEMENT

July 10, 2012
New York, New York

July 10, 2012
New York, New York

Credit Suisse Securities (USA) LLC
Goldman, Sachs & Co.
Deutsche Bank Securities Inc.
UBS Securities LLC
KKR Capital Markets LLC
Moelis & Company LLC
As Representatives of the Several Underwriters

c/o Credit Suisse Securities (USA) LLC
Eleven Madison Avenue,
New York, New York 10010-3629

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005

UBS Securities LLC
299 Park Avenue
New York, New York 10171-0026

KKR Capital Markets LLC
9 West 57th
Suite 4160
New York, NY 10019

Moelis & Company LLC
399 Park Avenue, 5th Floor
New York, NY 10022

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 Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Deutsche Bank Securities Inc., UBS Securities LLC, KKR Capital Markets LLC and Moelis & Company LLC are acting as representatives (the "**Representatives**"), 4,000,000 7.50% Tangible Equity Units (the "**Units**") of the Company (the "**Underwritten Securities**"). The Company also proposes to grant the Underwriters the option

to purchase up to an additional 600,000 Units to cover over-allotments, if any (the "**Option Securities**"; the Option Securities, together with the Underwritten Securities, being hereafter called the "**Securities**"). Each Security has a stated amount of $25.00 (the "**Stated Amount**") and consists of (1) a prepaid stock purchase contract (each, a "**Purchase Contract**") under which the holder has purchased and the Company will agree to automatically deliver on July 15, 2015, subject to acceleration in connection with any early settlement of such Purchase Contract pursuant to the provisions thereof and of the Purchase Contract Agreement (the "**Purchase Contract Agreement**"), to be dated as of the Closing Date (as defined herein), by and between the Company and U.S. Bank National Association, as purchase contract agent (in such capacity, the "**Purchase Contract Agent**"), a number of shares of common stock (the "**Issuable Common Stock**") of the Company, par value $.001 per share (the "**Common Stock**"), determined pursuant to the terms of the Purchase Contract and the Purchase Contract Agreement; and (2) a senior amortizing note with a scheduled final installment payment date of July 15, 2015 (each, an "**Amortizing Note**") issued by the Company, each of which Amortizing Note will have an initial principal amount of $5.1086 and will pay equal quarterly installments of $0.4688 (or, in the case of the installment payment due on October 15, 2012, $0.4635), which in the aggregate would be equivalent to a 7.50% cash distribution per year on the Stated Amount per Security. All references herein to the Securities include references to the underlying Purchase Contracts and Amortizing Notes, unless the context otherwise requires.

The Amortizing Notes will be issued pursuant to an indenture, dated as of April 17, 2002, as supplemented by a related supplemental indenture thereto, to be dated as of the Closing Date (together, as further amended and supplemented, the "**Indenture**"), by and between the Company and U.S. Bank National Association, as trustee (in such capacity, the "**Trustee**"). The Purchase Contracts will be issued pursuant to the Purchase Contract Agreement. This Agreement, the Securities, the Purchase Contract Agreement, the Issuable Common Stock and the Indenture are referred to herein collectively as the "**Securities Documents**." Each reference herein to the Securities, the Underwritten Securities or the Option Securities will be deemed to include a reference to the constituent Purchase Contracts and Amortizing Notes, unless the context requires otherwise.

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. 333-172483) under the Act, including a related Base Prospectus, for registration under the Act of the offering and sale of the Securities and the Issuable Common Stock. 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 and the Issuable Common Stock, 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 7:00 a.m. (Eastern time) on July 11, 2012.

"**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 Preliminary Prospectus used most recently prior to the Applicable Time, (ii) the Pricing Term Sheet (as defined below), (iii) the other Issuer Free Writing Prospectuses, if any, identified in Schedule V hereto, and (iv) 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. 333-172483), including exhibits and financial statements and any prospectus supplement relating to the Securities, the Issuable Common Stock, the Purchase Contracts and the Amortizing Notes 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. 333-172483) 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 included therein) 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 included therein) 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, at a purchase price of $24.25 per Underwritten Security, the number of Underwritten Securities set forth opposite its name on Schedule I attached hereto.

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 600,000 Option Securities at the same purchase price per Option Security 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 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 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 July 16, 2012 (such date and time, the "**Closing Date**") at the offices of Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071 (such transactions being referred to herein collectively as the "**Closing**"). 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 Eleven Madison Avenue, New York, New York 10010-3629, 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.

One or more of the Securities in global form registered in such names as the Underwriters may request upon at least one Business Day's notice prior to the Closing Date or the settlement date, as applicable, and corresponding to the number of the Securities to be purchased by the several Underwriters on such Closing Date or settlement date, as applicable, shall be delivered by the Company to the Underwriters (or as the Representatives direct).

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(es), 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 any 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 included in the Pricing Disclosure Package 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 any 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 (or such new 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 Issuable Common Stock, the preparation, notarization (if necessary) and delivery of this Agreement, the Purchase Contract Agreement, the Indenture 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 and the issuance, transfer and delivery by the Company of the Issuable Common Stock, (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, (xi) the fees and expenses of the Purchase Contract Agent and its counsel, (xii) the fees and expenses of the transfer agent and registrar for the Issuable Common Stock, (xiv) the performance by the Company of its obligations under the Securities Documents, (xv) the listing of the Securities on the New York Stock Exchange and the Issuable Common Stock, and (xvi) 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 its 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 latest Preliminary Prospectus, the Pricing Term Sheet, 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 the Pricing Term Sheet and the other Issuer Free Writing Prospectuses 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 its 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 it or any of its 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 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 disclose 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 25,300,000 shares of the Company's Common Stock (which includes an additional 3,300,000 shares of the Company's Common Stock if the underwriters of such offering exercise their option to purchase additional shares 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 Underwriters 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 and addressed to the Representatives (the "**Lock-up Agreements**").

(s) To prepare a final term sheet, containing a description of final terms of the Securities and the offering thereof, and any other information agreed to by the Representatives, in the form approved by the Representatives 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 Issuable Common Stock issuable under the Purchase Contract Agreement.

(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 settlement rates of the Securities.

(v) To use its commercially reasonable efforts to cause the Securities and the Issuable Common Stock 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.

(w) Not to direct five percent or more of the net offering proceeds (not including underwriting compensation) from the sale, contemplated hereby, of the Securities to any Underwriter or its affiliates or associated persons in the manner contemplated by Rule 5121 of the Financial Industry Regulatory Authority, Inc.

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. 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 amended or supplemented in accordance with Section 4(b), if applicable), as of its date or 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, any 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) None of the Issuer Free Writing Prospectuses, if any, or the Pricing Term Sheet includes any information that conflicts with the information contained in the Registration Statement, including 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 March 31, 2012, 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 Issuable Common Stock as contemplated in the Securities Documents.

(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, the 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 "**Secured Note 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 Securities Documents and to consummate the transactions contemplated by the Securities 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 Issuable Common Stock. The Company has duly authorized the execution, delivery and performance of each of the Securities Documents. The Securities 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 Purchase Contract Agreement, when duly executed and delivered by the Company (assuming the due authorization, execution and delivery thereof by the Purchase Contract Agent), 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 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 the Enforceability Exceptions.

(m) The Securities, when issued, authenticated and delivered by the Company against payment by the Underwriters in accordance with the terms of this Agreement, the Purchase Contract Agreement and the Indenture, will be legally binding and valid obligations of the Company, entitled to the benefits of the Purchase Contract Agreement and 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.

(n) The Issuable Common Stock has been duly authorized and reserved for issuance upon settlement of the Purchase Contracts, and, when issued upon such settlement pursuant to the terms of the Purchase Contract Agreements, will be validly issued, fully paid and non-assessable and not issued in violation of any preemptive or similar right.

(o) At the Closing, the Company shall have delivered to the Underwriters a true and correct copy of each of the Securities Documents, together with all related agreements and all schedules and exhibits thereto, and there shall have been no material amendments, alterations, modifications or waivers of any of the provisions of any such documents since their respective dates of execution, other than any such amendments, alterations, modifications and waivers as to which the Underwriters have been advised in writing and which would not be required to be disclosed in the Pricing Disclosure Package; and there exists no event or condition which would constitute a default or an event of default under any of the Securities Documents. Each of the representations and warranties set forth in each of the Securities Documents entered into on the Closing Date will be true and correct in all material respects.

(p) 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 Securities Documents and the issuance and execution, delivery and sale of the Securities and the issuance of the Issuable Common Stock shall have been paid by or on behalf of the Company at or prior to the Closing Date.

(q) 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.

(r) The execution, delivery and performance by the Company of the Securities Documents, including the consummation of the offer and sale of the Securities and the issuance of the Issuable Common Stock upon settlement of the Purchase Contracts in accordance with the Purchase Contract Agreement, do 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 the Securities Documents, including the consummation of the offer and sale of the Securities and the issuance of the Issuable Common Stock upon settlement of the Purchase Contracts in accordance with the Purchase Contract Agreement, 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 the Securities Documents by the Company or the consummation by the Company of any of the transactions contemplated thereby.

(s) 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 the Securities 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 Securities 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.

(t) 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.

(u) 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).

(v) 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.

(w) 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.

(x) 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.

(y) The statements in the Pricing Disclosure Package and the Final Prospectus under the headings (i) "Description of Capital Stock," (ii) "Description of the Units," (iii) "Description of the Purchase Contracts," (iv) "Description of the Amortizing Notes," (v) "Description of Other Indebtedness" and (vi) "Material U.S. 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.

(z) 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 Secured Note 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.

(aa) 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.

(bb) 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.

(cc) 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.

(dd) 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.

(ee) The execution and delivery of this Agreement and the other Securities Documents and the sale of the Securities, and the issuance of the Issuable Common Stock, 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.

(ff) 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.

(gg) 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.

(hh) 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.

(ii) 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 March 31, 2012, 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.

(jj) 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.

(kk) 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 and, after the execution and delivery hereof, other than the Pricing Term Sheet) without the prior consent of the Underwriters.

(ll) 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.

(mm) As of March 31, 2012, 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 March 31, 2012, 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.

(nn) 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 Securities 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.

(oo) Deloitte & Touche LLP is an independent registered public accounting firm 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.

(pp) 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.

(qq) 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.

(rr) The Indenture has been qualified under the Trust Indenture Act.

(ss) 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 believes to be reliable and accurate in all material respects and represent its good faith estimates that are made on the basis of data derived from such sources.

(tt) 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.

(uu) None of the Company, its Subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate (as defined in Rule 405 under the Act, "**Affiliate**") of the Company or any of its Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its Subsidiaries and, to the knowledge of the Company, its or its Subsidiaries' Affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(vv) The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ww) None of the Company or any of its Subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

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 consents 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 required to be stated therein or 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 the Company's 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 required to be stated therein or 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 or of any such controlling person 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 or of any such controlling person shall have the same rights to contribution as 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 or other settlement date, as applicable, 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, any 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 March 31, 2012, 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 March 31, 2012, 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 the Company 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 King & Spalding 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 Latham & Watkins 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, an independent registered public accounting firm with respect to 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 Purchase Contract Agent shall have executed and delivered the Purchase Contract Agreement and the Underwriters shall have received copies, conformed as executed, thereof.

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

(k) 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.

(l) 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.

(m) Latham & Watkins 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.

(n) 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.

(o) 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.

(p) 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 in Section 3(a)(62) of the Exchange Act.

(q) 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.

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

(s) The Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

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 or other settlement date, as applicable.

9. Underwriters' Information. The Company and the Underwriters severally acknowledge that the statements set forth in (i) the last paragraph of the cover page of the Preliminary Prospectus and the Final Prospectus regarding delivery of the Securities, and (ii) the paragraphs under the caption "Underwriting" in the Preliminary Prospectus and the Final Prospectus related to selling concessions, 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, a 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 Securities 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 number of Underwritten Securities set forth opposite their names in Schedule I hereto bears to the aggregate number 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 number of Underwritten Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate number 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(e), 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:

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Fax: 404-572-5133
Attention: William Calvin Smith, Esq.

If to any Underwriter:

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

Goldman, Sachs & Co.
200 West Street
New York, New York 10282
Attention: Registration Department

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005
Attention: Syndicate

UBS Securities LLC
1285 Avenue of the Americas
New York, New York 10019
Attention: Syndicate / Michael Ryan (fax: (212) 713-3371)

KKR Capital Markets LLC
9 West 57th
Suite 4160
New York, NY 10019
Attention: Syndicate

and

Moelis & Company LLC
399 Park Avenue, 5th Floor
New York, NY 10022
Attention: Syndicate

with copy to:

Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Fax: 213-891-8763
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, agents, employees, affiliates, officers and directors 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.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

BEAZER HOMES USA, INC.

By: /s/ Robert L. Salomon
Name: Robert L. Salomon
Title: Executive Vice President and
Chief Financial Officer

[SIGNATURE PAGE TO UNIT UNDERWRITING AGREEMENT]

Confirmed and accepted as of
the date first above written:

CREDIT SUISSE SECURITIES (USA) LLC
GOLDMAN, SACHS & CO.
DEUTSCHE BANK SECURITIES INC.
UBS SECURITIES LLC
KKR CAPITAL MARKETS LLC
MOELIS & COMPANY LLC
As Representatives of the Several Underwriters

By:

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Katie Stein
Name: Katie Stein
Title: Director

GOLDMAN, SACHS & CO.

By: /s/ Michael Hickey
Name: Michael Hickey
Title: Vice President

DEUTSCHE BANK SECURITIES INC.

By: /s/ Warren Estey
Name: Warren Estey
Title: Managing Director

By: /s/ Isabel van Daesdank
Name: Isabel van Daesdank
Title: Director

UBS SECURITIES LLC

By: /s/ Aderemi Jacobs
Name: Aderemi Jacobs
Title: Associate Director

By: /s/ Karl Knapp
Name: Karl Knapp
Title: Vice Chairman

KKR CAPITAL MARKETS LLC

By: /s/ Peter Glaser
Name: Peter Glaser
Title: Authorized Signatory

MOELIS & COMPANY LLC

By: /s/ Dominick Petrosino
Name: Dominick Petrosino
Title: Managing Director

Schedule I

Underwriter	Number of Underwritten Securities To Be Purchased
Credit Suisse Securities (USA) LLC	1,160,000
Goldman, Sachs & Co.	1,160,000
Deutsche Bank Securities Inc.	640,000
UBS Securities LLC	640,000
KKR Capital Markets LLC	200,000
Moelis & Company LLC	200,000
Total	4,000,000

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
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
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

Subsidiary	Jurisdiction of Incorporation or Formation	Owners	% Owned by the Company (directly or indirectly)
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
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
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

Pricing Term Sheet

4,000,000
Beazer Homes USA, Inc.
7.50% Tangible Equity Units

The information in this pricing term sheet supplements, updates and supersedes (to the extent inconsistent with) the information in the Preliminary Prospectus Supplement dated July 9, 2012. Terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Preliminary Prospectus Supplement.

Issuer:	Beazer Homes USA, Inc.
Title of Securities:	Tangible Equity Units ("Units")
Stated Amount:	Each Unit has a stated amount of $25.00
Number of Units Offered:	4,000,000 (plus 600,000 over-allotment)
Composition of Units:	Each Unit is comprised of a prepaid stock purchase contract (each, a "Purchase Contract") and a senior amortizing note due July 15, 2015 issued by the Issuer (each, an "Amortizing Note"), which has an initial principal amount of $5.1086 per Amortizing Note and bears interest at a rate of 6.00% per annum and has a scheduled final installment payment date of July 15, 2015.
Aggregate Principal Amount of Amortizing Notes:	$20.4 million
Reference Price:	$2.90
Threshold Appreciation Price:	$3.55
Minimum Settlement Rate:	7.0373 shares of the Issuer's common stock (subject to adjustment), approximately equal to the $25.00 Stated Amount divided by the Threshold Appreciation Price
Maximum Settlement Rate:	8.6207 shares of the Issuer's common stock (subject to adjustment), equal to the $25.00 Stated Amount divided by the Reference Price

Payments on the Amortizing Notes: The Amortizing Note will pay holders equal quarterly installments of $0.4688 (or, in the case of the installment payment due on October 15, 2012, $0.4635) per Amortizing Note, which in the aggregate will be equivalent to a 7.50% cash payment per year with respect to each $25.00 Stated Amount of Units. Each installment will constitute a payment of interest (at a rate of 6.00% per annum), and a partial repayment of principal, on the Amortizing Note, allocated as set forth on the following amortization Schedule:

Scheduled Installment Payment Date	Amount of Principal	Amount of Interest
October 15, 2012	$ 0.3878	$ 0.0758
January 15, 2013	$ 0.3979	$ 0.0708
April 15, 2013	$ 0.4039	$ 0.0648
July 15, 2013	$ 0.4100	$ 0.0588
October 15, 2013	$ 0.4161	$ 0.0526
January 15, 2014	$ 0.4224	$ 0.0464
April 15, 2014	$ 0.4287	$ 0.0401
July 15, 2014	$ 0.4351	$ 0.0336
October 15, 2014	$ 0.4416	$ 0.0271
January 15, 2015	$ 0.4483	$ 0.0205
April 15, 2015	$ 0.4550	$ 0.0138
July 15, 2015	$ 0.4618	$ 0.0069

Public Offering Price: $25.00 per Unit; $100.0 million total (assuming no exercise of the underwriters' over-allotment option)

Underwriting Discount: $0.75 per Unit; $3 million total (assuming no exercise of the underwriters' over-allotment option)

Total proceeds to Issuer, after deducting underwriting discounts and estimated expenses: $96.5 million ($111.1 million, if the underwriters exercise their over-allotment option in full)

Joint Book-Running Managers: Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Deutsche Bank Securities Inc. and UBS Securities LLC

Co-Managers: KKR Capital Markets LLC and Moelis & Company LLC

Allocation:

Underwriter	Number of Units
Credit Suisse Securities (USA) LLC	1,160,000
Goldman, Sachs & Co.	1,160,000
Deutsche Bank Securities Inc.	640,000
UBS Securities LLC	640,000
KKR Capital Markets LLC	200,000
Moelis & Company LLC	200,000
Total	4,000,000

Listing: The Issuer intends to apply to list the Units on the New York Stock Exchange under the symbol "BZT," and, if approved, the Issuer expects trading on the New York Stock Exchange to begin within 30 days after the Units are first issued.

Settlement Date: July 16, 2012

CUSIP for the Units: 07556Q 709

ISIN for the Units: US07556Q7097

CUSIP for the Purchase Contracts: 07556Q 121

ISIN for the Purchase Contracts: US07556Q1215

CUSIP for the Amortizing Notes: 07556Q AZ8

ISIN for the Amortizing Notes: US07556QAZ81

Fair Market Value of Units: The Issuer has determined that the fair market value of each Amortizing Note is $5.1086 and the fair market value of each Purchase Contract is $19.8914. This position will be binding upon each holder (but not on the Internal Revenue Service) unless such holder explicitly discloses a contrary position on a statement attached to such holder's timely filed U.S. federal income tax return for the taxable year in which it acquires a Unit.

Distribution: SEC Registered

Early Settlement Upon a Fundamental Change: The following table sets forth the fundamental change early settlement rate per Purchase Contract for each stock price and effective date set forth below:

	Effective Date			
Stock Price	**July 16, 2012**	**July 15, 2013**	**July 15, 2014**	**July 15, 2015**
$0.50	7.8254	7.9505	8.0765	8.6207
$1.00	7.4201	7.5453	7.6712	8.6207
$1.50	7.1706	7.2958	7.4217	8.6207
$2.50	6.9143	7.0395	7.1654	8.6207
$2.75	6.8776	7.0028	7.1287	8.6207
$2.90	6.8588	6.9840	7.1099	8.6207
$3.00	6.8475	6.9726	7.0986	8.3333
$3.25	6.8226	6.9478	7.0737	7.6923
$3.55	6.7983	6.9234	7.0494	7.0423
$3.75	6.7848	6.9100	7.0359	7.0373
$4.50	6.7484	6.8735	6.9994	7.0373
$5.00	6.7327	6.8579	6.9838	7.0373
$7.50	6.7021	6.8273	6.9532	7.0373
$10.00	6.6994	6.8246	6.9505	7.0373
$12.50	6.7028	6.8279	6.9539	7.0373
$15.00	6.7070	6.8322	6.9581	7.0373

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- if the applicable stock price is between two stock prices in the table or the effective date is between two effective dates in the table, the fundamental change early settlement rate will be determined by straight-line interpolation between the fundamental change early settlement rates set forth for the higher and lower stock prices and the two effective dates, as applicable, based on a 365- or 366-day year as applicable;
- if the applicable stock price is in excess of $15.00 per share (subject to adjustment), then the fundamental change early settlement rate will be the minimum settlement rate; or

- if the applicable stock price is less than $0.50 per share (subject to adjustment), the "minimum stock price," the fundamental change early settlement rate will be determined as if the stock price equaled the minimum stock price, and using straight line interpolation, as described in the first bullet of this paragraph, if the effective date is between two dates in the table.

Concurrent Offering of Common Stock

The disclosure in the Preliminary Prospectus Supplement under the heading "Summary—Recent Developments—Concurrent Common Stock Offering" is modified to read as follows:

Concurrently with this offering, pursuant to a separate prospectus supplement, we are offering 22,000,000 shares of our common stock in an underwritten public offering (or 25,300,000 shares if the underwriters for that offering fully exercise their option to purchase additional shares). Assuming no exercise of the underwriters' option to purchase additional shares with respect to the common stock offering, we estimate that the net proceeds of the common stock offering, after deducting the underwriting discount and estimated expenses, will be approximately $60.1 million (or $69.2 million if the underwriters for that offering fully exercise their option to purchase additional shares), although there can be no assurance that the common stock offering will be completed.

Completion of this offering is not contingent on the completion of the common stock offering, and the completion of the common stock offering is not contingent on the completion of this offering.

Refinancing Transactions

The disclosure in the Preliminary Prospectus Supplement under the heading "Summary—Recent Developments—Other Potential Refinancing Opportunities" is modified to eliminate the reference to our intention to redeem certain of our secured and unsecured notes to provide that the Company currently intends to redeem only its 12.0% senior secured notes due 2017 and does not expect to redeem its 6.875% senior notes due 2015 shortly after this offering. However, the Company will continue to seek refinancing opportunities, which may include the repurchase, redemption or repayment of certain of its indebtedness, including its 6.875% senior notes due 2015.

Use of NOLs

The disclosure in the Preliminary Prospectus Supplement in the last sentence of the third paragraph under the heading "Recent Developments—Impact of Transactions on Use of our NOLs; NOL Protections to Remain in Place" and in the third sentence of the third paragraph under the heading "Risk Factors—The tax benefits of our net operating loss carryforwards and any future recognized built-in losses in our assets will be substantially limited if we experience an 'ownership change' as defined in Section 382 of the Internal Revenue Code, and as a result of this offering and the concurrent tangible equity unit offering, we have moved closer to experiencing an ownership change under Section 382" is modified to provide that if both of the common stock and concurrent tangible equity unit transactions are completed as currently contemplated in the prospectus supplement, we estimate that the Section 382 ownership shift will increase to less than 35%.

The issuer has filed a prospectus supplement and 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 supplement and 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: (i) Credit Suisse Securities (USA) LLC, Attention: Prospectus Department, One Madison Avenue, New York, New York, 10010, or by telephone at +1 (800) 221-1037, or by email at newyork.prospectus@credit-suisse.com; (ii) Goldman, Sachs & Co., via telephone: (866) 471-2526, email: prospectus-ny@ny.email.gs.com, or standard mail at Goldman, Sachs & Co., 200 West Street, New York, NY 10282, Attn: Prospectus Department; (iii) Deutsche Bank Securities Inc., Attention: Prospectus Group, 60 Wall Street, New York, NY 10005-2836 or by telephone at: (800) 503-4611, or by email at: prospectus.CPDG@db.com; or (iv) UBS Securities LLC, 299 Park Avenue, New York, NY 10171, Attention: Prospectus Department, or by calling (888) 827-7275.

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

None

Lock-Up Agreement Signatories

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

Opinion of King & Spalding LLP

Schedule I

Beazer Homes Texas Holdings, Inc.
Beazer Homes Holdings Corp.
Beazer Homes Sales, Inc.
Beazer General Services, Inc.
Beazer Homes Indiana Holdings Corp.
Beazer Homes Corp.

Exhibit B

Form of Lock-Up Agreement

July , 2012

Beazer Homes USA, Inc.
Public Offerings of Common Stock
and Tangible Equity Units

Credit Suisse Securities (USA) LLC
Goldman, Sachs & Co.
Deutsche Bank Securities Inc.
UBS Securities LLC
KKR Capital Markets LLC
Moelis & Company LLC
As Representatives of the several Underwriters

Re: Beazer Homes USA, Inc.
Public Offerings of Common Stock and Tangible Equity Units

Ladies and Gentlemen:

This letter is being delivered to you in connection with (i) the proposed Underwriting Agreement (the "**Common Stock Underwriting Agreement**"), between Beazer Homes USA, Inc., a Delaware corporation (the "**Company**"), and Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Deutsche Bank Securities Inc., UBS Securities LLC, KKR Capital Markets LLC and Moelis & Company LLC, as representatives of a group of Underwriters named therein (the "**Representatives**"), relating to an underwritten public offering of Common Stock, par value $.001 per share (the "**Common Stock**"), of the Company and (ii) the proposed Underwriting Agreement (the "**Unit Underwriting Agreement**" and, together with the Common Stock Underwriting Agreement, the "**Underwriting Agreements**"), between the Company and the Representatives, relating to an underwritten public offering of Tangible Equity Units (the "**Units**"), of the Company.

In order to induce you and the other Underwriters to enter into the Underwriting Agreements, the undersigned will not, without the prior written consent of the Representatives, (1) offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned), or (2) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Securities and Exchange Commission (other than a registration statement on Form S-8) in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules and

regulations of the Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 90 days after the date of the Underwriting Agreements (the "**Lock-Up Period**"), other than in the case of clauses (1) and (2) transfers (i) as a bona fide gift or gifts; (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned; *provided* that any such transfer shall not involve a disposition for value; (iii) by will or intestate succession upon the death of the undersigned; *provided*, *further*, that (a) in the case of any transfer pursuant to clauses (i) through (iii) above, each donee or transferee, other than charitable organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, shall sign and deliver a lock up letter substantially in the form of this letter applicable for the remainder of the Lock-Up Period referred to herein; and (b) in the case of any transfer pursuant to clause (i) or (ii) above, no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Lock-Up Period (other than a filing on Form 5); (iv) pursuant to written trading plans designed to comply with Rule 10b5-1 of the Exchange Act ("**10b5-1 Plans**") that were existing on or prior to the date hereof or the entry into new 10b5-1 Plans, provided that (a) no sales or other distributions pursuant to a new 10b5-1 Plan may occur until the expiration of the Lock-Up Period and (b) no public announcement or filing under the Exchange Act regarding the establishment of such new plan shall be required of or voluntarily made by or on behalf of the undersigned or the Company; or (v) to the Company in order to pay (a) the exercise price associated with the exercise of options that expire during the Lock-Up Period or (b) taxes associated with any shares of restricted stock that vest during the Lock-Up Period. For purposes of this agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin.

If for any reason both Underwriting Agreements shall be terminated prior to the applicable Closing Date (as defined in the applicable Underwriting Agreement), the agreement set forth above shall likewise be terminated.

Yours very truly,

Print Name: _____

Address: _____

_____

_____

PURCHASE CONTRACT AGREEMENT

Dated as of July 16, 2012

Between

BEAZER HOMES USA, INC.

and

U.S. BANK NATIONAL ASSOCIATION,

as Purchase Contract Agent

and as Trustee under the Indenture referred to herein

TABLE OF CONTENTS

EXHIBITS

PURCHASE CONTRACT AGREEMENT, dated as of July 16, 2012 between Beazer Homes USA, Inc., a Delaware corporation (the "**Company**"), and U.S. Bank National Association, a national banking association, acting as purchase contract agent and attorney-in-fact for the Holders of Purchase Contracts (as defined herein) from time to time (the "**Purchase Contract Agent**") and as trustee under the Indenture (as defined herein).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Agreement and the Units (as defined herein) and Purchase Contracts issuable hereunder.

All things necessary to make the Units and Purchase Contracts, when such are executed by the Company and authenticated on behalf of the Holders and delivered by the Purchase Contract Agent, as provided in this Agreement, the valid obligations of the Company and to constitute this Agreement a valid agreement of the Company, in accordance with its terms, have been done. For and in consideration of the premises and the purchase of the Units (including the constituent parts thereof) by the Holders thereof, it is mutually agreed as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Definitions

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

(a) 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;

(b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States;

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

(d) "or" is not exclusive; and

(e) the following terms have the meanings given to them in this Section 1.01(e):

"**Act**" has the meaning, with respect to any Holder, set forth in Section 1.04(a).

"**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.

"**Agreement**" 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.

"**Applicable Market Value**" means the average Closing Price per share of the Common Stock on each of the 20 consecutive Trading Days ending on, and including, the third Trading Day immediately preceding the Mandatory Settlement Date.

"**Applicants**" has the meaning set forth in Section 7.12(b).

"**Beneficial Owner**" means, with respect to a Book-Entry Interest, a Person who is the beneficial owner of such Book-Entry Interest as reflected on the books of the Depositary or on the books of a Person maintaining an account with the Depositary (directly as a Depositary Participant or as an indirect participant, in each case in accordance with the rules of the Depositary).

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

"**Board Resolution**" means one or more resolutions of the Board of Directors (or, for the avoidance of doubt, any duly authorized committee thereof), a copy of which has been certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors (or such committee) and to be in full force and effect on the date of such certification and delivered to the Purchase Contract Agent.

"**Book-Entry Interest**" means a beneficial interest in a Global Security, registered in the name of a Depositary or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Depositary as described in Section 3.06.

"**Business Day**" means any day other than a Saturday, Sunday or any day on which banking institutions in New York, New York are authorized or obligated by applicable law to close.

"**Capital Stock**" of any Person means any and all shares, interests, participations or other equivalents, however designated, of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

"**Clearing Agency**" means an organization registered as a "Clearing Agency" pursuant to Section 17A of the Exchange Act.

"**close of business**" means 5:00 p.m. (New York City time).

"**Closing Price**," with respect to a share of the Common Stock, means on any given date:

(1) the reported closing price per share on that date or, if no closing price is reported, the last reported sale price per share of Common Stock on the NYSE on that date; or

(2) if the Common Stock is not traded on the NYSE, the closing price per share 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 per share of 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 per share of Common Stock on that date in the over-the-counter market as reported by Pink OTC Markets Inc. or a similar or successor organization; or

(4) if the Common Stock is not so quoted by Pink OTC Markets Inc. or a similar or successor organization, the market value per share of the Common Stock on that date as determined by the Board of Directors.

For the avoidance of doubt, following a Reorganization Event, the Closing Price shall be determined in the manner provided in clause (ii) of the last sentence of the first paragraph of Section 5.01(e).

All references herein to the closing price per share of Common Stock and the last reported sale price per share of Common Stock on the NYSE shall be such closing price per share and such last reported sale price per share as reflected on the website of the NYSE (www.nyse.com) and as reported by Bloomberg Professional Service; *provided*, *however*, that in the event that there is a discrepancy between the closing price per share and the last reported sale price per share as reflected on the website of the NYSE and as reported by Bloomberg Professional Service, the closing price per share and the last reported sale price per share on the website of the NYSE shall govern.

"**Code**" means the Internal Revenue Code of 1986 (title 26 of the United States Code), as amended from time to time.

"**Common Stock**" means the common stock, par value $0.001 per share, of the Company as it existed on the date of this Agreement, subject to Section 5.01(e).

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

"**Corporate Trust Office**" means the principal corporate trust office of the Purchase Contract Agent at which, at any particular time, its corporate trust business shall be administered, which office at the date hereof is located at U.S. Bank Corporate Trust Services, 1349 West Peachtree Street NW, Suite 1050, Atlanta, GA 30309, Attention: Account Manager-Beazer Tangible Equity Units; *provided*, *however*, that solely for the purposes of the requirement to maintain an office in the Borough of Manhattan, the Corporate Trust Office shall be located at 100 Wall Street, 16th Floor Window, New York, NY 10005, Attention: Account Manager-Beazer Tangible Equity Units.

"**Current Market Price**" per share of Common Stock on any date means for the purposes of determining an adjustment to the Fixed Settlement Rates:

(a) for purposes of adjustments pursuant to Section 5.01(a)(ii), Section 5.01(a)(iv) in the event of an adjustment not relating to a Spin-Off, and Section 5.01(a)(v), the average of the Closing Prices per share of Common Stock over the five consecutive Trading Day period ending, and including, 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 5.01(a)(iv) in the event of an adjustment relating to a Spin-Off, the average of the Closing Prices per share of Common Stock 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 5.01(a)(vi), the average of the Closing Prices per share of Common Stock over the five consecutive Trading Day period ending, and including, on the seventh Trading Day after the Tender Offer Expiration Date of the relevant tender offer or exchange offer.

"**Definitive Security**" means any Security in definitive form.

"**Depositary**" means a Clearing Agency that is acting as a depositary for the Purchase Contracts and in whose name, or in the name of a nominee of that organization, shall be registered one or more Global Securities and which shall undertake to effect book-entry transfers of the Purchase Contracts as contemplated by Section 3.06, Section 3.07, Section 3.08 and Section 3.09.

"**Definitive Equity-Linked Security**" means an Equity-Linked Security in definitive form.

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

"**DTC**" means The Depository Trust Company.

"**DWAC System**" has the meaning set forth in Section 2.03(a).

"**Early Mandatory Settlement Date**" has the meaning set forth in Section 4.05(a).

"**Early Mandatory Settlement Notice**" has the meaning set forth in Section 4.05(b).

"**Early Mandatory Settlement Rate**" shall be the Maximum Settlement Rate, unless the Closing Price per share of the Common Stock for 20 or more Trading Days in a period of 30 consecutive Trading Days ending on, and including, the Trading Day immediately preceding the Notice Date exceeds 130% of the Threshold Appreciation Price in effect on each such Trading Day, in which case the "Early Mandatory Settlement Rate" shall be the Minimum Settlement Rate.

"**Early Mandatory Settlement Right**" has the meaning set forth in Section 4.05(a).

"**Early Settlement**" has the meaning set forth in Section 4.04(a).

"**Early Settlement Date**" has the meaning set forth in Section 4.04(b).

"**Early Settlement Rate**" for each Purchase Contract means the Minimum Settlement Rate, unless the Holder elects to settle such Purchase Contract in connection with a Fundamental Change, in which case such Holder shall receive upon settlement of such Purchase Contract a number of shares of Common Stock equal to the Fundamental Change Early Settlement Rate.

"**Effective Date**" has the meaning set forth in Section 5.02(c).

"**Equity-Linked Security**" means a Unit or a Purchase Contract, as applicable.

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

"**Exchange Property**" has the meaning set forth in Section 5.01(e).

"**Exchange Property Unit**" has the meaning set forth in Section 5.01(e).

"**expiration date**" has the meaning set forth in Section 1.04(e).

"**Ex-Date**" means, with respect to any issuance of distribution on shares of the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, 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 Board Resolution.

"**Fixed Settlement Rate**" has the meaning set forth in Section 4.01(iii).

"**Fundamental Change**" shall be deemed to occur if any of the following occurs:

(i) the Common Stock or other common stock receivable upon settlement of Purchase Contracts is neither listed for trading on a U.S. 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 the Company 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, in each case pursuant to which the Common Stock is exchanged for, converted into, or constitutes solely the right to receive, consideration consisting of any combination of cash, other securities or any other property;

provided, *however*, that if at least 90% of such consideration (other than cash payments for fractional shares or pursuant to statutory appraisal rights) consists of common stock and any associated rights traded on a U.S. national securities exchange (or which will be so traded when issued or exchanged in connection with such acquisition, transactions or events), such acquisition, transactions or events shall not be deemed to be a "fundamental change" pursuant to this clause (ii).

"**Fundamental Change Early Settlement Date**" has the meaning set forth in Section 5.02(a).

"**Fundamental Change Early Settlement Rate**" has the meaning set forth in Section 5.02(c).

"**Fundamental Change Early Settlement Right**" has the meaning set forth in Section 5.02(a).

"**Global Note**" means a Global Note, as defined in the Indenture, that shall evidence the number of Separate Notes specified therein.

"**Global Purchase Contract**" means a Purchase Contract in global form that (i) shall evidence the number of Separate Purchase Contracts specified therein, (ii) shall be registered on the books and records of the Purchase Contract Agent in the name of the Depositary or its nominee and (iii) shall be held by the Purchase Contract Agent as custodian for the Depositary.

"**Global Security**" means a Global Unit, a Global Purchase Contract or a Global Note, as applicable.

"**Global Unit**" means a Unit in global form that (i) shall evidence the number of Units specified therein, (ii) shall be registered on the books and records of the Purchase Contract Agent in the name of the Depositary or its nominee and (iii) shall be held by the Purchase Contract Agent as custodian for the Depositary.

"**Holder**" means, with respect to a Unit or Purchase Contract, the Person in whose name the Unit or Purchase Contract, as the case may be, is registered in the Security Register, and with respect to a Note, the Person in whose name the Note is registered as provided for in the Indenture; *provided*, *however*, that in determining whether the Holders of the requisite number of Units or Purchase Contracts, as the case may be, have voted on any matter, then for the purpose of such determination only (and not for any other purpose hereunder), if the Units or Purchase Contracts, as the case may be, remain in the form of one or more Global Securities and if the Depositary that is the registered holder of such Global Security has sent an omnibus proxy assigning voting rights to the Depositary Participants to whose accounts the Units or Purchase Contracts, as the case may be, are credited on the related record date, the term "Holder" shall mean such Depositary Participant acting at the direction of the Beneficial Owners.

"**Indenture**" means the Indenture, dated as of April 17, 2002, between the Company and the Trustee (including any provisions of the TIA that are deemed incorporated therein), as supplemented by the Sixteenth Supplemental Indenture, dated as of July 16, 2012, pursuant to which the Notes will be issued.

"**Issue Date**" means July 16, 2012.

"**Issuer Order**" or "Issuer Request" means a written order or request signed in the name of the Company by its Chairman of the Board, its President or one of its Vice Presidents, and by its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Purchase Contract Agent or the Trustee.

"**Mandatory Settlement Date**" means July 15, 2015.

"**Market Disruption Event**" means (i) a failure by the securities exchange or other market referenced in the definition of Trading Day to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock of an aggregate one-half hour of suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options, contracts or futures contracts relating to the Common Stock.

"**Maximum Settlement Rate**" means 8.6207, subject to adjustment as provided herein.

"**Minimum Settlement Rate**" means 7.0373, subject to adjustment as provided herein.

"**Notes**" means the series of notes designated as the 6.00% Senior Amortizing Notes due July 15, 2015 to be issued by the Company under the Indenture, and "Note" means each note of such series having an initial principal amount of $5.1086.

"**Notice Date**" has the meaning set forth in Section 4.05(b)(ii).

"**NYSE**" means the New York Stock Exchange, Inc.

"**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 Purchase Contract Agent and Trustee from time to time.

"**Opinion of Counsel**" means a written opinion of counsel, who may be counsel to the Company (and who may be an employee of the Company), and who shall be reasonably acceptable to the Purchase Contract Agent or Trustee, as applicable. An opinion of counsel may rely on certificates as to matters of fact.

"**Outstanding Purchase Contracts**" means, as of the date of determination, all Purchase Contracts theretofore executed, authenticated on behalf of the Holder and delivered under this Agreement (including, for the avoidance of doubt, Purchase Contracts held as a component of Units and Separate Purchase Contracts), except:

(i) Purchase Contracts theretofore cancelled by the Purchase Contract Agent or delivered to the Purchase Contract Agent for cancellation or deemed cancelled pursuant to the provisions of this Agreement; and

(ii) Purchase Contracts in exchange for or in lieu of which other Purchase Contracts have been executed, authenticated on behalf of the Holder and delivered pursuant to this Agreement, other than any such Purchase Contract in respect of which there shall have been presented to the Purchase Contract Agent proof satisfactory to it that such Purchase Contract is held by a "protected purchaser" (as such term is defined in Section 8-303 of the Uniform Commercial Code of New York as then in effect) in whose hands the Purchase Contracts are valid obligations of the Company; *provided*, *however*, that in determining whether the Holders of the requisite number of the Purchase Contracts have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Purchase Contracts owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding Purchase Contracts, except that, in determining whether the Purchase Contract Agent shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Purchase Contracts that a Responsible Officer of the Purchase Contract Agent actually knows to be so owned shall be so disregarded.

"**Participant**" has the meaning set for in Section 2.03(a).

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

"**Purchase Contract**" means the contract obligating the Company to deliver shares of Common Stock on the terms and subject to the conditions set forth herein.

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

"**Purchase Contract Settlement Fund**" has the meaning set forth in Section 4.03(a).

"**Reference Price**" means $2.90, subject to adjustment as provided herein.

"**Reorganization Event**" has the meaning set forth in Section 5.01(e).

"**Repurchase Date**" has the meaning set forth in the Indenture.

"**Repurchase Price**" has the meaning set forth in the Indenture.

"**Repurchase Right**" has the meaning set forth in the Indenture.

"**Responsible Officer**" means, with respect to the Purchase Contract Agent, any officer of the Purchase Contract Agent assigned by the Purchase Contract Agent to administer this Agreement.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the primary U.S. national securities exchange or market on which the Common Stock is listed or admitted for trading; *provided*, *however*, that if the Common Stock is not so listed or admitted for trading, then "Scheduled Trading Day" means a Business Day.

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

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

"**Security**" means a Unit, a Purchase Contract or a Note, as applicable.

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

"**Separate Note**" has the meaning set forth in Section 2.03(a).

"**Separate Purchase Contract**" has the meaning set forth in Section 2.03(a).

"**Settlement Date**" means any Fundamental Change Early Settlement Date, Early Settlement Date, Early Mandatory Settlement Date, or Mandatory Settlement Date.

"**Settlement Rate**" has the meaning set forth in Section 4.01.

"**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, which Capital Stock or equity interests are, or will be, immediately following such Spin-Off, listed on a national or regional securities exchange.

"**Stated Amount**" means $25.00 per Unit.

"**Stock Price**" has the meaning set forth in Section 5.02(c).

"**Subsidiary**" means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

"**Tender Offer Expiration Date**" has the meaning set forth in Section 5.01(a)(vi).

"**Tender Offer Expiration Time**" has the meaning set forth in Section 5.01(a)(vi).

"**Threshold Appreciation Price**" means $3.55, subject to adjustment as provided herein.

"**TIA**" means the Trust Indenture Act of 1939, as amended from time to time.

"**Trading Day**" means a day on which (i) trading in the Common Stock generally occurs; (ii) there is no Market Disruption Event; and (iii) a Closing Price per share of the Common Stock is provided on the NYSE or, if the Common Stock is not then listed on the NYSE, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded.

"**Trustee**" means U.S. Bank National Association, as trustee under the Indenture, or any successor thereto.

"**Underwriters**" has the meaning set forth in the Underwriting Agreement.

"**Underwriting Agreement**" means the Underwriting Agreement, dated as of July 10, 2012, between the Company and the several underwriters named therein relating to the Units.

"**Unit**" means the collective rights of a Holder of a unit consisting of one Purchase Contract and one Note prior to separation pursuant Section 2.03 or subsequent to recreation pursuant to Section 2.04.

"**Vice President**" 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 1.02 Compliance Certificates and Opinions.

Except as otherwise expressly provided by this Agreement, upon any application or request by the Company to the Purchase Contract Agent or Trustee to take any action in accordance with any provision of this Agreement, the Company shall furnish to the Purchase Contract Agent or Trustee, as applicable, an Officers' Certificate stating that all conditions precedent, if any, provided for in this Agreement relating to the proposed action have been complied with and, if requested by the Purchase Contract Agent or Trustee, as applicable, an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Agreement relating to such particular application or request, no additional certificate or opinion need be furnished.

Every Officers' Certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement shall include:

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

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

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

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

Section 1.03 Form of Documents Delivered.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, 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 Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

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

Section 1.04 Acts of Holders; Record Dates.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Purchase Contract Agent and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "**Act**" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and (subject to Section 7.01) conclusive in favor of the Purchase Contract Agent and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Purchase Contract Agent deems sufficient.

(c) The ownership of Purchase Contracts shall be proved by the Security Registrar upon review of the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Purchase Contract shall bind every future Holder of the same Purchase Contract and the Holder of such Purchase Contract 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 Purchase Contract Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Purchase Contract.

(e) The Company may set any date as a record date for the purpose of determining the Holders of Outstanding Purchase Contracts entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Agreement to be given, made or taken by Holders of Purchase Contracts. If any record date is set pursuant to this paragraph, the Holders of the Outstanding Purchase Contracts on such record date, and no other Holders, shall be entitled to take the relevant action with respect to the Purchase Contracts, whether or not such Holders remain Holders after such record date; *provided*, *however*, that no such action shall be effective hereunder unless taken prior to or on the applicable expiration date by Holders of the requisite number of Outstanding Purchase Contracts on such record date. Nothing contained in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and be of no effect), and nothing contained in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite number of Outstanding Purchase Contracts on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable expiration date to be given to the Purchase Contract Agent in writing and to each Holder of Purchase Contracts in the manner set forth in Section 1.06.

With respect to any record date set pursuant to this Section, the Company may designate any date as the "**expiration date**" and from time to time may change the expiration date to any earlier or later day; *provided*, *however*, that no such change shall be effective unless notice of the proposed new expiration date is given to the Purchase Contract Agent in writing, and to each Holder of Purchase Contracts in the manner set forth in Section 1.06, prior to or on the existing expiration date. If an expiration date is not designated with respect to any record date set pursuant to this Section, the Company 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 as provided in this paragraph. Notwithstanding anything to the contrary in the foregoing, no expiration date shall be later than the 180th day after the applicable record date.

Section 1.05 Notices.

Any notice or communication is duly given if in writing and delivered in Person or mailed by first-class mail (registered or certified, return receipt requested), telecopier (with receipt confirmed) or overnight courier guaranteeing next day delivery to the others' address; *provided, however*, that notice shall be deemed given to the Purchase Contract Agent or Trustee, as applicable, only upon receipt thereof:

If to the Purchase Contract Agent or Trustee:
U.S. Bank National Association
Corporate Trust Services
1349 West Peachtree St., Ste. 1050
Atlanta, GA 30309
Fax: 404-898-8844

with a copy to:

Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309-3053
Fax: 404-581-8330
Attention: Ralph F. MacDonald III, Esq.

If to the Company:

Beazer Homes USA, Inc.
1000 Abernathy Road
Suite 260
Atlanta, Georgia 30328
Fax: 770-481-7364
Attention: Kenneth F. Khoury

with a copy to:

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Fax: 404-572-5133
Attention: William Calvin Smith, Esq.

Section 1.06 Notice to Holders; Waiver.

Where this Agreement 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 its address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, 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 Agreement 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 Purchase Contract Agent, 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 written approval of the Purchase Contract Agent shall constitute a sufficient notification for every purpose hereunder.

Section 1.07 Effect of Headings and Table of Contents.

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

Section 1.08 Successors and Assigns.

All covenants and agreements in this Agreement by the Company and the Purchase Contract Agent shall bind their respective successors and assigns, whether so expressed or not.

Section 1.09 Separability Clause.

In case any provision in this Agreement or in the Purchase Contracts shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof and thereof shall not in any way be affected or impaired thereby.

Section 1.10 Benefits of Agreement.

Nothing contained in this Agreement or in the Purchase Contracts, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and, to the extent provided hereby, the Holders, any benefits or any legal or equitable right, remedy or claim under this Agreement. The Holders from time to time shall be beneficiaries of this Agreement and shall be bound by all of the terms and conditions hereof and of the Purchase Contracts by their acceptance of delivery of such Purchase Contracts.

Section 1.11 Governing Law.

This Agreement, the Units and the Purchase Contracts, and any claim, controversy or dispute arising under or related to this Agreement, the Units or the Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to the conflicts of law principles that would result in the application of law other than the law of the State of New York).

Section 1.12 Conflicts with Indenture.

To the extent that any provision of this Purchase Contract Agreement relating to or affecting the Notes conflicts with or is inconsistent with the Indenture, the Indenture shall govern.

Section 1.13 Legal Holidays.

In any case where any Settlement Date shall not be a Business Day, notwithstanding any other provision of this Agreement or the Purchase Contracts, the settlement of the Purchase Contracts shall not be effected on such date, but instead shall be effected on the next succeeding Business Day with the same force and effect as if made on such Settlement Date, and no interest or other amounts shall accrue or be payable by the Company or to any Holder in respect of such delay, except that, if such next succeeding Business Day is in the next succeeding calendar year, such settlement shall be made on the immediately preceding Business Day with the same force and effect as if made on such Settlement Date.

Section 1.14 Counterparts.

This Agreement 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 1.15 Inspection of Agreement.

A copy of this Agreement shall be available at all reasonable times during normal business hours at the Corporate Trust Office for inspection by any Holder or Beneficial Owner.

Section 1.16 Waiver of Jury Trial.

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

Section 1.17 Force Majeure.

In no event shall either of the Purchase Contract Agent or 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 each of the Purchase Contract Agent and the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 1.18 Calculations.

The solicitation of any necessary bids and the performance of any calculations to be made hereunder shall be the sole obligation of the Company. These calculations include, but are not limited to, determination of the applicable Settlement Rate, the Fixed Settlement Rates, the Early Settlement Rate, the Early Mandatory Settlement Rate, the Fundamental Change Early Settlement Rate, the Applicable Market Value, the Closing Price, the Current Market Price, the Reference Price and the Threshold Appreciation Price as the case may be. All calculations made by the Company or its agent hereunder shall be made in good faith and, absent manifest error, be final and binding on the Purchase Contract Agent, the Trustee, each Paying Agent and on the Holders. For any calculations to be made by the Company or its agent hereunder, the Company shall provide a schedule of such calculations to the Purchase Contract Agent and the Trustee, and each of the Purchase Contract Agent and the Trustee shall be entitled to conclusively rely upon the accuracy of the calculations by the Company or its agent without independent verification, shall have no liability with respect thereto and shall have no liability to the Holders for any loss any of them may incur in connection with no independent verification having been done.

Section 1.19 UCC.

Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

ARTICLE II

UNIT AND PURCHASE CONTRACT FORMS

Section 2.01 Forms of Units and Purchase Contracts Generally.

The Units and Purchase Contracts shall be in substantially the forms set forth in Exhibit A and Exhibit B hereto, respectively, which shall be incorporated in and made a part of this Purchase Contract Agreement, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units or Purchase Contracts, as the case may be, are (or may in the future be) listed or any depositary therefor, or as may, consistently herewith, be determined by the officers of the Company executing such Units and Purchase Contracts, as the case may be, as evidenced by their execution thereof.

The Units and Purchase Contracts shall be issuable only in registered form and only in denominations of a single Unit or Purchase Contract, as the case may be, and any integral multiple thereof.

Definitive Securities shall be printed, lithographed or engraved with steel engraved borders or may be produced in any other manner, all as determined by the officers of the Company executing the Units or Purchase Contracts, as the case may be, evidenced by such Definitive Securities, consistent with the provisions of this Agreement, as evidenced by their execution thereof.

Every Global Unit and Global Purchase Contract executed, authenticated on behalf of the Holders and delivered hereunder shall bear a legend in substantially the following form:

"THIS SECURITY IS A GLOBAL [UNIT / PURCHASE CONTRACT] WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT 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 GLOBAL [UNIT / PURCHASE CONTRACT] IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AGREEMENT AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY 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.

UNLESS THIS GLOBAL [UNIT / PURCHASE CONTRACT] IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY 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."

Section 2.02 Form of Certificate of Authentication.

The form of certificate of authentication of the Units and Purchase Contracts shall be in substantially the form set forth in the form of Unit or form of Purchase Contract, respectively, attached hereto.

Section 2.03 Global Securities; Separation of Units.

(a) On any Business Day during the period beginning on, and including, the Business Day immediately succeeding the Issue Date to, but excluding, the third Business Day immediately preceding the Mandatory Settlement Date or any Early Mandatory Settlement Date, a Holder or Beneficial Owner of a Unit may separate such Unit into its constituent Purchase Contract and Note (each such separated Purchase Contract and separated Note, a "**Separate Purchase Contract**" and "**Separate Note**," respectively), which will thereafter trade under their respective CUSIP numbers (07556Q 121 and 07556Q 808), and that Unit will cease to exist. Beneficial interests in a Unit, and after separation, the Separate Purchase Contract and Separate Note, will be shown on and transfers will be effected through direct or indirect participants in DTC. Beneficial interests in Units, Separate Purchase Contracts and Separate Notes will be evidenced by Global Units, Global Purchase Contracts and Global Notes, respectively. In order

to separate a Unit into its component parts, a Beneficial Owner must deliver written instruction to the broker or other direct or indirect participant (the "**Participant**") through which it holds an interest in such Unit to notify DTC through DTC's Deposit/Withdrawal at Custodian System (the "**DWAC System**") of such Beneficial Owner's election to separate such Unit, following which the Purchase Contract Agent or Trustee, as applicable, shall register (i) a decrease in the Global Unit and the amount of Purchase Contracts and Notes attached to the Global Unit as Attachments 3 and 4, respectively, as set forth in Schedule A to each such attachment, and (ii) a corresponding increase in the amount of the Global Purchase Contract and Global Note. If, however, such Unit is in the form of a Definitive Security in accordance with Section 3.09, the Holder thereof must deliver to the Purchase Contract Agent such Unit, together with a separation notice, in the form set forth in Attachment 1 to the form of Unit attached hereto as Exhibit A. Upon the receipt of such separation notice, the Company shall promptly cause delivery, in accordance with the delivery instructions set forth in such separation notice, of one Separate Purchase Contract and one Separate Note for each such Unit. Separate Purchase Contracts and Separate Notes will be transferable independently from each other.

(b) Holders which elect to separate the Note and related Purchase Contract in accordance with this Section 2.03 shall be responsible for any fees or expenses payable in connection with such separation, and the Company shall not be responsible for any such fees or expenses.

Each of the Purchase Contract Agent and the Trustee is authorized to act in accordance with any letter of representations executed by the Company in favor of DTC.

Section 2.04 Recreation of Units.

(a) On any Business Day during the period beginning on, and including, the Business Day immediately succeeding the Issue Date to, but excluding, the third Business Day immediately preceding the Mandatory Settlement Date or any Early Mandatory Settlement Date, a Holder or Beneficial Owner of a Separate Purchase Contract and a Separate Note may recreate a Unit (which will thereafter trade under the CUSIP number 07556Q 709 for the Units), and each such Separate Purchase Contract and Separate Note will cease to exist. In order to recreate a Separate Purchase Contract and Separate Note into a Unit, a Beneficial Owner must deliver written instruction to the Participant through which it holds an interest in such Separate Purchase Contract and Separate Note to notify DTC through the DTC's DWAC System of such Beneficial Owner's election to recreate a Unit, following which the Purchase Contract Agent or Trustee, as applicable, shall register (i) an increase in the Global Unit and the amount of Purchase Contracts and Notes attached to the Global Unit as Attachments 3 and 4, respectively, as set forth in Schedule A to each such attachment, and (ii) a corresponding decrease in the amount of the Global Purchase Contract and Global Note. If, however, such Separate Purchase Contract and Separate Note are in the form of Definitive Securities, the Holder thereof must deliver to the Purchase Contract Agent such Definitive Securities, together with a recreation notice, in the form set forth in Attachment 2 to the form of Unit attached hereto as Exhibit A. Upon the receipt of such recreation notice, the Company shall promptly cause delivery, in accordance with the delivery instructions set forth in such recreation notice, of one Unit in definitive form for such Definitive Securities.

(b) Holders that recreate Units in accordance with this Section 2.04 shall be responsible for any fees or expenses payable in connection with such recreation, and the Company shall not be responsible for any such fees or expenses.

ARTICLE III

THE UNITS AND PURCHASE CONTRACTS

Section 3.01 Amount and Denominations.

The aggregate number of Units and Separate Purchase Contracts evidenced by Equity-Linked Securities executed, authenticated on behalf of the Holders and delivered hereunder is limited in each case to 4,000,000 (or up to 4,600,000 to the extent the Underwriters fully exercise their over-allotment option to purchase additional Units pursuant to the Underwriting Agreement), except for Units and Separate Purchase Contracts executed, authenticated and delivered upon registration of transfer of, in exchange for, or in lieu of, other Units and Separate Purchase Contracts pursuant to Section 3.04, Section 3.05, Section 3.10, Section 3.04 or Section 8.05.

Equity-Linked Securities that are not in the form of Global Securities shall be issuable in denominations of one Equity-Linked Security and integral multiples in excess thereof.

Section 3.02 Rights and Obligations Evidenced by the Equity-Linked Securities.

Each Equity-Linked Security shall evidence the number of Units or Separate Purchase Contracts, as the case may be, specified therein, with each such Unit or Separate Purchase Contract representing the rights and obligations of the Holder thereof and the Company under one Unit or one Separate Purchase Contract, respectively.

Prior to the delivery of shares of Common Stock under each Purchase Contract (whether such Purchase Contract is held as a component of a Unit or as a Separate Purchase Contract), such Purchase Contract shall not entitle the Holder thereof to any of the rights of a holder of Common Stock, including, without limitation, the right to vote or receive any dividends or other payments or to consent or to receive notice as a shareholder in respect of the meetings of shareholders or for the election of directors for any other matter, or any other rights whatsoever as a shareholder of the Company.

Section 3.03 Execution, Authentication, Delivery and Dating.

Upon the execution and delivery of this Agreement, and at any time and from time to time thereafter, the Company may deliver Equity-Linked Securities executed by the Company to the Purchase Contract Agent and Trustee for authentication on behalf of the Holders and delivery, together with an Issuer Order for authentication of such Equity-Linked Securities, and the Purchase Contract Agent and Trustee in accordance with such Issuer Order shall authenticate on behalf of the Holders and deliver such Equity-Linked Securities.

The Equity-Linked Securities shall be executed on behalf of the Company by any authorized officer of the Company. The signature of any such officer on the Equity-Linked Securities may be manual or facsimile.

Equity-Linked Securities bearing the manual or facsimile signature of an individual who was at any time the proper officer of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such offices prior to the authentication and delivery of such Equity-Linked Securities or did not hold such offices at the date of such Equity-Linked Securities.

Each Equity-Linked Security shall be dated the date of its authentication.

No Equity-Linked Security shall be entitled to any benefit under this Agreement or be valid or obligatory for any purpose unless there appears on such Equity-Linked Security a certificate of authentication substantially in the form provided for herein executed by an authorized officer of the Purchase Contract Agent and Trustee by manual signature, and such certificate upon any Equity-Linked Security shall be conclusive evidence, and the only evidence, that such Equity-Linked Security has been duly authenticated and delivered hereunder.

Section 3.04 Temporary Equity-Linked Securities.

Pending the preparation of Definitive Equity-Linked Securities, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holders, and deliver, in lieu of such Definitive Equity-Linked Securities, temporary Equity-Linked Securities that are in substantially the form set forth in Exhibit A or Exhibit B hereto, as the case may be, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units or Separate Purchase Contracts, as the case may be, are listed, or as may, consistently herewith, be determined by the officers of the Company executing such Equity-Linked Securities, as evidenced by their execution of the Equity-Linked Securities.

If temporary Equity-Linked Securities are issued, the Company will cause Definitive Equity-Linked Securities to be prepared without unreasonable delay. After the preparation of Definitive Equity-Linked Securities, the temporary Equity-Linked Securities shall be exchangeable for Definitive Equity-Linked Securities upon surrender of the temporary Equity-Linked Securities at the Corporate Trust Office, at the expense of the Company and without charge to the Holder or the Purchase Contract Agent. Upon surrender for cancellation of any one or more temporary Equity-Linked Securities, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder, and deliver in exchange therefor, one or more Definitive Equity-Linked Securities of like tenor and denominations and evidencing a like number of Units or Separate Purchase Contracts, as the case may be, as the temporary Equity-Linked Security or Equity-Linked Securities so surrendered. Until so exchanged, the temporary Equity-Linked Securities shall in all respects evidence the same benefits and the same obligations with respect to the Units or Separate Purchase Contracts, as the case may be, evidenced thereby as Definitive Equity-Linked Securities.

Section 3.05 Registration; Registration of Transfer and Exchange.

The Company shall cause to be kept at the Corporate Trust Office a register (the "**Security Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Equity-Linked Securities and of transfers of Equity-Linked Securities. The Purchase Contract Agent is hereby initially appointed Security Registrar (the "**Security Registrar**") for the purpose of registration of Equity-Linked Securities and transfers of Equity-Linked Securities as provided herein. The Security Registrar shall record separately the registration and transfer of the Equity-Linked Securities evidencing Units and Separate Purchase Contracts.

Upon surrender for registration of transfer of any Equity-Linked Security at the Corporate Trust Office, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall authenticate on behalf of the designated transferee or transferees, and deliver, in the name of the designated transferee or transferees, one or more new Equity-Linked Securities of any authorized denominations, of like tenor, and evidencing a like number of Units or Separate Purchase Contracts, as the case may be.

At the option of the Holder, Equity-Linked Securities may be exchanged for other Equity-Linked Securities of any authorized denominations and evidencing a like number of Units or Separate Purchase Contracts, as the case may be, upon surrender of the Equity-Linked Securities to be exchanged at the Corporate Trust Office. Whenever any Equity-Linked Securities are so surrendered for exchange, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder, and deliver the Equity-Linked Securities which the Holder making the exchange is entitled to receive.

All Equity-Linked Securities issued upon any registration of transfer or exchange of an Equity-Linked Security shall evidence the ownership of the same number of Units or Separate Purchase Contracts, as the case may be, and be entitled to the same benefits and subject to the same obligations, under this Agreement as the Units or Separate Purchase Contracts, as the case may be, evidenced by the Equity-Linked Security surrendered upon such registration of transfer or exchange.

Every Equity-Linked Security presented or surrendered for registration of transfer or exchange shall (if so required by the Purchase Contract Agent) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Purchase Contract Agent duly executed by the Holder thereof, or its attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of an Equity-Linked Security, but the Company may require payment from the Holder 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 Equity-Linked Securities, other than any exchanges pursuant to Section 3.06 and Section 8.05 not involving any transfer.

Notwithstanding anything to the contrary in the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall not be obligated to authenticate on behalf of the Holder or deliver any Equity-Linked Security in exchange for any other Equity-Linked Security presented or surrendered for registration of transfer or for exchange on or after the Business Day immediately preceding the Settlement Date with respect to such Equity-Linked Security. In lieu of delivery of a new Equity-Linked Security, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall, if a Settlement Date with respect to such Equity-Linked Security has occurred, deliver the shares of Common Stock deliverable in respect of the Purchase Contracts evidenced by such Equity-Linked Security (together with Separate Notes equal to the number of, and in the same form as, the Notes evidenced by such Equity-Linked Security if such Equity-Linked Security is a Unit and if the Repurchase Right is not applicable or, if applicable, not exercised).

Section 3.06 Book-Entry Interests.

The Units, on original issuance, will be issued in the form of one or more fully registered Global Units, to be delivered to the Depositary or its custodian by, or on behalf of, the Company. The Company hereby designates DTC as the initial Depositary. Such Global Units shall initially be registered on the books and records of the Company in the name of Cede & Co., the nominee of DTC, and no Beneficial Owner will receive a Definitive Unit representing such Beneficial Owner's interest in such Global Unit, except as provided in Section 3.09. The Purchase Contract Agent shall enter into an agreement with the Depositary if so requested by the Company in writing. Unless and until definitive, fully registered Securities have been issued to Beneficial Owners pursuant to Section 3.09:

(i) the provisions of this Section 3.06 shall be in full force and effect;

(ii) the Company shall be entitled to deal with the Depositary for all purposes of this Agreement (including receiving approvals, votes or consents hereunder) as the Holder of the Global Units and Global Purchase Contracts and shall have no obligation to the Beneficial Owners as such;

(iii) to the extent that the provisions of this Section 3.06 conflict with any other provisions of this Agreement, the provisions of this Section 3.06 shall control; and

(iv) the rights of the Beneficial Owners shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such Beneficial Owners and the Depositary or the Depositary Participants.

Section 3.07 Notices to Holders.

Whenever a notice or other communication to the Holders is required to be given under this Agreement, the Company or the Company's agent shall give such notices and communications to the Holders and, with respect to any Units or Purchase Contracts registered in the name of the Depositary or the nominee of the Depositary, the Company or the Company's agent shall, except as set forth herein, have no obligations to the Beneficial Owners.

Section 3.08 Appointment of Successor Depositary.

If the Depositary elects to discontinue its services as securities depositary with respect to the Units or Purchase Contracts, the Company may, in its sole discretion, appoint a successor Depositary with respect to such Units or such Purchase Contracts, as the case may be.

Section 3.09 Definitive Securities.

If:

(i) the Depositary is no longer a Clearing Agency or is unwilling or unable to continue its services as securities depositary with respect to the Global Securities and a successor Depositary is not appointed within 90 days after such discontinuance pursuant to Section 3.08;

(ii) at any time the Depositary ceases to be a Clearing Agency; or

(iii) the Company elects, in its sole discretion, to allow some or all Global Units or Global Purchase Contracts to be exchangeable for definitive securities in registered form,

then (x) Definitive Securities shall be prepared by the Company with respect to such Global Securities and delivered to the Purchase Contract Agent and the Trustee, and (y) upon surrender of such Global Securities by the Depositary, accompanied by registration instructions, the Company shall cause Definitive Securities to be executed, authenticated and delivered to Beneficial Owners in accordance with the instructions of the Depositary. The Company shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Each Definitive Security so delivered shall evidence Units or Purchase Contracts or Notes, as the case may be, of the same kind and tenor as the Global Security so surrendered in respect thereof. Notwithstanding anything to the contrary in the foregoing, the exchange of Global Notes for Notes in definitive form shall be governed by the Indenture.

Section 3.10 Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Equity-Linked Security is surrendered to the Purchase Contract Agent, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder, and deliver in exchange therefor, a new Equity-Linked Security, evidencing the same number of Units or Separate Purchase Contracts, as the case may be, and bearing a security number not contemporaneously outstanding.

If there shall be delivered to the Company, the Purchase Contract Agent and Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Equity-Linked Security, and (ii) such security or indemnity as may be reasonably required by them to hold each of them and any agent of any of them harmless, then, in the absence of notice to the Company, the Purchase Contract Agent or Trustee that such Equity-Linked Security has been acquired by a protected purchaser, the Company shall execute and deliver to the Purchase Contract Agent and Trustee,

and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder, and deliver to the Holder, in lieu of any such destroyed, lost or stolen Equity-Linked Security, a new Equity-Linked Security, evidencing the same number of Units or Separate Purchase Contracts, as the case may be, and bearing a security number not contemporaneously outstanding.

Notwithstanding anything to the contrary in the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall not be obligated to authenticate on behalf of the Holder, and deliver to the Holder, an Equity-Linked Security on or after the Business Day immediately preceding the Settlement Date with respect to such Equity-Linked Security. In lieu of delivery of a new Equity-Linked Security, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall, if a Settlement Date with respect to such Equity-Linked Security has occurred, deliver or arrange for delivery of the shares of Common Stock deliverable in respect of the Purchase Contracts evidenced by such Equity-Linked Security (together with Separate Notes equal to the number of, and in the same form as, the Notes evidenced by such Equity-Linked Security if such Equity-Linked Security is a Unit and if the Repurchase Right is not applicable or, if applicable, not exercised).

Upon the issuance of any new Equity-Linked Security under this Section 3.10, the Company and the Purchase Contract Agent may require the payment by the Holder 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 reasonable fees and expenses of the Purchase Contract Agent) connected therewith.

Every new Equity-Linked Security issued pursuant to this Section 3.10 in lieu of any destroyed, lost or stolen Equity-Linked Security shall constitute an original additional contractual obligation of the Company and of the Holder in respect of the Unit or Separate Purchase Contract, as the case may be, evidenced thereby, whether or not the destroyed, lost or stolen Equity-Linked Security shall be found at any time. Such new Equity-Linked Security (and the Units or Separate Purchase Contracts, as applicable, evidenced thereby) shall be at any time enforceable by anyone, and shall be entitled to all the benefits and be subject to all the obligations of this Agreement equally and proportionately with any and all other Equity-Linked Securities delivered hereunder.

The provisions of this Section 3.10 are exclusive and shall preclude, to the extent lawful, all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Equity-Linked Securities.

Section 3.11 Persons Deemed Owners.

Prior to due presentment of an Equity-Linked Security for registration of transfer, the Company and the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name such Equity-Linked Security is registered as the owner of the Unit or Purchase Contract, as the case may be, evidenced thereby, for the purpose of performance of the Units or Purchase Contracts, as applicable, evidenced by such Equity-Linked Securities and for all other purposes whatsoever, and neither the Company nor the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary.

Notwithstanding anything to the contrary in the foregoing, with respect to any Global Unit or Global Purchase Contract, nothing contained herein shall prevent the Company, the Purchase Contract Agent or any agent of the Company or the Purchase Contract Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary (or its nominee), as a Holder, with respect to such Global Unit or Global Purchase Contract or impair, as between such Depositary and the related Beneficial Owner, the operation of customary practices governing the exercise of rights of the Depositary (or its nominee) as Holder of such Global Unit or Global Purchase Contract.

Section 3.12 Cancellation.

All Securities surrendered for separation or recreation and all Equity-Linked Securities surrendered for settlement or upon the registration of transfer or exchange of an Equity-Linked Security shall, if surrendered to any Person other than the Purchase Contract Agent, be delivered to the Purchase Contract Agent and, if not already cancelled, be promptly cancelled by it; *provided, however*, that the Purchase Contract Agent shall deliver any Notes or Separate Notes so surrendered to it to the Trustee and Paying Agent (as defined in the Indenture) for disposition in accordance with the provisions of the Indenture. In the case of a Unit or Units surrendered for settlement, subject to Section 4.05 hereof, the Company shall promptly execute and the Trustee shall promptly authenticate and deliver in accordance with the terms of the Indenture to the Holder thereof a number of Separate Notes equal to the number of, and in the same form as, the Notes comprising part of the Units so surrendered. The Company may at any time deliver to the Purchase Contract Agent for cancellation any Equity-Linked Securities previously executed, authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Equity-Linked Securities so delivered shall, upon an Issuer Order, be promptly cancelled by the Purchase Contract Agent; *provided, however*, that if the Equity-Linked Securities so delivered are Units, the Purchase Contract Agent shall deliver the Notes comprising such Units to the Trustee and Paying Agent (as defined in the Indenture) for disposition in accordance with the provisions of the Indenture. No Equity-Linked Securities shall be executed, authenticated on behalf of the Holder and delivered in lieu of or in exchange for any Equity-Linked Securities cancelled as provided in this Section, except as expressly permitted by this Agreement. All cancelled Equity-Linked Securities held by the Purchase Contract Agent shall be disposed of in accordance with its customary practices.

If the Company or any Affiliate of the Company shall acquire any Equity-Linked Security, such acquisition shall not operate as a cancellation of such Equity-Linked Security unless and until such Equity-Linked Security is delivered to the Purchase Contract Agent for cancellation, in which case such Equity-Linked Security shall be accompanied by an Issuer Order and cancelled in accordance with the immediately preceding paragraph.

ARTICLE IV

SETTLEMENT OF THE PURCHASE CONTRACTS

Section 4.01 Settlement Rate.

Each Purchase Contract obligates the Company to deliver, on the Mandatory Settlement Date, a number of shares of Common Stock (subject to Section 4.06 and ARTICLE V) equal to the Settlement Rate as determined by the Company unless such Purchase Contract settles prior to the Mandatory Settlement Date.

The "**Settlement Rate**" per Purchase Contract is equal to:

(i) if the Applicable Market Value (as defined below) is equal to or greater than the Threshold Appreciation Price, a number of shares of Common Stock equal to the Minimum Settlement Rate;

(ii) if the Applicable Market Value is less than the Threshold Appreciation Price but greater than the Reference Price, a number of shares of Common Stock equal to a fraction whose numerator is the Stated Amount of such Purchase Contract and whose denominator is the Applicable Market Value; and

(iii) if the Applicable Market Value is less than or equal to the Reference Price, a number of shares of Common Stock equal to the Maximum Settlement Rate;

provided, *however*, that the Maximum Settlement Rate, the Minimum Settlement Rate (each, a "**Fixed Settlement Rate**") shall be subject to adjustment as provided in ARTICLE V and rounded upward or downward to the nearest 1/10,000th of a share.

(iv) The Company shall give notice of the Settlement Rate to the Purchase Contract Agent and Holders no later than 2 Trading Days prior to the Mandatory Settlement Date.

Section 4.02 Representations and Agreements of Holders.

Each Holder of an Equity-Linked Security by its acceptance thereof:

(i) irrevocably authorizes the Purchase Contract Agent to enter into and perform this Agreement on its behalf as its attorney-in-fact;

(ii) consents to the provisions hereof;

(iii) agrees that it will treat each Purchase Contract in its entirety as a forward contract for the delivery of the Common Stock, or other Exchange Property, on the Mandatory Settlement Date (or on any Fundamental Change Early Settlement Date, Early Settlement Date, or Early Mandatory Settlement Date), under the terms of which contract the Company will, at settlement, deliver to the Holders the number of shares of Common Stock that such Holder is entitled to receive at that time pursuant to the terms of the Purchase Contracts;

(iv) in the case of a Holder that holds a Unit, agrees, for United States tax purposes, to treat (1) a Unit as an investment unit composed of two separate instruments, in accordance with its form and (2) the Notes as indebtedness; and

(v) agrees to be bound by the terms and provisions thereof.

Section 4.03 Delivery Upon Settlement of the Purchase Contracts.

(a) On the applicable Settlement Date (or, with respect to an Early Settlement Date, on the date provided for in the first sentence of Section 4.04(c)), the Company shall issue and deliver to the Purchase Contract Agent, for the benefit of the Holders of the Outstanding Purchase Contracts, the aggregate number of shares of Common Stock to which such Holders are entitled hereunder, registered in the name of the Purchase Contract Agent (or its nominee) as custodian for the Holders (such shares of Common Stock, together with any dividends or distributions for which a record date and payment date for such dividend or distribution have occurred after the due date for the delivery of the Common Stock, where such payment is made to the Purchase Contract Agent, the "**Purchase Contract Settlement Fund**").

(b) On or following the applicable Settlement Date, upon surrender of the Units or Separate Purchase Contracts by book entry transfer or by delivery of any Units or Separate Purchase Contracts in definitive form to the Purchase Contract Agent with duly completed settlement instructions in the form attached thereto, the Purchase Contract Agent shall transfer the shares of Common Stock underlying such Purchase Contracts, together with (i) cash in lieu of fractional shares as provided in Section 4.06, (ii) the Separate Note (in the case of the transfer or delivery of Units, but not in the case of settlement on the Mandatory Settlement Date if such Separate Note also matures on the Mandatory Settlement Date) and (iii) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund, but without any interest thereon, to such Holder by book-entry transfer, or other appropriate procedures, in accordance with such instructions.

(c) The shares of Common Stock underlying the Purchase Contracts shall be registered in the name of the Holder or the Holder's designee as specified in the settlement instructions provided by the Holder to the Purchase Contract Agent, and the Company will pay all stock transfer and similar taxes attributable to the delivery thereof, unless any such transfer or similar tax is payable in respect of any registration of such shares in a name of a Person other than the Person in whose name the Security evidencing such Purchase Contract is registered, in which case the Company shall not be required to pay any such transfer or similar tax and no such registration shall be made unless the Person requesting such registration has paid any such transfer or similar taxes required by reason of such registration in a name of a Person other than the Person in whose name the Security evidencing such Purchase Contract is registered or has established to the satisfaction of the Company that such tax either has been paid or is not payable.

In the event a Holder fails to effect surrender or delivery of its Units or Purchase Contracts in accordance with the provisions hereof, the shares of Common Stock underlying such Purchase Contracts, and any distributions thereon, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until the earlier to occur of:

(i) the surrender of the relevant Units or Separate Purchase Contracts for settlement in accordance with the provisions hereof or receipt by the Company and the Purchase Contract Agent from such Holder of satisfactory evidence that such Units or Separate Purchase Contracts have been destroyed, lost or stolen, together with any reasonable indemnity that may be required by the Purchase Contract Agent and the Company; and

(ii) the passage of two (2) years from the Settlement Date, following which the Purchase Contract Agent shall pay to the Company such Holder's shares of Common Stock and any distributions thereon; *provided*, *however*, that the Purchase Contract Agent, before making any such payment to the Company, may at the expense of the Company cause to be published once in a newspaper of general circulation in the City of New York or mail to each such Holder notice that such property remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing, any unclaimed balance of such property then remaining will be repaid to the Company. After payment to the Company, (A) Holders entitled to such property must look to the Company for payment as general creditors, unless applicable abandoned property law designates another person, and (B) all liability of the Purchase Contract Agent with respect to such property shall cease.

Section 4.04 Early Settlement.

(a) Subject to and upon compliance with the provisions of this Section 4.04, at any time during the period beginning on, and including, the Trading Day immediately following the Issue Dateto, but excluding, the third Trading Day immediately preceding the Mandatory Settlement Date, a Holder may elect to settle its Purchase Contracts early, in whole or in part (an "**Early Settlement**") at the Early Settlement Rate per Purchase Contract or Unit, as applicable.

(b) A Holder's right to receive Common Stock upon Early Settlement of any of its Purchase Contracts is subject to the following conditions:

(i) delivery of a written and signed notice of election (an "**Early Settlement Notice**") in the form attached to the Purchase Contract to the Purchase Contract Agent electing Early Settlement of such Purchase Contract;

(ii) surrendering the relevant Definitive Security, if such Purchase Contract or the Unit that includes such Purchase Contract is in the form of a Definitive Security, to the Purchase Contract Agent at the Corporate Trust Office duly endorsed for transfer to the Company or in blank with the form of Election to Settle Early on the reverse thereof duly completed, or if such Purchase Contract is represented by a Global Security, compliance with the applicable procedures of the Depositary; and

(iii) payment by such Holder of any transfer or similar taxes payable in connection with the issuance of Common Stock to any Person other than such Holder pursuant to Section 4.04(c) below.

If a Holder complies with the requirements set forth in clauses (i) through (iii) above earlier than the close of business on any Business Day, then that Business Day shall be considered the "**Early Settlement Date**." If a Holder complies with the requirements set forth in clauses (i) through (iii) above at or after 5:00 p.m., New York City time, on any Business Day or at any time on a day that is not a Business Day, then the next Business Day shall be considered the "**Early Settlement Date**."

(c) Upon surrender or book-entry transfer of such Purchase Contracts or the related Units in accordance with Section 4.03, the Company shall cause a number of shares of Common Stock, per Purchase Contract or Unit, as applicable, equal to the Early Settlement Rate to be issued and delivered, together with payment in lieu of any fraction of a share as provided in Section 4.06, as promptly as practicable, but no later than the third Business Day following the Early Settlement Date. Such shares shall be registered in the name of the Holder or the Holder's designee, and shall be delivered as specified on the applicable form of Election to Settle Early provided by the Holder to the Purchase Contract Agent. If any shares of Common Stock deliverable in respect of a Purchase Contract are to be registered to a Person other than the Person in whose name the Security evidencing such Purchase Contract is registered, no such registration shall be made unless the Person requesting such registration has paid any transfer and other taxes required by reason of such registration in a name other than that of the registered Holder of the certificate evidencing such Purchase Contract or has established to the satisfaction of the Company that such tax either has been paid or is not payable.

(d) In the event that Early Settlement is effected with respect to Purchase Contracts that are a component of Units, upon such Early Settlement the Company shall execute and the Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, a number of Separate Notes, in same form as the Notes comprising part of the Units, equal to the number of Purchase Contracts as to which Early Settlement was effected.

(e) In the event that Early Settlement is effected with respect to Purchase Contracts represented by less than all the Purchase Contracts evidenced by a Security, upon such Early Settlement the Company shall execute and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, one or more Securities evidencing the Purchase Contracts (and, if applicable, Amortizing Notes) as to which Early Settlement was not effected (and, if applicable, Amortizing Notes).

Section 4.05 Early Mandatory Settlement at the Company's Election.

(a) The Company has the right to settle the Purchase Contracts early, in whole but not in part (the "**Early Mandatory Settlement Right**"), on a date fixed by it (the "**Early Mandatory Settlement Date**") at the Early Mandatory Settlement Rate.

(b) If the Company elects to exercise its Early Mandatory Settlement Right, the Company will provide the Purchase Contract Agent and the Holders of Units, Separate Purchase Contracts and Separate Notes with a notice of its election (the "**Early Mandatory Settlement Notice**"), issue a press release announcing its election and post such press release on its website. The Early Mandatory Settlement Notice shall specify, among other things:

(i) the Early Mandatory Settlement Rate;

(ii) the Early Mandatory Settlement Date, which will be at least 5 but not more than 30 Business Days following the date of the Company's notice (the "**Notice Date**");

(iii) whether Holders of Units and Separate Notes will have the right to require the Company to repurchase their Amortizing Notes that are a component of the Units or are Separate Notes, as the case may be pursuant to and in accordance with the Indenture;

(iv) if applicable, the Repurchase Price and Repurchase Date;

(v) if applicable, the last date on which Holders may exercise their Repurchase Right; and

(vi) if applicable, the procedures that Holders must follow to require the Company to repurchase their Notes (which procedures shall be in accordance with the Indenture).

The Company will deliver the shares of Common Stock and any cash payable for fractional shares to the Holders of the Purchase Contract on the Early Mandatory Settlement Date.

(c) In the event that Early Mandatory Settlement is effected with respect to Purchase Contracts that are a component of Units, upon such Early Mandatory Settlement the Company shall execute and the Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes in the same form and in the same number as the Notes comprising part of the Units; *provided*, *however*, that if the Repurchase Date occurs prior to the Early Mandatory Settlement Date, Holders will surrender the Units on the Repurchase Date and the Company shall execute, and the Purchase Contract Agent and the Trustee shall authenticate, Separate Purchase Contracts in the same form and in the same number as the Purchase Contracts comprising part of the Units, such Separate Purchase Contracts to be settled on the Early Mandatory Settlement Date.

Section 4.06 No Fractional Shares.

No fractional shares or scrip certificates representing fractional shares of Common Stock shall be issued or delivered to Holders upon settlement of the Purchase Contracts. In lieu of any fractional shares of Common Stock that would otherwise be issuable upon settlement of any Purchase Contracts, a Holder of a Security shall be entitled to receive an amount in cash equal to the fraction of a share of Common Stock, calculated on an aggregate basis in respect of the Purchase Contracts being settled, multiplied by the last reported sale price of the Common Stock

on the Trading Day immediately preceding the applicable Settlement Date. The Company shall provide the Purchase Contract Agent from time to time with sufficient funds to permit the Purchase Contract Agent to make all cash payments required by this Section 4.06 in a timely manner.

ARTICLE V

ADJUSTMENTS

Section 5.01 Adjustments to the Fixed Settlement Rates.

(a) Each Fixed Settlement 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, then each Fixed Settlement 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 Settlement 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 Settlement 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 per share, then each Fixed Settlement 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 Settlement Rate by a fraction:

(A) the numerator of which is the sum of (x) 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 (y) the number of shares of Common Stock issuable pursuant to such rights or warrants, and

(B) the denominator of which is the sum of (x) 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 (y) 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 per share of Common Stock.

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 Settlement 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 Settlement 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 Settlement Rate shall be readjusted to such Fixed Settlement 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 any consideration given to exercise such rights or warrants (the value of which consideration, if other than cash, to be determined by the Board of Directors in a Board Resolution, 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, then each Fixed Settlement 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 5.01(a)(i), (2) any rights or warrants covered by Section 5.01(a)(ii), (3) any dividend or distribution covered by Section 5.01(a)(v) and (4) any Spin-Off to which the provisions set forth in Section 5.01(a)(iv)(B) apply), then each Fixed Settlement 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 per share of Common Stock, and

2. the denominator of which is the Current Market Price per share of Common Stock 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.

Any adjustment made pursuant to this clause (A) 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. If such distribution is not so made, then each Fixed Settlement 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 Settlement Rate that would then be in effect if such distribution had not been declared.

(B) In the case of a Spin-Off, each Fixed Settlement 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 the Capital Stock or equity interests distributed pursuant to such Spin Off will be multiplied by a fraction:

1. the numerator of which is the sum of (x) the Current Market Price per share of Common Stock and (y) the average of the Closing Prices of such Capital Stock or equity interests (determined pursuant to the definition of “Closing Price” as if such Capital Stock or equity interests were Common Stock) so distributed applicable to one share of Common Stock over the ten consecutive Trading Days commencing on, and including, the fifth Trading Day following the Ex-Date for such Spin-Off; and

2. the denominator of which is the Current Market Price per share of Common Stock.

Any adjustment made pursuant to this clause (B) shall be deemed to have 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 Capital Stock or equity interests. If any Stock Purchase Contract is to be settled after such time and on or before the tenth consecutive Trading Days commencing on, and including, the fifth Trading Day following the Ex-Date for such Spin-Off, then, notwithstanding anything to the contrary herein, the settlement of such Stock Purchase Contract shall be delayed to the extent, and only to the extent, necessary to determine the Current Market Price, or the average of the Closing Prices of such Capital Stock or equity interests, for purposes of determining the adjustment for such Spin-Off pursuant to this Section 5.01(a)(iv)(B).

If such Spin-Off is not so made, then each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to effect such Spin-Off, to such Fixed Settlement Rate that would then be in effect if such Spin-Off had not been declared.

(v) *Cash Distributions*. If the Company distributes an amount exclusively in cash to all or substantially all holders of Common Stock (excluding (x) any cash that is distributed in a Reorganization Event to which Section 5.01(e) applies, (y) any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company and (z) any consideration payable as part of a tender or exchange offer to which Section 5.01(a)(vi) applies), then each Fixed Settlement 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 per share of Common Stock, and

(B) the denominator of which is the Current Market Price per share of Common Stock 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 Settlement 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 Settlement Rate that 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 per share of Common Stock, then each Fixed Settlement 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 all shares of Common Stock validly tendered or exchanged and not withdrawn as of the Tender Offer Expiration Date; and

b. the product of (x) the Current Market Price per share of Common Stock and (y) the number of shares of Common Stock outstanding immediately after the last time (the "**Tender Offer Expiration Time**") tenders or exchanges may be made pursuant to such tender or exchange offer on the Tender Offer Expiration Date, after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer, and

(B) the denominator of which shall be equal to the product of (x) the Current Market Price per share of Common Stock and (y) the number of shares of Common Stock outstanding immediately prior to the Tender Offer Expiration Time and prior to giving effect to the purchase of any shares accepted for purchase or exchange in such tender or exchange offer.

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 Settlement Rate shall be readjusted to such Fixed Settlement 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, for the avoidance of doubt, if the application of this clause (vi) to any tender offer or exchange offer would result in a decrease in each Fixed Settlement Rate, no adjustment shall be made for such tender offer or exchange offer under this clause (vi).

(vii) If the application of Section 5.01(a)(iv)(A) or Section 5.01(a)(v) with respect to a distribution would result in the denominator referred to in Section 5.01(a)(iv)(A) or Section 5.01(a)(v) to be zero or negative, then, in lieu of an adjustment in each Fixed Settlement Rate, each Holder of Purchase Contracts shall be entitled to receive upon settlement thereof, in addition to any consideration otherwise then due thereupon, the kind and amount of indebtedness, shares of Capital Stock, securities, cash or other assets that such Holder would have received pursuant to such distribution if such Holder owned, as of the record date for determining the holders of Common Stock entitled to participate in such distribution, a number of shares of Common Stock equal to the Minimum Settlement Rate in effect on such date.

(viii) *Rights Plans*. To the extent that the Company has a rights plan in effect with respect to the Common Stock on any Settlement Date for any Purchase Contracts, the Holders thereof shall be entitled to receive from the Company, in addition to the consideration otherwise then due, the rights under such rights plan, unless, prior to such Settlement Date, the rights have separated from the Common Stock, in which case each Fixed Settlement 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 that is subject to Section 5.01(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 Settlement Rate, in addition to any other increases required by this Section 5.01, 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*, *however*, that the same proportionate adjustment must be made to each Fixed Settlement Rate.

(c) *Calculation of Adjustments; Adjustments to Threshold Appreciation Price, Reference Price and Stock Price*. (i) All adjustments to each Fixed Settlement Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock. No adjustment in a Fixed Settlement Rate shall be required unless such adjustment would require an increase or decrease of at least one percent therein; *provided*, *however*, that any adjustments which by reason of this Section 5.01(c)(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment; *provided*, *further*, that on the earlier of the Mandatory Settlement Date, the Fundamental Change Early Settlement Date, the Early Mandatory Settlement Date and an Early Settlement Date, adjustments to each Fixed Settlement Rate shall be made with respect to any such adjustment carried forward and which has not been taken into account before such date.

(i) Upon each adjustment to each Fixed Settlement Rates pursuant to Section 5.01(a) or Section 5.01(b), each of the Threshold Appreciation Price and the Reference Price shall be divided by a fraction, the numerator of which shall be either Fixed Settlement Rate immediately after such adjustment pursuant to Section 5.01(a) or Section 5.01(b), as applicable, and the denominator of which shall be such Fixed Settlement Rate immediately before such adjustment.

(ii) If:

(A) the record date for a dividend or distribution on the Common Stock occurs after the end of the 20 consecutive Trading Day period used for calculating the Applicable Market Value and before the Mandatory Settlement Date, Early Mandatory Settlement Date or Fundamental Change Early Settlement 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 Settlement Date, the Early Mandatory Settlement Date or Fundamental Change Early Settlement Date, as applicable.

(iii) If an adjustment is made to the Fixed Settlement Rates pursuant to Section 5.01(a) or Section 5.01(b), then an adjustment shall be made to each Stock Price set forth the first column of the table included in Section 5.02(e) by multiplying such Stock Price by a fraction, the numerator of which is the Minimum Settlement Rate immediately prior to such adjustment and the denominator of which is the Minimum Settlement Rate immediately after such adjustment. Each of the Fundamental Change Early Settlement Rates in the table included in Section 5.02(e) will be subject to adjustment in the same manner as each Fixed Settlement Rate as set forth in this Section 5.01.

(iv) Notwithstanding anything herein to the contrary, no adjustment to the Fixed Settlement Rates (or, for the avoidance of doubt, any corresponding adjustment to the Reference Price or Threshold Reference Price pursuant to Section 5.01(c)(i)) shall be made if Holders may participate in the transaction that would otherwise give rise to an adjustment. In addition, the Fixed Settlement Rates 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 Settlement Rates are to be adjusted, the Company shall:

(i) compute such adjusted Fixed Settlement Rates (and any corresponding adjustment to the Fundamental Change Settlement Rates, the Stock Prices, the Reference Price and the Threshold Appreciation Price) and prepare and transmit to the Purchase Contract Agent an Officers' Certificate, and, within five Business Days after such

adjustment, provide a statement to Holders, in each case setting forth such adjusted Fixed Settlement Rates, Fundamental Change Settlement Rates, Stock Prices, Reference Price and Threshold Appreciation Price, the method of calculation thereof in reasonable detail and the facts requiring such adjustment and upon which such adjustment is based; and

(ii) within five Business Days following such adjustment, provide, or cause to be provided, a written notice to the Holders of the occurrence of such event.

(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; or

(iv) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition covered by clause (i) above),

in each case, as a result of which the Common Stock would be converted into, or exchanged for, or would represent solely the right to receive, securities, cash or property (each, a "**Reorganization Event**," and, such securities, cash or property, the "**Exchange Property**," and the amount of Exchange Property that a holder of one share of the Common Stock would be entitled to receive on account of such Reorganization Event, an "**Exchange Property Unit**"), then from and after the effective time of such Reorganization Event, the consideration due upon settlement of any Purchase Contract will be determined in the same manner as if each reference herein to any number of shares of Common Stock were instead a reference to the same number of Exchange Property Units. 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 or exchanged for, or to represent solely 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 pursuant to such Reorganization Event by the holders of the Common Stock that affirmatively make such an election. The number of Exchange Property Units for each Purchase Contract settled following the effective time of such Reorganization Event will be determined without interest thereon and without any right to dividends or distributions thereon which have a record date prior to the date such Purchase Contracts are actually settled. The Applicable Market Value of the Exchange Property Unit will be determined (i) with respect to any publicly traded securities that compose all or part of the Exchange Property Unit, based on the Closing Price of such securities (determined pursuant to the definition of "Closing Price" as if such securities were Common Stock); (ii) in the case of any cash that composes all or part of the Exchange Property Unit, based on the amount of such cash; and (iii) in the case of any other property that composes all or part of the Exchange Property Unit, based on the value of such property, as determined by a nationally recognized independent investment banking firm retained by the Company for such purpose.

The above provisions of this Section 5.01(e) shall similarly apply to successive Reorganization Events. Following each Reorganization Event, (i) for the avoidance of doubt, the Fixed Settlement Rates shall continue to be subject to adjustment (together with corresponding adjustments to the Fundamental Change Settlement Rates, the Stock Prices, the Reference Price and the Threshold Appreciation Price) pursuant to this Section 5.01; and (ii) for all purposes hereunder (including, without limitation, for purposes of determining whether a Fundamental Change has occurred), each reference herein to Common Stock shall be read as if such reference were instead a reference to the Exchange Property Units.

The Company (or any successor) shall, within 20 days of the occurrence of any Reorganization Event, provide written notice to the Purchase Contract Agent and Holders of such occurrence of such event and of the composition of the Exchange Property and Exchange Property Units. Failure to deliver such notice shall not affect the operation of this Section 5.01(e).

Section 5.02 Early Settlement Upon a Fundamental Change.

(a) If a Fundamental Change occurs and a Holder elects to effect an Early Settlement of any Purchase Contract in connection with such Fundamental Change, then, notwithstanding anything to the contrary herein, such Holder shall receive a number of shares of Common Stock (or cash, securities or other property) equal to the Fundamental Change Early Settlement Rate (the "**Fundamental Change Early Settlement Right**"). An Early Settlement shall be deemed for these purposes to be "in connection with" such Fundamental Change if the Holder delivers an Early Settlement Notice to the Purchase Contract Agent, and otherwise satisfies the requirements for effecting Early Settlement of its Purchase Contracts set forth in Section 4.04, during the period beginning on, and including, the Effective Date of the Fundamental Change and ending on, and including, the 30th Business Day thereafter (the "**Fundamental Change Early Settlement Date**").

(b) The Company shall provide the Purchase Contract Agent and the Holders of Units and Separate Purchase Contracts with a notice of a Fundamental Change within five Business Days after its occurrence, issue a press release announcing the Effective Date and post such press release on its website. The notice shall set forth (i) the applicable Fundamental Change Early Settlement Rate, (ii) the kind and amount of Exchange Property receivable by the Holder upon settlement and (iii) the deadline by which each Holder's Fundamental Change Early Settlement Right must be exercised.

(c) The "**Fundamental Change Early Settlement Rate**" shall be determined by the Company by reference to the table below, based on the date on which the Fundamental Change occurs or becomes effective (the "**Effective Date**") and the stock price (the "**Stock Price**") in the Fundamental Change, which shall be determined as follows:

(i) in the case of a Fundamental Change described in clause (ii) of the definition thereof in which holders of shares 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) in all other cases, the Stock Price shall be the average of the daily Closing Prices per share of Common Stock over the 10 Trading Day period ending on, and including, the Trading Day preceding the Effective Date.

(d) The Stock Prices set forth in the first column of the table below and the Fundamental Change Early Settlement Rates in the table below are subject to adjustment as provided in Section 5.01(c)(iii).

(e) The following table sets forth the Fundamental Change Early Settlement Rate per Purchase Contract for each Stock Price and Effective Date set forth below:

	Effective Date			
Stock Price	**July 16, 2012**	**July 15, 2013**	**July 15, 2014**	**July 15, 2015**
$0.50	7.8254	7.9505	8.0765	8.6207
$1.00	7.4201	7.5453	7.6712	8.6207
$1.50	7.1706	7.2958	7.4217	8.6207
$2.50	6.9143	7.0395	7.1654	8.6207
$2.75	6.8776	7.0028	7.1287	8.6207
$2.90	6.8588	6.9840	7.1099	8.6207
$3.00	6.8475	6.9726	7.0986	8.3333
$3.25	6.8226	6.9478	7.0737	7.6923
$3.55	6.7983	6.9234	7.0494	7.0423
$3.75	6.7848	6.9100	7.0359	7.0373
$4.50	6.7484	6.8735	6.9994	7.0373
$5.00	6.7327	6.8579	6.9838	7.0373
$7.50	6.7021	6.8273	6.9532	7.0373
$10.00	6.6994	6.8246	6.9505	7.0373
$12.50	6.7028	6.8279	6.9539	7.0373
$15.00	6.7070	6.8322	6.9581	7.0373

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the applicable Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, then the Fundamental Change Early Settlement Rate shall be determined by a straight-line interpolation between the Fundamental Change Early Settlement Rates set forth for the higher and lower Stock Prices and the two Effective Dates, as applicable, based on a 365- or 366-day year, as applicable;

(ii) if the applicable Stock Price is in excess of $15.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above), then the Fundamental Change Early Settlement Rate shall be the Minimum Settlement Rate; or

(iii) if the applicable Stock Price is less than $0.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above) (the "**Minimum Stock Price**"), then the Fundamental Change Early Settlement Rate shall be determined as if the Stock Price equaled the Minimum Stock Price, and using straight line interpolation, as described in clause (i) of this Section 5.02(e), if the Effective Date is between two dates in the table.

The maximum number of shares of Common Stock deliverable under a Purchase Contract is the Maximum Settlement Rate.

(f) If a Holder exercises its Fundamental Change Early Settlement Right following the Effective Date of a Fundamental Change pursuant to clause (ii) of the definition thereof and such Fundamental Change constitutes a Reorganization Event, then, for the avoidance of doubt, such Holder shall, pursuant to Section 5.01(e), receive, per Stock Purchase Contract being settled, a number of Exchange Property Units equal to the Fundamental Change Settlement Rate applicable to such Fundamental Change.

(g) If a Holder does not elect to exercise the Fundamental Change Early Settlement Right, such Holder's Purchase Contracts shall remain outstanding and shall be subject to normal settlement on any subsequent Settlement Date, including, if applicable, the provisions set forth in Section 5.01.

Section 5.03 Adjustments for Events Occurring During Averaging Periods.

Notwithstanding anything to the contrary herein, whenever an average of prices of the Common Stock must be calculated pursuant hereto over a specified period of time, the Board of Directors shall, in its good faith determination (which determination shall be described in a Board Resolution), appropriately adjust such prices to account for any adjustment, pursuant hereto, to the Fixed Settlement Rates that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Fixed Settlement Rates where the Ex Date of such event occurs, at any time during such period.

ARTICLE VI
REMEDIES

Section 6.01 Unconditional Right of Holders to Receive Shares of Common Stock.

Each Holder of a Purchase Contract (whether or not included in a Unit) shall have the right, which is absolute and unconditional, to receive the shares of Common Stock pursuant to such Purchase Contract and to institute suit for the enforcement of any such right to receive the shares of Common Stock, and such right shall not be impaired without the consent of such Holder.

Section 6.02 Limitation on Proceedings.

No Holder of Purchase Contracts (whether or not included in a Unit) may institute any proceedings, judicial or otherwise, with respect to this Agreement or for any remedy hereunder,

except in the case of failure of the Purchase Contract Agent, for 60 days, to act after the Purchase Contract Agent has received a written request to institute proceedings in respect of a default with respect to any covenant hereunder from the Holders of not less than 25% of the Outstanding Purchase Contracts, as well as an offer of indemnity reasonably satisfactory to the Purchase Contract Agent. This provision will not prevent any Holder of Purchase Contracts (whether or not included in a Unit) from instituting suit for the delivery of Common Stock deliverable upon settlement of the Purchase Contracts on the Mandatory Settlement Date or any Early Settlement Date, Fundamental Change Settlement Date or Early Mandatory Settlement Date.

Section 6.03 Restoration of Rights and Remedies.

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

Section 6.04 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.10, no right or remedy herein conferred upon or reserved 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 6.05 Delay or Omission Not Waiver.

No delay or omission of any Holder to exercise any right or remedy upon a default hereunder shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article or by law to the Holders may be exercised from time to time, and as often as may be deemed expedient, by such Holders.

Section 6.06 Undertaking for Costs.

All parties to this Agreement agree, and each Holder of a Purchase Contract, by its acceptance of such Purchase Contract shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Purchase Contract Agent for any action taken, suffered or omitted by it as Purchase Contract Agent, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and costs against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided*, *however*, that the provisions of this Section shall not apply to any suit instituted by (a) the Purchase Contract Agent, (b) any Holder, or group of Holders, holding in the aggregate more

than 10% of the Outstanding Purchase Contracts, or (c) any Holder for the enforcement of the right to receive shares of Common Stock under the Purchase Contracts held by such Holder.

Section 6.07 Waiver of Stay or Execution Laws.

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

Section 6.08 Control by Majority.

The Holders of not less than a majority in number of the Outstanding Purchase Contracts shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Purchase Contract Agent, or of exercising any trust or power conferred upon the Purchase Contract Agent; *provided*, *however*, that the Purchase Contract Agent has received indemnity reasonably satisfactory to it. Notwithstanding anything to the contrary in the foregoing, the Purchase Contract Agent may refuse to follow any direction that is in conflict with any law or this Purchase Contract Agreement, that may involve it in personal liability or that may be unduly prejudicial to the Holders of Purchase Contracts not joining in the action.

ARTICLE VII

THE PURCHASE CONTRACT AGENT AND TRUSTEE

Section 7.01 Certain Duties and Responsibilities.

(a) Each of the Purchase Contract Agent and Trustee:

(i) undertakes to perform, with respect to the Units and Purchase Contracts, such duties and only such duties as are specifically delegated to it and set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Purchase Contract Agent or Trustee; and

(ii) in the absence of bad faith or gross negligence on its own part, may, with respect to the Units and Purchase Contracts, 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 Purchase Contract Agent or the Trustee, as applicable, and conforming to the requirements of this Agreement but in the case of any certificates or opinions that by any provision hereof are specifically required to be furnished to the Purchase Contract Agent or the Trustee, as applicable, the Purchase Contract Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement (but need not confirm or investigate the accuracy of the mathematical calculations or other facts stated therein and may assume the genuineness of all signatures).

(b) No provision of this Agreement shall be construed to relieve the Purchase Contract Agent from liability for its own grossly negligent action, its own grossly negligent failure to act, its own willful misconduct or its own bad faith, except that:

(i) this subsection shall not be construed to limit the effect of Section 7.01(a);

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

(iii) no provision of this Agreement shall require the Purchase Contract Agent 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 indemnity reasonably satisfactory to the Purchase Contract Agent is not provided to it; and

(iv) the Purchase Contract Agent 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 number of the Outstanding Purchase Contracts.

(c) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Purchase Contract Agent shall be subject to the provisions of this Section 7.01.

Section 7.02 Notice of Default.

Within 90 days after the occurrence of any default by the Company hereunder of which a Responsible Officer of the Purchase Contract Agent has actual knowledge, the Purchase Contract Agent shall transmit by mail to the Company and the Holders of Purchase Contracts, as their names and addresses appear in the Security Register, notice of such default hereunder, unless such Responsible Officer of the Purchase Contract Agent has actual knowledge that such default shall have been cured or waived.

Section 7.03 Certain Rights of Purchase Contract Agent.

Subject to the provisions of Section 7.01:

(a) the Purchase Contract Agent may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, 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;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate, Issuer Order or Issuer Request, and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

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

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

(e) the Purchase Contract Agent 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 Purchase Contract Agent, in its discretion may make reasonable further inquiry or investigation into such facts or matters related to the execution, delivery and performance of the Purchase Contracts as it may see fit, and, if the Purchase Contract Agent shall determine to make such further inquiry or investigation, it shall be given a reasonable opportunity, during the Company's normal business hours, to examine the relevant books, records and premises of the Company, personally or by agent or attorney, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(f) the Purchase Contract Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, or Affiliates and the Purchase Contract Agent shall not be responsible for any misconduct or negligence on the part of any agent, attorney or Affiliate appointed with due care by it hereunder;

(g) the Purchase Contract Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Holders pursuant to this Agreement, unless such Holders shall have provided to the Purchase Contract Agent security or indemnity reasonably satisfactory to the Purchase Contract Agent against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(h) the Purchase Contract Agent 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 Agreement;

(i) the Purchase Contract Agent shall not be deemed to have notice of any default hereunder unless a Responsible Officer of the Purchase Contract Agent has actual knowledge thereof or unless written notice of a default is received by the Purchase Contract Agent at the Corporate Trust Office of the Purchase Contract Agent, and such notice references the Purchase Contracts and this Agreement;

(j) the Purchase Contract Agent may request that the Company deliver an Officers' Certificate setting forth the names of individuals or titles of officers authorized at such time to take specified actions pursuant to this Agreement, 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;

(k) the rights, privileges, protections, immunities and benefits given to the Purchase Contract Agent and under this Agreement, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Purchase Contract Agent and Trustee (whether or not the Trustee is expressly referred in connection with any such rights, privileges, protections, immunities and benefits) and to each agent, custodian and other Person employed to act hereunder; and

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

Section 7.04 Not Responsible for Recitals.

The recitals contained herein and in the instruments evidencing any Purchase Contract or Amortizing Note, or in any document used in connection with the sale, offer or issuance of the Purchase Contracts or the Amortizing Notes, shall be taken as the statements of the Company, and neither the Purchase Contract Agent nor the Trustee assumes any responsibility for their accuracy. Neither the Purchase Contract Agent nor the Trustee makes any representations as to the validity or sufficiency of either this Agreement or of the Purchase Contracts. Neither the Purchase Contract Agent nor the Trustee shall be accountable for the use or application by the Company of the proceeds in respect of the Purchase Contracts.

Section 7.05 May Hold Units and Purchase Contracts.

Any Security Registrar or any other agent of the Company, or the Purchase Contract Agent, the Trustee and any of their Affiliates, in their individual or any other capacity, may become the owner of Units, Separate Purchase Contracts and Separate Notes and may otherwise deal with the Company or any other Person with the same rights it would have if it were not Security Registrar or such other agent, or the Purchase Contract Agent. The Company may become the owner of Units, Separate Purchase Contracts and Separate Notes.

Section 7.06 Money Held in Custody.

Money held by the Purchase Contract Agent in custody hereunder need not be segregated from other funds except to the extent required by law or provided herein. The Purchase Contract Agent shall be under no obligation to invest or pay interest on any money received by it hereunder except as specifically instructed by the Company in an Issuer Order.

Section 7.07 Compensation, Reimbursement and Indemnification.

The Company agrees:

(a) to pay to the Purchase Contract Agent compensation for all services rendered by it hereunder as the Company and the Purchase Contract Agent shall from time to time agree in writing;

(b) except as otherwise expressly provided for herein, to promptly reimburse the Purchase Contract Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by the Purchase Contract Agent in accordance with any provision of this Agreement (including costs of collection and the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be determined to have been caused by the Purchase Contract Agent's own gross negligence, willful misconduct or bad faith; and

(c) to indemnify the Purchase Contract Agent and any predecessor Purchase Contract Agent and their respective agents and representatives for, and to hold them harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of the Purchase Contract Agent's duties 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.

The provisions of this Section shall survive the resignation or removal of the Purchase Contract Agent, the termination of this Agreement or the rejection of this Agreement under bankruptcy law.

Section 7.08 Corporate Purchase Contract Agent Required; Eligibility.

There shall at all times be a Purchase Contract Agent hereunder which shall be a corporation or national banking association 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 exercise corporate trust powers, having (or being a member of a bank holding company having) a combined capital and surplus of at least $50,000,000, subject to supervision or examination by Federal or State authority and having a corporate trust office in the Borough of Manhattan, New York City, if there be such a corporation in the Borough of Manhattan, New York City, qualified and eligible under this Article and willing to act on reasonable terms. If such corporation 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 corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Purchase Contract Agent 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 7.09 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Purchase Contract Agent and no appointment of a successor Purchase Contract Agent pursuant to this Article shall become effective until the acceptance of appointment by the successor Purchase Contract Agent in accordance with the applicable requirements of Section 7.10.

(b) The Purchase Contract Agent may resign at any time by giving written notice thereof to the Company 60 days prior to the effective date of such resignation. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10 shall not have been delivered to the Purchase Contract Agent within 30 days after the giving of such notice of resignation, the resigning Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(c) The Purchase Contract Agent may be removed at any time by Act of the Holders of a majority in number of the Outstanding Purchase Contracts delivered to the Purchase Contract Agent and the Company. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10 shall not have been delivered to the Purchase Contract Agent within 30 days after the delivery of such Act, the removed Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(d) If at any time:

(i) the Purchase Contract Agent shall cease to be eligible under Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(ii) the Purchase Contract Agent shall be adjudged bankrupt or insolvent or a receiver of the Purchase Contract Agent or of its property shall be appointed or any public officer shall take charge or control of the Purchase Contract Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (x) the Company by a Board Resolution may remove the Purchase Contract Agent, or (y) any Holder who has been a bona fide Holder of a Purchase Contract 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 Purchase Contract Agent and the appointment of a successor Purchase Contract Agent.

(e) If the Purchase Contract Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Purchase Contract Agent for any cause, the Company shall promptly appoint a successor Purchase Contract Agent and shall comply with the applicable requirements of Section 7.10. If no successor Purchase Contract Agent shall have been so appointed by the Company and accepted appointment in the manner required by Section 7.10, any Holder who has been a bona fide Holder of a Purchase Contract for at least six months, on behalf of itself and all others similarly situated, or the Purchase Contract Agent may petition at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(f) The Company shall give, or shall cause such successor Purchase Contract Agent to give, notice of each resignation and each removal of the Purchase Contract Agent and each appointment of a successor Purchase Contract Agent by mailing written notice of such event by first-class mail, postage prepaid, to Holders as their names and addresses appear in the applicable Security Register. Each notice shall include the name of the successor Purchase Contract Agent and the address of its Corporate Trust Office.

Section 7.10 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Purchase Contract Agent, every such successor Purchase Contract Agent so appointed shall execute, acknowledge and deliver to the Company and to the retiring Purchase Contract Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Purchase Contract Agent shall become effective and such successor Purchase Contract Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, agencies and duties of the retiring Purchase Contract Agent, and the retiring Purchase Contract Agent shall have no further obligations or duties hereunder except as expressly set forth herein. At the request of the Company or the successor Purchase Contract Agent, such retiring Purchase Contract Agent shall, upon its receipt of payment or reimbursement of any amounts due to it hereunder, execute and deliver an instrument transferring to such successor Purchase Contract Agent all the rights, powers and trusts of the retiring Purchase Contract Agent and shall duly assign, transfer and deliver to such successor Purchase Contract Agent all property and money held by such retiring Purchase Contract Agent hereunder.

(b) Upon request of any such successor Purchase Contract Agent, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Purchase Contract Agent all such rights, powers and agencies referred to in paragraph Section 7.10(a).

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

Section 7.11 Merger; Conversion; Consolidation or Succession to Business.

Any corporation into which the Purchase Contract 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 the Purchase Contract Agent shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Purchase Contract Agent, shall be the successor of the Purchase Contract Agent hereunder; *provided*, *however*, that 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. If any Equity-Linked Securities shall have been authenticated on behalf of the Holders by the Trustee and Purchase Contract Agent then in office, but not delivered, any successor by merger, conversion

or consolidation to such Purchase Contract Agent may adopt such Purchase Contract Agent's authentication and deliver the Equity-Linked Securities so authenticated with the same effect as if such successor Purchase Contract Agent had itself authenticated such Equity-Linked Securities.

Section 7.12 Preservation of Information; Communications to Holders.

(a) The Purchase Contract Agent shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders as received by the Purchase Contract Agent in its capacity as Security Registrar.

(b) If three or more Holders (such three or more Holders, the "**Applicants**") apply in writing to the Purchase Contract Agent, and furnish to the Purchase Contract Agent reasonable proof that each such Applicant has owned a Unit or Separate Purchase Contract for a period of at least six months preceding the date of such application, and such application states that the Applicants desire to communicate with other Holders with respect to their rights under this Agreement or under the Units or Separate Purchase Contracts and is accompanied by a copy of the form of proxy or other communication that such Applicants propose to transmit, then the Purchase Contract Agent shall mail to all the Holders copies of the form of proxy or other communication that is specified in such request, with reasonable promptness after a tender to the Purchase Contract Agent of the materials to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing.

Section 7.13 No Other Obligations of Purchase Contract Agent or Trustee.

Except to the extent otherwise expressly provided in this Agreement, neither the Purchase Contract Agent nor Trustee assumes any obligations, and neither the Purchase Contract Agent nor Trustee shall be subject to any liability, under this Agreement or Security evidencing a Unit or Purchase Contract in respect of the obligations of the Holder of any Unit or Purchase Contract thereunder. The Company agrees, and each Holder of a Security, by his or her acceptance thereof, shall be deemed to have agreed, that the Purchase Contract Agent's or Trustee's authentication, as applicable, of the Securities on behalf of the Holders shall be solely as agent and attorney-in-fact for the Holders, and that neither the Purchase Contract Agent nor Trustee shall have any obligation to perform such Purchase Contracts (whether held as components of Units or Separate Purchase Contracts) on behalf of the Holders, except to the extent expressly provided in ARTICLE III hereof. Anything contained in this Agreement to the contrary notwithstanding, in no event shall the Purchase Contract Agent, the Trustee or their respective officers, employees or agents be liable under this Agreement to any third party for indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including lost profits, whether or not the likelihood of such loss or damage was known to the Purchase Contract Agent or Trustee, incurred without any act or deed that is found to be attributable to gross negligence, willful misconduct or bad faith on the part of the Purchase Contract Agent or Trustee.

Section 7.14 Tax Compliance.

(a) The Company and the Purchase Contract Agent shall comply with all applicable certification, information reporting and withholding (including "backup" withholding)

requirements imposed by applicable tax laws, regulations or administrative practice with respect to (i) any payments made with respect to the Purchase Contracts or (ii) the issuance, delivery, holding, transfer, redemption or exercise of rights under the Purchase Contracts. Such compliance shall include, without limitation, the preparation and timely filing of required returns and the timely payment of all amounts required to be withheld to the appropriate taxing authority or its designated agent.

(b) The Company shall provide written direction to the Purchase Contract Agent with respect to its obligations arising under Section 7.14(a). The Purchase Contract Agent shall comply, in accordance with the terms hereof, with any such written direction or any other written direction received from the Company with respect to the execution or certification of any required documentation and the application of such requirements to particular payments or Holders or in other particular circumstances, and may for purposes of this Agreement conclusively rely on any such direction in accordance with the provisions of Section 7.01(a)(ii) hereof.

(c) The Purchase Contract Agent shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available, on written request, to the Company or its authorized representative within a reasonable period of time after receipt of such request.

ARTICLE VIII

SUPPLEMENTAL AGREEMENTS

Section 8.01 Supplemental Agreements Without Consent of Holders.

Without the consent of any Holders, the Company, the Purchase Contract Agent and the Trustee at any time and from time to time, may enter into one or more agreements supplemental hereto, in form satisfactory to the Company and the Purchase Contract Agent, to:

(i) evidence the permitted succession of another Person to the Company's obligations;

(ii) add to the covenants for the benefit of Holders or to surrender any of the Company's rights or powers;

(iii) evidence and provide for the acceptance of appointment of a successor Purchase Contract Agent;

(iv) make provision with respect to the rights of Holders pursuant to adjustments in the Settlement Rate due to Reorganization Events;

(v) cure any ambiguity or manifest error, to correct or supplement any provisions that may be inconsistent; or

(vi) to make any other provisions with respect to such matters or questions;

provided that any such action described in clauses (v) and (vi) above shall not adversely affect the interest of the Holders.

Section 8.02 Supplemental Agreements With Consent of Holders.

With the consent of the Holders of not less than a majority in number of the Outstanding Purchase Contracts, by Act of said Holders delivered to the Company, the Purchase Contract Agent and the Trustee the Company, when authorized by a Board Resolution, and the Purchase Contract Agent and Trustee may enter into an agreement or agreements supplemental hereto for the purpose of modifying in any manner the terms of the Purchase Contracts, or the provisions of this Agreement or the rights of the Holders in respect of the Purchase Contracts; *provided*, *however*, that, except as contemplated herein, no such supplemental agreement shall, without the consent of each Holder of an outstanding Purchase Contract affected thereby,

(i) reduce the number of shares of Common Stock deliverable upon settlement of the Purchase Contracts, change the Mandatory Settlement Date, the right to settle Purchase Contracts early or the Fundamental Change Early Settlement Right; or otherwise adversely affect the Holder's rights under the Purchase Contract; or

(ii) reduce the above-stated percentage of Outstanding Purchase Contracts the consent of the Holders of which is required for the modification or amendment of the provisions of the Purchase Contracts or the Purchase Contract Agreement, or

(iii) impair the right to institute suit for the enforcement of the Purchase Contract.

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

Section 8.03 Execution of Supplemental Agreements.

In executing, or accepting the additional agencies created by, any supplemental agreement permitted by this Article or the modifications thereby of the agencies created by this Agreement, the Purchase Contract Agent and Trustee shall be provided, and (subject to Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental agreement is authorized or permitted by this Agreement and does not violate the Indenture, and that any and all conditions precedent to the execution and delivery of such supplemental agreement have been satisfied. The Purchase Contract Agent and Trustee may, but shall not be obligated to, enter into any such supplemental agreement that affects the Purchase Contract Agent's or Trustee's own rights, duties or immunities under this Agreement or otherwise.

Section 8.04 Effect of Supplemental Agreements.

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

Section 8.05 Reference to Supplemental Agreements.

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

Section 8.06 Notice of Supplemental Agreements.

After any supplemental agreement under this Article becomes effective, the Company shall mail to the Holders a notice briefly describing such supplemental agreement; *provided, however*, that the failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of such supplemental agreement.

ARTICLE IX

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 9.01 Covenant Not to Consolidate, Merge, Convey, Transfer or Lease Property Except Under Certain Conditions.

The Company covenants that it will not merge with and into, consolidate with or convert into any other Person or sell, assign, transfer, lease or convey all or substantially all of its properties and assets to any Person, unless:

(i) the successor entity is an entity organized and validly existing under the laws of the United States of America, any State of the United States of America or the District of Columbia that expressly assumes all of the Company's obligations under the Units, the Purchase Contracts and this Agreement; and

(ii) the Company or the successor entity, as the case may be, will not, immediately after the merger, consolidation, conversion, sale, assignment, lease or conveyance, be in default in the performance of its covenants and conditions under the Units, the Purchase Contracts or this Agreement.

Section 9.02 Rights and Duties of Successor Entity.

In case of any such merger, consolidation, sale, assignment, transfer or conveyance (but not any such lease) and upon any such assumption by a successor entity in accordance with Section 9.01, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such successor entity thereupon

may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities evidencing Units or Purchase Contracts issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Purchase Contract Agent; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Agreement prescribed, the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holders and deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Purchase Contract Agent and Trustee for authentication, and any Security evidencing Units or Purchase Contracts that such successor corporation thereafter shall cause to be signed and delivered to the Purchase Contract Agent and Trustee for that purpose. All the Securities issued shall in all respects have the same legal rank and benefit under this Agreement as the Securities theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Securities had been issued at the date of the execution hereof.

In the event of any such merger, consolidation, sale, assignment, transfer, lease or conveyance, such change in phraseology and form (but not in substance) may be made in the Securities evidencing Units or Purchase Contracts thereafter to be issued as may be appropriate.

Section 9.03 Officers' Certificate and Opinion of Counsel Given to Purchase Contract Agent.

The Purchase Contract Agent, subject to Section 7.01 and Section 7.03, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such merger, consolidation, conversion, sale, assignment, transfer, lease or conveyance, and any such assumption, complies with the provisions of this Article and that all conditions precedent to the consummation of any such merger, consolidation, sale, assignment, transfer, lease or conveyance have been met.

ARTICLE X

COVENANTS OF THE COMPANY

Section 10.01 Performance Under Purchase Contracts.

The Company covenants and agrees for the benefit of the Holders from time to time of the Units and Purchase Contracts that it will duly and punctually perform its obligations under the Units and Purchase Contracts in accordance with the terms of the Units and Purchase Contracts and this Agreement.

Section 10.02 Maintenance of Office or Agency.

The Company will maintain in the Borough of Manhattan, New York City an office or agency where Securities may be presented or surrendered for acquisition of shares of Common Stock upon settlement of the Purchase Contracts on the Mandatory Settlement Date, any Early Settlement Date or any Early Mandatory Settlement Date and where notices and demands to or upon the Company in respect of the Purchase Contracts and this Agreement may be served. The Company will give prompt written notice to the Purchase Contract Agent 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 Purchase Contract Agent with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Purchase Contract Agent 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 Securities 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 the Borough of Manhattan, New York City for such purposes. The Company will give prompt written notice to the Purchase Contract Agent of any such designation or rescission and of any change in the location of any such other office or agency. The Company hereby designates as the place of payment for the Purchase Contracts the Corporate Trust Office and appoints the Purchase Contract Agent at its Corporate Trust Office as paying agent in such city.

Section 10.03 Statements of Officers of the Company as to Default.

The Company will deliver to the Purchase Contract Agent, within 120 days after the end of each fiscal year of the Company (which as of the date hereof is September 30) ending after the date hereof, an Officers' Certificate (one of the signers of which shall be the principal executive officer, principal financial officer or principal accounting officer of the Company), stating whether or not to the knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions hereof, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.04 Existence.

Except as otherwise permitted under ARTICLE IX, the Company will do or cause to be done all things necessary to maintain in full force its legal existence, rights (charter and statutory) and franchises, except that the Company is not required to preserve any right or franchise if the Company determines that it is no longer desirable in the conduct of its business and the loss is not disadvantageous in any material respect to the Holders of any Purchase Contracts.

Section 10.05 Company to Reserve Common Stock.

The Company shall at all times prior to the Mandatory Settlement Date reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, solely for issuance upon settlement of the Purchase Contracts, that number of shares of Common Stock as shall from time to time be issuable upon the settlement of all Outstanding Purchase Contracts (whether or not included in a Unit), assuming settlement at the Maximum Settlement Rate.

Section 10.06 Covenants as to Common Stock.

The Company covenants that all shares of Common Stock that may be issued upon settlement of any Outstanding Purchase Contract will, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, free from all taxes, liens and charges and not subject to any preemptive rights.

The Company further covenants that, if at any time the Common Stock shall be listed on the NYSE or any other national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed, so long as the Common Stock shall be so listed on such exchange, all Common Stock issuable upon settlement of the Purchase Contracts; *provided*, *however*, that, if the rules of such exchange system permit the Company to defer the listing of such Common Stock until the first delivery of Common Stock upon settlement of Purchase Contracts in accordance with the provisions of this Agreement, the Company covenants to list such Common Stock issuable upon settlement of the Purchase Contracts in accordance with the requirements of such exchange at such time.

Section 10.07 Tax Treatment.

The Company agrees, and by purchasing a Unit each Holder agrees, for United States tax purposes, to treat (1) a Unit as an investment unit composed of two separate instruments, in accordance with its form and (2) the Notes as indebtedness.

[SIGNATURES ON THE FOLLOWING PAGE]

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

BEAZER HOMES USA, INC.

By: /s/ Robert L. Salomon
Name: Robert L. Salomon
Title: Executive Vice President and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,
as Purchase Contract Agent

By: /s/ William B. Echols
Name: William B. Echols
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Trustee under the Indenture

By: /s/ William B. Echols
Name: William B. Echols
Title: Vice President

EXHIBIT A

[FORM OF FACE OF UNIT]

[INCLUDE IF A GLOBAL UNIT]

[THIS SECURITY IS A GLOBAL UNIT WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT 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 GLOBAL UNIT IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AGREEMENT AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY 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.

UNLESS THIS GLOBAL UNIT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY 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.]

BEAZER HOMES USA, INC.

7.50% TANGIBLE EQUITY UNITS

CUSIP No. 07556Q 709

No. _____ [Initial][1] Number of Units _____

This Unit certifies that [CEDE & CO.][1] [ ][2] (the "**Holder**"), or registered assigns, is the registered owner of [the number of Units set forth above][2] [the number of Units shown on Schedule A hereto, which number may from time to time be reduced or increased, as appropriate in accordance with the terms of the Purchase Contract Agreement (as defined below), but which shall not exceed Units][1].

Each Unit consists of (i) a Purchase Contract and (ii) a Note, in each case issued by Beazer Homes USA, Inc. (the "**Company**"). Each Unit evidenced hereby is governed by a Purchase Contract Agreement, dated as of July 16, 2012 (as may be supplemented from time to time, the "**Purchase Contract Agreement**"), between the Company and U.S. Bank National Association, as purchase contract agent (including its successors hereunder, the "**Purchase Contract Agent**") and as trustee (including its successors hereunder, the "**Trustee**") under the Indenture.

Reference is hereby made to the Purchase Contract Agreement and the Indenture and, in each case supplemental agreements thereto, for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Trustee, the Company, and the Holders and of the terms upon which the Units are, and are to be, executed and delivered.

Upon the conditions and under the circumstances set forth in the Purchase Contract Agreement, Holders of Units shall have the right to separate a Unit into its component parts, and a Holder of a Separate Purchase Contract and Separate Note shall have the right to re-create a Unit.

The Company agrees, and by purchasing a Unit each Holder agrees, for U.S. tax purposes, to treat (1) a Unit as an investment unit composed of two separate instruments, in accordance with its form and (2) the Notes as indebtedness.

The Units, and any claim, controversy or dispute arising under or related to the Units, shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to the conflicts of law principles that would result in the application of law other than the law of the State of New York).

1 **Include if a Global Unit.**

2 **Exclude if a Global Unit.**

Capitalized terms used herein and not defined have the meanings given to such terms in the Purchase Contract Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

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

BEAZER HOMES USA, INC.
By: _____
Name:
Title:

Dated: _____

UNIT CERTIFICATE OF AUTHENTICATION

OF PURCHASE CONTRACT AGENT AND TRUSTEE UNDER INDENTURE

This is one of the Units referred to in the within mentioned Purchase Contract Agreement.

U.S. BANK NATIONAL ASSOCIATION,
as Purchase Contract Agent

By: _____
(Authorized Signatory)

U.S. BANK NATIONAL ASSOCIATION,
as Trustee under the Indenture

By: _____
(Authorized Signatory)

Dated: _____

SCHEDULE A

[INCLUDE IF A GLOBAL UNIT]

SCHEDULE OF INCREASES OR DECREASES IN A GLOBAL UNIT

The initial number of Units evidenced by this Global Unit is _____. The following increases or decreases in this Global Unit have been made:

Date	Amount of increase in number of Units evidenced by the Global Unit	Amount of decrease in number of Units evidenced by the Global Unit	Number of Units evidenced by the Global Unit following such decrease or increase	Signature of authorized signatory of Purchase Contract Agent

ATTACHMENT 1

[FORM OF SEPARATION NOTICE]

U.S. Bank National Association
Corporate Trust Services
1349 West Peachtree Street, Suite 1050
Atlanta, GA 30309

Attention: Account Manager—Beazer Tangible Equity Units

Re: Separation of [Global][3] Units

The undersigned [Beneficial Owner][3] hereby notifies you that it wishes to separate Units [as to which it holds a Book-Entry Interest][3] into the applicable number of Notes and the applicable number of Purchase Contracts in accordance with the Purchase Contract Agreement (the "**Purchase Contract Agreement**") dated July 16, 2012 between the Beazer Homes USA, Inc. (the "**Company**") and U.S. Bank National Association, as Purchase Contract Agent and Trustee under the Indenture. Terms used and not defined herein have the meaning assigned to such terms in the Purchase Contract Agreement.

The undersigned [includes herewith][4] [Beneficial Owner has instructed the undersigned Depository Participant to transfer to you its Book-Entry Interests][3] the number of Units specified in the immediately succeeding paragraph. The undersigned [includes herewith][4] [Beneficial Owner has furnished the undersigned Depository Participant with][3] the appropriate endorsements and documents and paid all transfer or similar taxes, if any, to the extent required by the Purchase Contract Agreement.

Please [deliver to the undersigned's address specified below][4] [transfer to the account of the undersigned Beneficial Owner with the undersigned Depositary Participant the beneficial interests in][3] (i) the number of Notes and (ii) number of Purchase Contracts represented by the number of Units specified above.

[3] **Include if a Global Unit.**
[4] **Exclude if a Global Unit.**

IN WITNESS WHEREOF, the [undersigned has caused this instrument to be duly executed][4] [Depository Participant has caused this instrument to be duly executed on behalf of itself and the undersigned Beneficial Owner][3].

Dated: _____

[NAME OF BENEFICIAL OWNER]

By: _____
Name:
Title:
Address:

[NAME OF DEPOSITORY PARTICIPANT][3]

By: _____
Name:
Address:

Attest By:

ATTACHMENT 2

[FORM OF RECREATION NOTICE]

U.S. Bank National Association
Corporate Trust Services
1349 West Peachtree Street, Suite 1050
Atlanta, GA 30309

Attention: Account Manager–Beazer Tangible Equity Units

Re: Recreation of [Global][5] Units

The undersigned [Beneficial Owner][5] hereby notifies you that it wishes to recreate Units [as to which it holds a Book-Entry Interest][5] from the applicable number of Notes and the applicable number of Purchase Contracts in accordance with the Purchase Contract Agreement (the "**Purchase Contract Agreement**") dated as of July 16, 2012 between Beazer Homes USA, Inc. (the "**Company**") and U.S. Bank National Association, as Purchase Contract Agent and Trustee under the Indenture. Terms used and not defined herein have the meaning assigned to such terms in the Purchase Contract Agreement.

The undersigned [includes herewith][6] [Beneficial Owner has instructed the undersigned Depository Participant to transfer to you its Book-Entry Interests in][5] the applicable number of Notes and the applicable number of Purchase Contracts sufficient for the recreation of the number of Units specified above. The undersigned [includes herewith][6] [Beneficial Owner has furnished the undersigned Depository Participant with][5] the appropriate endorsements and documents and paid all transfer or similar taxes, if any, to the extent required by the Purchase Contract Agreement.

Please [deliver to the undersigned's address specified below][6] [transfer to the account of the undersigned Beneficial Owner with the undersigned Depositary Participant the beneficial interests in][5] the number of Units specified above.

[5] **Include if a Global Unit.**
[6] **Exclude if a Global Unit.**

IN WITNESS WHEREOF, the [undersigned has caused this instrument to be duly executed][6] [Depository Participant has caused this instrument to be duly executed on behalf of itself and the undersigned Beneficial Owner][8].

Dated: _____

[NAME OF BENEFICIAL OWNER]

By: _____
Name:
Title:
Address:

[NAME OF DEPOSITORY PARTICIPANT][7]

By: _____
Name:
Address:

Attest By:

[6] **Exclude if a Global Unit.**
[8] **Include if a Global Unit.**
[7] **Exclude if a Global Unit.**

ATTACHMENT 3

BEAZER HOMES USA, INC.

PURCHASE CONTRACTS

CUSIP No. 07556Q 121

No. _____ Number of Purchase Contracts: _____

_____

This Purchase Contract certifies that, **Cede & Co**, or its registered assigns (the "**Holder**") is the registered owner of the number of Purchase Contracts [set forth above][shown on Schedule A hereto], which number may from time to time be reduced or increased as set forth on Schedule A hereto, as appropriate in accordance with the terms of the Purchase Contract Agreement, dated as of July 16, 2012 (as may be supplemented from time to time, the "**Purchase Contract Agreement**"), between the Company and U.S. Bank National Association, as purchase contract agent (including its successors hereunder, the "**Purchase Contract Agent**") and as trustee under the Indenture (as defined on the reverse hereof), but which shall not exceed _____ Purchase Contracts.

Each Purchase Contract consists of the rights of the Holder under such Purchase Contract with the Company. All capitalized terms used herein which are defined in the Purchase Contract Agreement have the meaning set forth therein.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract on the Mandatory Settlement Date a number shares of common stock, $0.001 par value ("**Common Stock**"), of the Company equal to the Settlement Rate, unless such Purchase Contract settles prior to the Mandatory Settlement Date, all as provided in the Purchase Contract Agreement and more fully described on the reverse hereof.

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:

Dated: _____

PURCHASE CONTRACT CERTIFICATE OF AUTHENTICATION
OF PURCHASE CONTRACT AGENT AND TRUSTEE UNDER THE INDENTURE

This is one of the Purchase Contracts referred to in the within-mentioned Purchase Contract Agreement.

U.S. BANK NATIONAL ASSOCIATION,
as Purchase Contract Agent

By:_____
(Authorized Signatory)

U.S. BANK NATIONAL ASSOCIATION,
as Trustee under the Indenture

By:_____
(Authorized Signatory)

[REVERSE OF PURCHASE CONTRACT]

Each Purchase Contract evidenced hereby is governed by the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement and supplemental agreements thereto for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Trustee, the Company, and the Holders and of the terms upon which the Purchase Contracts are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract, on the Mandatory Settlement Date, a number of shares of Common Stock equal to the Settlement Rate, unless such Purchase Contract settles prior to the Mandatory Settlement Date, all as provided in the Purchase Contract Agreement.

No fractional shares of Common Stock will be issued upon settlement of Purchase Contracts, as provided in Section 4.06 of the Purchase Contract Agreement.

The Purchase Contracts are issuable only in registered form and only in denominations of a single Purchase Contract and any integral multiple thereof. The transfer of any Purchase Contract will be registered and Purchase Contracts may be exchanged as provided in the Purchase Contract Agreement.

The Holder of this Purchase Contract, by its acceptance hereof, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract Agreement on its behalf as its attorney-in-fact and agrees to be bound by the terms and provisions thereof.

Subject to certain exceptions set forth in the Purchase Contract Agreement, the provisions of the Purchase Contract Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts, and any claim, controversy or dispute arising under or related to the Purchase Contracts, shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to the conflicts of law principles that would result in the application of law other than the law of the State of New York).

The Company, the Purchase Contract Agent and its Affiliates and any agent of the Company or the Purchase Contract Agent may treat the Person in whose name this Purchase Contract is registered as the owner of the Purchase Contracts evidenced hereby for the purpose of performance of the Purchase Contracts and for all other purposes whatsoever, whether or not any payments in respect thereof be overdue and notwithstanding any notice to the contrary, and neither the Company, the Purchase Contract Agent nor any such agent shall be affected by notice to the contrary.

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of the Common Stock or other Exchange Property.

Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

A copy of the Purchase Contract Agreement is available for inspection at the offices of the Purchase Contract Agent.

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 GIT MIN ACT:	_____ (cust) Custodian: _____ (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.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Purchase Contracts and all rights thereunder, hereby irrevocably constituting and appointing attorney _____, to transfer said Purchase Contracts on the books of the Company with full power of substitution in the premises.

DATED: _____ Signature: _____

Notice : The signature to this assignment must correspond with the name as it appears upon the face of the within Purchase Contracts in every particular, without alteration or enlargement or any change whatsoever

Signature Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate for shares of Common Stock or other securities deliverable upon settlement on or after the Settlement Date of Purchase Contracts evidenced by this instrument 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 of Common Stock or other securities are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incidental 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:

_____
Name

Address

_____

_____

Social Security or other Taxpayer Identification Number, if any

_____
Name

Address

_____

_____

_____

ELECTION TO SETTLE EARLY

The undersigned Holder of this Purchase Contract hereby irrevocably exercises the option to effect Early Settlement in accordance with the terms of the Purchase Contract Agreement with respect to the Purchase Contracts evidenced by this instrument specified below. The undersigned Holder directs that a certificate for shares of Common Stock or other securities deliverable upon such Early Settlement be registered in the name of, and delivered, together with a check in payment for any fractional share and any Purchase Contract representing any Purchase Contracts evidenced hereby as to which Early Settlement is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Common Stock or other securities 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: _____

Number of Purchase Contracts evidenced hereby as to which Early Settlement is being elected:

If shares of Common Stock or Purchase Contracts are to be registered in the name of and delivered to a Person other than the Holder, please print such Person's name and address:

Name

Address

Social Security or other Taxpayer Identification Number, if any

REGISTERED HOLDER

Please print name and address of Registered Holder:

Name

Address

SCHEDULE A

SCHEDULE OF INCREASES OR DECREASES IN THE PURCHASE CONTRACT

The initial number of Purchase Contracts evidenced by this certificate is _____. The following increases or decreases in this certificate have been made:

Date	Amount of increase in number of Purchase Contracts evidenced hereby	Amount of decrease in number of Purchase Contracts evidenced hereby	Number of Purchase Contracts evidenced hereby following such decrease or increase	Signature of authorized signatory of Purchase Contract Agent

BEAZER HOMES USA, INC.
6.00% SENIOR AMORTIZING NOTES
DUE JULY 15, 2015

REGISTERED
CUSIP: 07556Q 808

ISIN: US07556Q8087

No. _____ [Initial] Number of Notes: [_____ _____]

Beazer Homes USA, Inc., a Delaware corporation (the "**Company**", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to CEDE & CO., or registered assigns, the initial principal sum of $5.1086 for each of the number of Notes set forth [above][in Schedule A hereto], in quarterly installments (each constituting a payment of interest at the rate per year of 6.00% and a partial repayment of principal) payable on each July 15, October 15, January 15 and April 15, commencing on October 15, 2012 (each such date, an "**Installment Payment Date**" and the period from, and including, July 16, 2012 to, but excluding, the first Installment Payment Date and each subsequent full quarterly period from and including an Installment Payment Date to, but excluding, the immediately succeeding Installment Payment Date, an "**Installment Payment Period**"), all as set forth on the reverse hereof. The installment amount payable on any Installment Payment Date shall be computed on the basis of a 360-day year consisting of twelve 30-day months. If an installment is payable for any period shorter than a full Installment Payment Period, such installment shall be computed on the basis of the actual number of days elapsed per 30-day month. In the event that any date on which an installment is payable is not a Business Day, then payment of the installment on such date will be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. However, if such Business Day is in the next succeeding calendar year, then such installment payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the date when such installment payment was originally due. Installments shall be paid to the person in whose name the Note is registered, with limited exceptions, at the close of business on the Business Day immediately preceding the related Installment Payment Date (each, a "**Regular Record Date**"). If the Notes do not remain in book-entry only form, the Company shall have the right to select Regular Record Dates, noticed in writing in advance, to the Trustee and Holders, which will be more than 14 days but less than 60 days prior to the relevant Installment Payment Date. Any such installment payment not punctually paid or duly provided for on any Interest Payment Date shall forthwith cease to be payable to the registered Holders at the close of business on such Regular Record Date and may be paid to the Person in whose name this Note (or one or more successor Securities) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted installment, notice whereof shall be given to the registered Holders of the Notes not less than 15 days prior to such special record date, or may be paid at any time in any other

lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Installments shall be payable at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York; *provided*, *however*, that payment of installments may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register or by wire transfer to an account appropriately designated by the Holder entitled to payment.

This Note shall not be entitled to any benefit under the Indenture hereinafter referred to or be valid or obligatory for any purpose until the Certificate of Authentication shall have been signed by or on behalf of the Trustee.

The provisions of this Note are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

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

Dated: _____

BEAZER HOMES USA, INC.,

as Issuer

By: _____
Name:
Title:

Attest

By: _____
Name:
Title:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

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

Dated: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee under the Indenture

By: _____
Authorized Signatory:
Title:

This Note is one of a duly authorized series of Securities of the Company designated as its 6.00% Senior Amortized Notes due 2015 (herein sometimes referred to as the "Notes"), issued under the Indenture, dated as of April 17, 2002, between the Company and U.S. Bank National Association, as trustee (the "**Trustee**," which term includes any successor trustee under the Indenture) (the "**Base Indenture**") as supplemented by the Sixteenth Supplemental Indenture, dated as of July 16, 2012, between the Company and the Trustee (such supplemental indenture, together with the Base Indenture, the "**Indenture**"), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders. The terms of other series of Securities issued under the Indenture may vary with respect to interest rates, issue dates, maturity, redemption, repayment, currency of payment and otherwise as provided in the Indenture. The Indenture further provides that securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates. This series of Securities is limited in aggregate principal amount as specified in the Indenture.

Each installment shall constitute a payment of interest (at a rate of 6.00% per annum) and a partial repayment of principal on the Note, allocated as set forth in the schedule below:

Scheduled Installment Payment Date	Amount of Principal	Amount of Interest
October 15, 2012	$ 0.3878	$ 0.0758
January 15, 2013	$ 0.3979	$ 0.0708
April 15, 2013	$ 0.4039	$ 0.0648
July 15, 2013	$ 0.4100	$ 0.0588
October 15, 2013	$ 0.4161	$ 0.0526
January 15, 2014	$ 0.4224	$ 0.0464
April 15, 2014	$ 0.4287	$ 0.0401
July 15, 2014	$ 0.4351	$ 0.0336
October 15, 2014	$ 0.4416	$ 0.0271
January 15, 2015	$ 0.4483	$ 0.0205
April 15, 2015	$ 0.4550	$ 0.0138
July 15, 2015	$ 0.4618	$ 0.0069

The Securities of this series shall not be subject to redemption at the option of the Company. However, a Holder shall have the right to require the Company to repurchase some or all of its Notes for cash at the Repurchase Price per Note to be repurchased on the Repurchase Date, upon the occurrence of certain events and subject to the conditions set forth in the Indenture.

This Security is not entitled to the benefit of any sinking fund. The Indenture contains provisions for defeasance and covenant defeasance at any time of the indebtedness on this Security upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Security.

If an Event of Default with respect to the Notes shall occur and be continuing, then (unless no declaration of acceleration or notice is required for such Event of Default) either the Trustee or the Holders of not less than 25% in principal amount of the Notes of this series then outstanding may declare the aggregate principal amount of the Notes of this series, and all interest accrued thereon, to be due and payable immediately, in the manner, subject to the conditions and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee, with the consent of the holders of not less than a majority in principal amount of the Securities at the time outstanding, to execute supplemental indentures for certain purposes as described therein.

Obligations Unconditional. No provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay installments on this Note at the time, place and rate, and in the coin or currency, herein and in the Indenture prescribed.

Additional Terms. The Notes are originally being issued as part of the Company's 7.50% Tangible Equity Units (the "**Units**") issued pursuant to that certain Purchase Contract Agreement, dated as of July 16, 2012, between the Company, the Trustee and U.S. Bank National Association, as Purchase Contract Agent and as Trustee of the Indenture (the "**Purchase Contract Agreement**"). Holders of the Units have the right to separate such Units into their constituent parts, consisting of Purchase Contracts (as defined in the Purchase Contract Agreement) and Notes, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent parts, the Notes will be transferable independently from the Purchase Contracts. In addition, separated Notes can be recombined with separated Purchase Contracts to recreate Units, as provided for in the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement for a more complete description of the terms thereof applicable to the Units and Notes.

Transfer and Exchange. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note shall be registered on the Security Register of the Company, upon surrender of this Note for registration of transfer at the office or agency of the Company in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, shall be issued to the designated transferee or transferees.

The Securities of this series are initially issued in registered, global form without coupons in initial minimum denominations of one Note and integral multiples in excess thereof.

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

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Issuer or the Trustee may treat the Holder in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

This Note and the Indenture, and any claim, controversy or dispute arising under or related to the Indenture or this Note, shall for all purposes be governed by, and construed in accordance with, the laws of the State of New York (without regard to the conflicts of law principles that would result in the application of law other than the law of the State of New York).

All terms used in this Note which are defined in the Indenture and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

No recourse shall be had for the payment of any installment on this Note, or for any claim based hereon, or upon any obligation, covenant or agreement of the Company in the Indenture, against any incorporator, stockholder, officer or director, past, present or future of the Company or of any predecessor or successor corporation, either directly or through the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment of penalty or otherwise; and all such personal liability is expressly released and waived as a condition of, and as part of the consideration for, the issuance of this Note.

The Company and each Holder agrees, for U.S. tax purposes, to treat the Notes as indebtedness.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints:

as agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Date: _____

_____

Signature:

_____

Signature Guarantee

(Sign exactly as your name appears on the other side of this Note)

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

By: _____
Name:
Title:

_____
as Trustee

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

FORM OF REPURCHASE NOTICE

TO: Beazer Homes USA, Inc. and U.S. Bank National Association, as Trustee

The undersigned registered Holder hereby irrevocably acknowledges receipt of a notice from Beazer Homes USA, Inc. (the "**Company**") regarding the right of Holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to repay the entire principal amount of the number of Notes below designated, in accordance with the terms of the Indenture and the Notes, together with accrued and unpaid interest to, but excluding, the Repurchase Date to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Company as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

_____

Signature:

_____

NOTICE: The above signature of the Holder hereof must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Notes Certificate Number (if applicable): _____

Number of Notes to be repurchased (if less than all, must be one Note or integral multiples in excess thereof): _____

Social Security or Other Taxpayer Identification Number: _____

SCHEDULE A

The initial number of Notes evidenced by this certificate is [ ]. The following increases or decreases in this Note have been made:

Date	Amount of decrease in number of Notes evidenced hereby	Amount of increase in number of Notes evidenced hereby	Number of Notes evidenced hereby following such decrease (or increase)	Signature of authorized officer of Trustee

EXHIBIT B

[FORM OF FACE OF PURCHASE CONTRACT]

[INCLUDE IF A GLOBAL PURCHASE CONTRACT]

[THIS SECURITY IS A GLOBAL PURCHASE CONTRACT WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT 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 GLOBAL PURCHASE CONTRACT IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AGREEMENT AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY 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.

UNLESS THIS GLOBAL PURCHASE CONTRACT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY 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.]

Each Purchase Contract evidenced hereby is governed by a Purchase Contract Agreement, dated as of July 16, 2012 (as may be supplemented from time to time, the "**Purchase Contract Agreement**"), between the Company and U.S. Bank National Association, as purchase contract agent (including its successors hereunder, the "**Purchase Contract Agent**") and as trustee under the Indenture. Reference is hereby made to the Purchase Contract Agreement and supplemental agreements thereto for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Trustee, the Company, and the Holders and of the terms upon which the Purchase Contracts are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract, on the Mandatory Settlement Date, a number of shares of Common Stock equal to the Settlement Rate, unless such Purchase Contract settles prior to the Mandatory Settlement Date, all as provided in the Purchase Contract Agreement.

No fractional shares of Common Stock will be issued upon settlement of Purchase Contracts, as provided in Section 4.06 of the Purchase Contract Agreement.

The Purchase Contracts are issuable only in registered form and only in denominations of a single Purchase Contract and any integral multiple thereof. The transfer of any Purchase Contract will be registered and Purchase Contracts may be exchanged as provided in the Purchase Contract Agreement.

The Holder of this Purchase Contract, by its acceptance hereof, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract Agreement on its behalf as its attorney-in-fact and agrees to be bound by the terms and provisions thereof.

Subject to certain exceptions set forth in the Purchase Contract Agreement, the provisions of the Purchase Contract Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts, and any claim, controversy or dispute arising under or related to the Purchase Contracts, shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to the conflicts of law principles that would result in the application of law other than the law of the State of New York).

The Company, the Purchase Contract Agent and its Affiliates and any agent of the Company or the Purchase Contract Agent may treat the Person in whose name this Purchase Contract is registered as the owner of the Purchase Contracts evidenced hereby for the purpose of performance of the Purchase Contracts and for all other purposes whatsoever, whether or not any payments in respect thereof be overdue and notwithstanding any notice to the contrary, and neither the Company, the Purchase Contract Agent nor any such agent shall be affected by notice to the contrary.

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of the Common Stock or other Exchange Property.

Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

A copy of the Purchase Contract Agreement is available for inspection at the offices of the Purchase Contract Agent.

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:	_____ (cust) Custodian: _____ (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.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Purchase Contracts and all rights thereunder, hereby irrevocably constituting and appointing attorney _____, to transfer said Purchase Contracts on the books of the Company with full power of substitution in the premises.

DATED: _____

Signature: _____

Notice : The signature to this assignment must correspond with the name as it appears upon the face of the within Purchase Contracts in every particular, without alteration or enlargement or any change whatsoever

Signature Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate for shares of Common Stock or other securities deliverable upon settlement on or after the Settlement Date of Purchase Contracts evidenced by this instrument 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 of Common Stock or other securities are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incidental 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:

_____
Name

Address

_____

_____

Social Security or other Taxpayer Identification Number, if any

_____
Name

Address

_____

_____

_____

ELECTION TO SETTLE EARLY

The undersigned Holder of this Purchase Contract hereby irrevocably exercises the option to effect Early Settlement in accordance with the terms of the Purchase Contract Agreement with respect to the Purchase Contracts evidenced by this instrument specified below. The undersigned Holder directs that a certificate for shares of Common Stock or other securities deliverable upon such Early Settlement be registered in the name of, and delivered, together with a check in payment for any fractional share and any Purchase Contract representing any Purchase Contracts evidenced hereby as to which Early Settlement is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Common Stock or other securities 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: _____

Number of Purchase Contracts evidenced hereby as to which Early Settlement is being elected:

If shares of Common Stock or Purchase Contracts are to be registered in the name of and delivered to a Person other than the Holder, please print such Person's name and address:

Name

Address

Social Security or other Taxpayer Identification Number, if any

REGISTERED HOLDER

Please print name and address of Registered Holder:

Name

Address

SCHEDULE A

SCHEDULE OF INCREASES OR DECREASES IN THE PURCHASE CONTRACT

The initial number of Purchase Contracts evidenced by this certificate is _____. The following increases or decreases in this certificate have been made:

Date	Amount of increase in number of Purchase Contracts evidenced hereby	Amount of decrease in number of Purchase Contracts evidenced hereby	Number of Purchase Contracts evidenced hereby following such decrease or increase	Signature of authorized signatory of Purchase Contract Agent

Exhibit 4.4

SIXTEENTH SUPPLEMENTAL INDENTURE

Dated as of July 16, 2012

between

BEAZER HOMES USA, INC.

and

U.S. BANK NATIONAL ASSOCIATION, as Trustee

6.00% SENIOR AMORTIZING NOTES

Supplement to Indenture Dated as of April 17, 2002

SIXTEENTH SUPPLEMENTAL INDENTURE, dated as of July 16, 2012 (this "**Sixteenth Supplemental Indenture**," and, together with the Base Indenture (as defined below), the "**Indenture**"), between Beazer Homes USA, Inc., a Delaware corporation (the "**Company**," which term includes any successor thereto), 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 April 17, 2002 (the "**Base Indenture**");

WHEREAS, the Company desires and has requested the Trustee pursuant to Section 9.01 of the Base Indenture to join with it in the execution and delivery of this Sixteenth 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 6.00% Senior Amortizing Notes due 2015;

WHEREAS, Section 9.01 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 create a Series (as defined in the Base Indenture) and establish its terms as permitted by Section 2.01 of the Base Indenture; and

WHEREAS, the execution and delivery of this Sixteenth Supplemental Indenture have been duly authorized by a Board Resolution of the Company, and all things necessary to make the Notes (as defined in Section 2.01 hereof), when the Notes are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company have been done.

NOW THEREFORE, THIS SIXTEENTH 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 Sixteenth 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; *provided*, *however*, that the changes, modifications and supplements to the Base Indenture effected by this Sixteenth Supplemental Indenture shall be applicable only with respect to, and govern the terms of, the Notes and shall not apply to any other Securities that may be issued under the Base Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes modifications and supplements.

Section 1.02 Establishment of New Series. Pursuant to Section 2.01 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 Sixteenth Supplemental Indenture and as set forth in the form of Note attached to this Sixteenth Supplemental Indenture as Exhibit A, which is incorporated herein as a part of this Sixteenth Supplemental Indenture.

Section 1.03 Definition Of Terms. For all purposes of this Sixteenth Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) capitalized terms used but not defined herein have the respective meanings ascribed to them in the TIA 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 Sixteenth Supplemental Indenture as a whole and not to any particular Article, Section, Exhibit or other subdivision;

(d) the definition of any term in this Sixteenth Supplemental Indenture that is also defined in the Base Indenture, shall for the purposes of this Sixteenth Supplemental Indenture supersede the definition of such term in the Base Indenture;

(e) the definition of a term in this Sixteenth Supplemental Indenture is not intended to have any effect on the meaning or definition of an identical term that is defined in the Base Indenture insofar as the use or effect of such term in the Base Indenture, as previously defined, is concerned;

(f) headings are for convenience of reference only and do not affect interpretation;

(g) “or” is not exclusive; and

(h) the following terms have the meanings set forth below:

“**Acceleration Event**” has the meaning ascribed to it in Section 6.03(b).

“**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 recital of this Sixteenth Supplemental Indenture.

“**Board Resolution**” means one or more resolutions of the Board of Directors, a copy of which has been 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.

“**Business Day**” means any day other than a Saturday, Sunday or any day on which banking institutions in New York, New York are authorized or obligated by applicable law to close.

“**Certificate of Authentication**” means the Certificate of Authentication substantially in the form attached as Exhibit A hereto.

“**Company**” has the meaning ascribed to it in the first paragraph of this Sixteenth Supplemental Indenture.

“Company Order” 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 principal corporate trust office of the Purchase Contract Agent at which, at any particular time, this Indenture shall be administered, which office at the date hereof is located at U.S. Bank Corporate Trust Services, 1349 West Peachtree Street NW, Suite 1050, Atlanta, Georgia 30309, Attention: Account Manager — Beazer 6.00% Senior Amortizing Notes due 2015; *provided*, *however*, that solely for purposes of the requirement to maintain an office in the Borough of Manhattan, the Corporate Trust Office shall be located at 100 Wall Street, 16th Floor Window, New York, NY 10005, Attention: Account Manager — Beazer 6.00% Senior Amortizing Notes due 2015; or at such other address or addresses 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 Indenture shall be administered.

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

"**Depositary**" means, with respect to any Series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as depositary for such Securities as contemplated by Section 2.02.

"**DTC**" means The Depository Trust Company.

"**Early Mandatory Settlement Date**" has the meaning ascribed to it in the Purchase Contract Agreement.

"**Early Mandatory Settlement Notice**" has the meaning ascribed to it in the Purchase Contract Agreement.

"**Early Mandatory Settlement Right**" has the meaning ascribed to it in the Purchase Contract Agreement.

"**Early Settlement**" has the meaning ascribed to it in the Purchase Contract Agreement.

"**Event of Default**" has the meaning ascribed to it Section 6.02.

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

"**Fundamental Change**" has the meaning ascribed to it in the Purchase Contract Agreement.

"**Global Note**" has the meaning ascribed to it in Section 2.02.

"**Global Security**" means a Security that evidences all or part of any Series and is authenticated and delivered to, and registered in the name of, the Depositary for such Securities or a nominee thereof.

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

"Indebtedness" means, with respect to any specified Person, whether recourse is to all or a portion of the assets of such specified Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such specified Person for money borrowed; (ii) every obligation of such specified 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 specified Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such specified Person; (iv) every obligation of such specified 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 specified Person; (vi) all indebtedness of such specified Person, whether incurred on or prior to the date of this Sixteenth Supplemental 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 specified 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**" has the meaning given in the recitals hereto.

"**Installment Payment Date**" means each July 15, October 15, January 15 and April 15, commencing on October 15, 2012 and ending on July 15, 2015.

"**Installment Payment Period**" means the period from, and including, the Issue Date to, but excluding, the first Installment Payment Date and each subsequent period from, and including, an Installment Payment Date to, but excluding, the immediately succeeding Installment Payment Date.

"**Issue Date**" means July 16, 2012.

"**Material Subsidiary**" has the meaning set forth in the Secured Notes Indenture, except that references in such definition to "Default" and "Event of Default" shall be deemed to be references to "Default" and "Event of Default", respectively, as defined in the Indenture.

"**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.

"**Note**" and "**Notes**" have the respective meaning ascribed to them in Section 2.01.

"**Paying Agent**" initially means the Trustee.

"**Purchase Contract Agreement**" means the Purchase Contract Agreement, dated as of July 16, 2012, between the Company and U.S. Bank National Association, as purchase contract agent and as Trustee.

"**Purchase Contract**" has the meaning ascribed to it in the Purchase Contract Agreement.

"**Registrar**" initially means the Trustee.

"**Regular Record Date**" means, with respect to an Installment Payment Date, the close of business on the Business Day immediately preceding such Installment Payment Date or, if the Notes do not remain in book-entry form, a date selected by the Company, and noticed, in writing, in advance, to the Trustee and Holders, which shall be more than 14 days but less than 60 days prior to the relevant Installment Payment Date.

"**Repurchase Date**" means a date specified by the Company in the Early Mandatory Settlement Notice, which shall be at least 20 but not more than 45 Business Days following the date of the Company's Early Mandatory Settlement Notice, which may or may not fall on the Early Mandatory Settlement Date.

"**Repurchase Notice**" means a notice in the form entitled "Repurchase Notice" on the reverse side of the Notes.

"**Repurchase Right**" has the meaning ascribed to it in Section 4.01.

"**Repurchase Price**" per Note to be redeemed shall be equal to (i) the principal amount of such Note as of the Repurchase Date, *plus* (ii) accrued and unpaid interest on such principal amount to, but excluding, the Repurchase Date at a rate of 6.00% per annum. However, if the Notes are in certificated form and the Repurchase Date falls after a Regular Record Date and on or prior to the immediately succeeding Installment Payment Date, then the installment payment payable on such Installment Payment Date will be paid on such Installment Payment Date to the Holder(s) of such Notes as of such Regular Record Date and will not be included in the Repurchase Price for such Notes.

"**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.

"**Security Register**" has the meaning ascribed to it in Section 2.02.

"**Trustee**" has the meaning ascribed to it in the first paragraph of this Sixteenth Supplemental Indenture.

"**Underwriters**" has the meaning set forth in the Underwriting Agreement.

"**Underwriting Agreement**" means the Underwriting Agreement, dated as of July 10, 2012, between the Company and the Underwriters named therein relating to the Units.

"**Unit**" has the meaning ascribed to it in the Purchase Contract Agreement.

ARTICLE II
GENERAL TERMS AND CONDITIONS OF THE NOTES

Section 2.01 Designation, Principal Amount and Original Issuance. There is hereby authorized a Series designated as the 6.00% Senior Amortizing Notes due 2015 (the "**Notes**," and "**Note**" means each note of such series having an initial principal amount of $5.1086) limited in aggregate principal amount to $20,434,400 (or up to $23,499,560 to the extent that the Underwriters exercise their over-allotment option to purchase additional Units pursuant to the Underwriting Agreement), except for Notes executed, authenticated and delivered upon registration of transfer of, in exchange for, in lieu of, other Notes pursuant to the Indenture. The Notes may be issued from time to time upon Company Order for the authentication and delivery of the Notes pursuant to Article Two of the Base Indenture. The Notes, upon execution of this Sixteenth Supplement Indenture, shall be executed by the Company and delivered to the Trustee for authentication together with the Officer's Certificate required under Section 2.02 of the Base Indenture, and the Trustee shall thereupon authenticate and deliver said Notes in accordance with a Company Order.

Section 2.02 Form, Payment and Appointment.

(a) The Notes will be Global Securities and will initially be issued in fully registered, permanent global form without coupons (a "**Global Note**"), and deposited with the Trustee as custodian for the Depositary, which shall be DTC or such other depositary as any officer of the Company may from time to time designate, and the Global Note shall be registered in the name of the Depositary or its nominee. Unless and until such Global Note is exchanged for Notes in registered form, a Global Note may be transferred, in whole or in part, only to the Depositary or a nominee of the Depositary, or to a successor Depositary selected or approved by the Company or to a nominee of such successor Depositary.

(b) Installments on the Notes will be payable, the transfer of such Notes will be registrable and such Notes will be exchangeable for Notes of a like aggregate principal amount bearing identical terms and provisions at the office or agency of the Company (a register maintained in such office and in any other office or agency of the Company, collectively, the "**Security Register**") maintained for such purpose in the Borough of Manhattan, The City of New York, which shall initially be the Corporate Trust Office of the Trustee.

(c) The Registrar and Paying Agent for the Notes shall initially be the Trustee.

(d) The Notes shall be issuable in denominations of one Note and integral multiples in excess thereof.

(e) Section 2.15(f) of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

(f) "Each Global Security shall also bear the following legend on the face thereof:

"THIS NOTE IS A GLOBAL SECURITY 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 GLOBAL

NOTE IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AGREEMENT AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY 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.

UNLESS THIS GLOBAL NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY 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."

Section 2.03 Installment Payments.

(a) *Installment Payment Dates.* On the first Installment Payment Date (October 15, 2012), the Company shall pay, in cash, an installment of $0.4635 on each Note, and on each Installment Payment Date thereafter, the Company shall pay, in cash, equal quarterly installments of $0.4688 on each Note.

(b) *Installment Payment Amount.* Each installment shall constitute a payment of interest (at a rate of 6.00% per annum) and a partial repayment of principal on the Note, allocated as set forth in the schedule below.

Scheduled Installment Payment Date	Amount of Principal	Amount of Interest
October 15, 2012	$0.3878	$0.0758
January 15, 2013	$0.3979	$0.0708
April 15, 2013	$0.4039	$0.0648
July 15, 2013	$0.4100	$0.0588
October 15, 2013	$0.4161	$0.0526
January 15, 2014	$0.4224	$0.0464
April 15, 2014	$0.4287	$0.0401
July 15, 2014	$0.4351	$0.0336
October 15, 2014	$0.4416	$0.0271
January 15, 2015	$0.4483	$0.0205
April 15, 2015	$0.4550	$0.0138
July 15, 2015	$0.4618	$0.0069

Each installment payment for any Installment Payment Period shall be computed on the basis of a 360-day year of twelve 30-day months. If an installment is payable for any period shorter than a full Installment Payment Period, such installment shall be computed on the basis of the actual number of days elapsed per 30-day month. Furthermore, if any date on which an installment is payable is not a Business Day, then payment of the installment on such date will be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. However, if such Business Day is in the next succeeding calendar year, then such installment payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the date when such installment payment was originally due.

(c) *Restrictions Applicable During a Default Under the Indenture*.

(i) If there shall have occurred and be continuing a Default under the Indenture, then:

(1) the Company and its Subsidiaries shall not declare or pay any dividend on, make any distributions relating to, or redeem, purchase, acquire or make a liquidation payment relating to, any of our capital stock or make any guarantee payment with respect thereto other than:

(A) purchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants;

(B) purchases of shares of the Company's common stock pursuant to a contractually binding requirement to buy stock existing prior to such Default, including under a contractually binding stock repurchase plan;

(C) as a result of an exchange or conversion of any class or series of the Company's capital stock for any other class or series of the Company's capital stock;

(D) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or

(E) purchases of the Company's capital stock in connection with the distribution thereof; and

(2) the Company and its Subsidiaries shall not make any payment of interest, principal or premium on, or repay, purchase or redeem, any debt securities or guarantees issued by us that rank equally with or junior to the Notes other than *pro rata* payments of accrued and unpaid interest on the Notes and any other debt securities or guarantees issued by the Company that rank equally with the Notes, except and to the extent the terms of any such debt securities would prohibit the Company from making such *pro rata* payment.

These foregoing restrictions shall not apply to any stock dividends paid by the Company where the dividend stock is the same stock as that on which the dividend is being paid.

Section 2.04 *Maturity Date*. The date on which the final installment payment on the Notes shall be due, unless the Notes are accelerated pursuant to the terms hereof or otherwise paid prior to maturity in connection with a Holder's exercise of the Repurchase Right, shall be July 15, 2015.

Section 2.05 *Ranking*. The obligations of the Company arising under or in connection with this Indenture and every outstanding Note issued under this Indenture from time to time constitute and shall constitute an unsecured general obligation of the Company, ranking equal in right of payment to all other existing and future senior unsecured and unsubordinated Indebtedness of the Company and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to the Notes by the terms of such Indebtedness.

Section 2.06 *Additional Terms*. The Notes are originally being issued as part of the Units. Holders of the Units have the right to separate such Units into their constituent parts, consisting of Purchase Contracts and Notes, during the times, and under the circumstances, set forth in Section 2.03 of the Purchase Contract Agreement. Following separation of any Unit into its constituent parts, the Notes will be transferable independently from the Purchase Contracts. In addition, separated Notes can be recombined with separated Purchase Contracts to recreate Units, in accordance with Section 2.04 of the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement for a more complete description of the terms thereof applicable to the Units and Notes.

ARTICLE III
REDEMPTION

Section 3.01 *Article Three of the Base Indenture Inapplicable*. Article Three of the Base Indenture shall not apply to the Notes.

ARTICLE IV
REPURCHASE OF NOTES AT THE OPTION OF THE HOLDER

Section 4.01 *Offer to Repurchase*. If the Company elects to exercise its Early Mandatory Settlement Right, then each Holder will have the right (the "**Repurchase Right**") to require the Company to repurchase some or all of its Notes for cash at the Repurchase Price per Note to be repurchased on the Repurchase Date, as set forth in Section 4.02. The Company shall not be required to repurchase any portion of an individual Note. In addition, a Holder shall not have the right to require the Company to repurchase any or all of such Holder's Notes in connection with any Early Settlement of such Holder's Purchase Contracts at the Holder's option at the Early Settlement Rate to the extent the Purchase Contract Agreement so provides.

Section 4.02 *Procedures for Exercise*.

(a) To exercise the Repurchase Right, a Holder must deliver, on or before the second Business Day immediately preceding the Repurchase Date, the Notes to be repurchased to the Paying Agent (or the Units that include the Notes to be repurchased to the Purchase Contract Agent), if (x) the Early Mandatory Settlement Date occurs on or after the Repurchase Date and (y) the Notes have not been separated from the Units), together with a duly completed written Repurchase Notice, in each case in accordance with appropriate DTC procedures, unless the Notes are not in the form of a Global Note, in which case such Holder must deliver the Notes to be repurchased to the Paying Agent or the Units that include the Notes to be repurchased to the Purchase Contract Agent, if the Early Mandatory Settlement Date occurs on or after the Repurchase Date and the Notes have not been separated from the Units, duly endorsed for transfer to the Company, together with a Repurchase Notice, to the Paying Agent.

(b) The Repurchase Notice must state the following:

(i) if certificated Notes or Units have been issued, the certificate numbers of the Notes or Units, or if the Notes are in the form of a Global Note, the Repurchase Notice must comply with appropriate DTC procedures;

(ii) the number of Notes to be repurchased (which must be a whole number); and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture.

(c) If the Company exercises its Early Mandatory Settlement Right with respect to Purchase Contracts that are a component of Units and the Early Mandatory Settlement Date is before the Repurchase Date, then, on or before such Early Mandatory Settlement Date, the Company shall execute and the Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes in same form and in the same number as the Notes comprising part of the Units.

Section 4.03 *Withdrawal of Repurchase Notice*.

(a) A Holder may withdraw any Repurchase Notice (in whole or in part) by a written, irrevocable notice of withdrawal delivered to the Paying Agent, with a copy to the Trustee and Company, prior to the close of business on the second Business Day immediately preceding the Repurchase Date.

(b) The notice of withdrawal must state the following:

(i) the number of the withdrawn Notes (which must be a whole number);

(ii) if certificated Notes or Units have been issued, the certificate numbers of the withdrawn Notes or Units, as applicable, or if the Notes are in the form of a Global Note, the notice of withdrawal must comply with appropriate DTC procedures; and

(iii) the number of Notes, if any, that remain subject to the Repurchase Notice (which must be a whole number).

Section 4.04 Effect of Repurchase.

(a) On the Repurchase Date, the Company shall be required to repurchase the Notes with respect to which the Repurchase Right has been exercised. To effectuate such repurchase, the Company shall distribute, in immediately available funds to the Paying Agent, on or prior to 11:00 a.m. New York City time on the Repurchase Date, an amount or amounts sufficient to pay the aggregate Repurchase Price with respect to those Notes for which the Repurchase Right has been exercised. A Holder electing to exercise the Repurchase Right shall receive payment of the Repurchase Price on the later of (i) the Repurchase Date and (ii) the time of book-entry transfer or the delivery of the Notes (or Units, as applicable); *provided*, *however*, that if the Company remits the Repurchase Price to the Paying Agent after 11:00 a.m. New York City time on the Repurchase Date, and such Holder would otherwise be entitled to receive the Repurchase Price on the Repurchase Date in accordance with the foregoing clause, distribution of the Repurchase Price by the Paying Agent may be made on the next succeeding Business Day without additional interest and with the same force and effect as if the Repurchase Price had been distributed on the Repurchase Date (it being understood that such delivery after 11:00 a.m. New York City time on the Repurchase Date shall constitute a Default).

(b) If the Paying Agent holds money on the Repurchase Date sufficient to pay the Repurchase Price with respect to those Notes, for which the Repurchase Right has been exercised, then (i) such Notes shall cease to be outstanding and interest shall cease to accrue threreon (whether or not book-entry transfer of the Notes or Units, as applicable, is made and whether or not the Notes or Units, as applicable, are delivered as required herein); and (ii) all other rights of the Holder shall terminate (other than the right to receive the Repurchase Price).

(c) The Company shall, in connection with any repurchase offer pursuant to this ARTICLE IV, if required, (i) comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable; and (ii) file a Schedule TO or any other required schedule under the Exchange Act.

(d) Notwithstanding anything to the contrary herein, no Notes may be repurchased at the option of Holders if the principal amount thereof has been accelerated, and such acceleration has not been rescinded, on or prior to the Repurchase Date (except in the case of a Default by the Company of the payment of the Repurchase Price with respect to such Notes).

Section 4.05 No Sinking Fund. The Notes are not entitled to the benefit of any sinking fund.

Section 4.06 No Subsidiary Guarantees. The Notes are not entitled to the benefit of any Subsidiary Guarantee.

Section 4.07 Listing. The Company is not obligated to initially apply to list the Notes on any securities exchange or automated inter-dealer quotation system.

ARTICLE V
FORM OF NOTE

Section 5.01 Form of Note. The Notes and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the forms attached as Exhibit A hereto, with such changes therein as the officers of the Company executing the Notes (by manual or facsimile signature) may approve, such approval to be conclusively evidenced by their execution thereof.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.01 Amendments to the Base Indenture. Sections 6.01, 6.02 and 6.04 of the Base Indenture shall not apply to the Notes. All references to Section 6.01(1) or (2) in the Base Indenture with respect to the Notes shall be deemed references to Section 6.02(a) of this Sixteenth Supplemental Indenture. All references to Section 6.04 in the Base Indenture with respect to the Notes shall be deemed references to Section 6.03(c) of this Sixteenth Supplemental Indenture.

Section 6.02 Events of Default. 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):

(a) the failure of the Company to pay any installment payment on any Note when the same becomes due and payable, which failure to pay is not cured within 30 days;

(b) failure to give notice of a Fundamental Change pursuant to, and in accordance with, the Purchase Contract Agreement;

(c) the failure by the Company to comply with any of its agreements or covenants in, or provisions of, the Notes or the Indenture, which failure continues for the period and after the notice specified below;

(d) the failure by the Company or any of its Subsidiaries to make any principal or interest payment in respect of Indebtedness with an outstanding aggregate amount of $25.0 million or more (other than Non-Recourse Indebtedness) of the Company or any of its Subsidiaries 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*, *however*, 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;

(e) 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, which judgment or judgments is not satisfied, stayed, annulled or rescinded within 60 days of being entered;

(f) the Company or any Material Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

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

(iii) consents to the appointment of a Custodian or trustee in bankruptcy of it or for all or substantially all of its property, or

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

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

(i) is for relief against the Company or any Material Subsidiary as debtor in an involuntary case,

(ii) appoints a Custodian or trustee in bankruptcy 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

(iii) orders the liquidation of the Company or any Material Subsidiary, which order or decree remains unstayed and in effect for 60 days.

A Default under Section 6.02(c) 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 such 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 6.03 Acceleration Event. (a) The Holders may not enforce the provisions of the Indenture or the Notes except as provided in the Indenture or the TIA.

(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 6.02(f) and Section 6.02(g), in which case the Notes will be deemed automatically accelerated without the need for any declaration or notice) (such acceleration, the "**Acceleration Event**").

(c) The Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee and the Company may waive any Default or Event of Default (other than any Default or Event of Default arising under Section 6.02(a)). Holders of a majority in principal amount of the then outstanding Notes may rescind an Acceleration Event and its consequence (except due to an Event of Default arising under Section 6.02(a)) by written notice to the Trustee and Company if the rescission would not conflict with any judgment or decree issued in respect of such Acceleration Event and if all existing Events of Default have been cured or waived.

ARTICLE VII
TAX TREATMENT

Section 7.01 Tax Treatment. The Company and each Holder agrees, for U.S. tax purposes, to treat the Notes as indebtedness.

ARTICLE VIII
MISCELLANEOUS

Section 8.01 Ratification of Indenture. The Base Indenture, as supplemented by this Sixteenth Supplemental Indenture, is in all respects ratified and confirmed, and this Sixteenth Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 8.02 Trustee Not Responsible for Recitals. The recitals contained herein and in the instruments evidencing any Note and any document used in connection with the offer, issuance or sale of the Units or the Notes are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Sixteenth Supplemental Indenture.

Section 8.03 New York Law to Govern. THIS SIXTEENTH SUPPLEMENTAL INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SIXTEENTH SUPPLEMENTAL INDENTURE OR NOTES, SHALL FOR ALL PURPOSES BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK).

Section 8.04 Separability. In case any one or more of the provisions contained in this Sixteenth Supplemental Indenture or in the Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, then, to the extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provisions of this Sixteenth Supplemental Indenture or of the Notes, but this Sixteenth Supplemental Indenture and the Notes shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 8.05 Counterparts. This Sixteenth Supplemental Indenture may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 8.06 Conflict with Base Indenture. In the event of any conflict between this Sixteenth Supplemental Indenture and the Base Indenture, the provisions of this Sixteenth Supplemental Indenture shall control to the extent of such conflict.

Section 8.07 Notices. Any order, consent, notice or communication under the Indenture shall be sufficiently given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), telecopier (with receipt confirmed) or overnight courier guaranteeing next day delivery, to the others' address, as follows:

If to the Trustee:

U.S. Bank National Association
Corporate Trust Services
1349 West Peachtree St., Ste 1050
Atlanta, GA 30309
Fax: 404-898-8844
Attention: Account Manager—Beazer 6.00% Senior Amortizing Notes due 2015

with a copy to:

Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309-3053
Fax: 404-581-8330
Attention: Ralph F. MacDonald III, Esq.

If to the Company:

Beazer Homes USA, Inc.
1000 Abernathy Road
Suite 260
Atlanta, Georgia 30328
Fax: 770-481-7364
Attention: Kenneth F. Khoury

with a copy to:

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Fax: 404-572-5133
Attention: William Calvin Smith, Esq.

ARTICLE IX
COVENANTS

Section 9.01 Amendments to the Base Indenture.

(a) Section 4.03 of the Base Indenture shall not apply to the Notes. All references to Section 4.03 in the Base Indenture with respect to the Notes shall be deemed references to Section 9.01(b) in this Sixteenth Supplemental Indenture.

(b) The Company shall deliver to the Trustee, on a quarterly basis, an Officers' Certificate regarding compliance with the Indenture, and include in such Officers' Certificate, 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 X
TRUSTEE

Section 10.01 Amendments to the Base Indenture. Section 7.05 of the Base Indenture is hereby amended and restated in its entirety with respect to the Notes as follows:

"Section 7.05. NOTICE OF DEFAULTS.

If a Default on a Series occurs and is continuing and if it is actually known to the Trustee or the Trustee receives written notice of such Default, the Trustee shall mail to each Securityholder of the Series notice of the Default (which shall specify any uncured Default known to it) within 90 days after it occurs.

Notwithstanding the foregoing provision, the Trustee may withhold from the Holders notice of any continuing Default or Event of Default if and so long as the Trustee in good faith determines that withholding the notice is in the interests of Holders of the Series."

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Sixteenth Supplemental Indenture to be duly executed by their respective officers thereunto duly authorized, on the date or dates indicated in the acknowledgments and as of the day and year first above written.

BEAZER HOMES USA, INC.

By: /s/ Robert L. Salomon
Name: Robert L. Salomon
Title: Executive Vice President and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ William B. Echols
Name: William B. Echols
Title: Vice President

EXHIBIT A

[FORM OF FACE OF NOTE]

[INCLUDE IF A GLOBAL NOTE]

[THIS NOTE IS A GLOBAL SECURITY 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 GLOBAL NOTE IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AGREEMENT AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY 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.

UNLESS THIS GLOBAL NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY 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.]

BEAZER HOMES USA, INC.
6.00% SENIOR AMORTIZING NOTES
DUE JULY 15, 2015

REGISTERED
CUSIP: 07556Q 808

ISIN: US07556Q8087

No. _____ **[Initial] Number of Notes: [_____]**

Beazer Homes USA, Inc., a Delaware corporation (the "**Company**", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to CEDE & CO., or registered assigns, the initial principal sum of $5.1086 for each of the number of Notes set forth [above][in Schedule A hereto], in quarterly installments (each constituting a payment of interest at the rate per year of 6.00% and a partial repayment of principal) payable on each July 15, October 15, January 15 and April 15, commencing on August October 15, 2012 (each such date, an "**Installment Payment Date**" and the period from, and including, July 16, 2012 to, but excluding, the first Installment Payment Date and each subsequent full quarterly period from and including an Installment Payment Date to, but excluding, the immediately succeeding Installment Payment Date, an "**Installment Payment Period**"), all as set forth on the reverse hereof. The installment amount payable on any Installment Payment Date shall be computed on the basis of a 360-day year consisting of twelve 30-day months. If an installment is payable for any period shorter than a full Installment Payment Period, such installment shall be computed on the basis of the actual number of days elapsed per 30-day month. In the event that any date on which an installment is payable is not a Business Day, then payment of the installment on such date will be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. However, if such Business Day is in the next succeeding calendar year, then such installment payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the date when such installment payment was originally due. Installments shall be paid to the person in whose name the Note is registered, with limited exceptions, at the close of business on the Business Day immediately preceding the related Installment Payment Date (each, a "**Regular Record Date**"). If the Notes do not remain in book-entry only form, the Company shall have the right to select Regular Record Dates, noticed in writing in advance, to the Trustee and Holders, which will be more than 14 days but less than 60 days prior to the relevant Installment Payment Date. Any such installment payment not punctually paid or duly provided for on any Interest Payment Date shall forthwith cease to be payable to the registered Holders at the close of business on such Regular Record Date and may be paid to the Person in whose name this Note (or one or more successor Securities) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted installment, notice whereof shall be given to the registered Holders of the Notes not less than 15 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Installments shall be payable at the office or agency of the

Company maintained for that purpose in the Borough of Manhattan, The City of New York; *provided*, *however*, that payment of installments may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register or by wire transfer to an account appropriately designated by the Holder entitled to payment.

This Note shall not be entitled to any benefit under the Indenture hereinafter referred to or be valid or obligatory for any purpose until the Certificate of Authentication shall have been signed by or on behalf of the Trustee.

The provisions of this Note are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

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

Dated: _____

BEAZER HOMES USA, INC.,
as Issuer

By: _____
Name:
Title:

Attest

By: _____
Name:
Title:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

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

Dated: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee under the Indenture

By: _____
Authorized Signatory:
Title:

This Note is one of a duly authorized series of Securities of the Company designated as its 6.00% Senior Amortized Notes due 2015 (herein sometimes referred to as the "Notes"), issued under the Indenture, dated as of April 17, 2002, between the Company and U.S. Bank National Association, as trustee (the "**Trustee**," which term includes any successor trustee under the Indenture) (the "**Base Indenture**") as supplemented by the Sixteenth Supplemental Indenture, dated as of July 16, 2012, between the Company and the Trustee (such supplemental indenture, together with the Base Indenture, the "**Indenture**"), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders. The terms of other series of Securities issued under the Indenture may vary with respect to interest rates, issue dates, maturity, redemption, repayment, currency of payment and otherwise as provided in the Indenture. The Indenture further provides that securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates. This series of Securities is limited in aggregate principal amount as specified in the Indenture.

Each installment shall constitute a payment of interest (at a rate of 6.00% per annum) and a partial repayment of principal on the Note, allocated as set forth in the schedule below:

Scheduled Installment Payment Date	Amount of Principal	Amount of Interest
October 15, 2012	$ 0.3878	$ 0.0758
January 15, 2013	$ 0.3979	$ 0.0708
April 15, 2013	$ 0.4039	$ 0.0648
July 15, 2013	$ 0.4100	$ 0.0588
October 15, 2013	$ 0.4161	$ 0.0526
January 15, 2014	$ 0.4224	$ 0.0464
April 15, 2014	$ 0.4287	$ 0.0401
July 15, 2014	$ 0.4351	$ 0.0336
October 15, 2014	$ 0.4416	$ 0.0271
January 15, 2015	$ 0.4483	$ 0.0205
April 15, 2015	$ 0.4550	$ 0.0138
July 15, 2015	$ 0.4618	$ 0.0069

The Securities of this series shall not be subject to redemption at the option of the Company. However, a Holder shall have the right to require the Company to repurchase some or all of its Notes for cash at the Repurchase Price per Note to be repurchased on the Repurchase Date, upon the occurrence of certain events and subject to the conditions set forth in the Indenture.

This Security is not entitled to the benefit of any sinking fund. The Indenture contains provisions for defeasance and covenant defeasance at any time of the indebtedness on this Security upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Security.

If an Event of Default with respect to the Notes shall occur and be continuing, then (unless no declaration of acceleration or notice is required for such Event of Default) either the Trustee or the Holders of not less than 25% in principal amount of the Notes of this series then outstanding may declare the aggregate principal amount of the Notes of this series, and all interest accrued thereon, to be due and payable immediately, in the manner, subject to the conditions and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee, with the consent of the holders of not less than a majority in principal amount of the Securities at the time outstanding, to execute supplemental indentures for certain purposes as described therein.

Obligations Unconditional. No provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay installments on this Note at the time, place and rate, and in the coin or currency, herein and in the Indenture prescribed.

Additional Terms. The Notes are originally being issued as part of the Company's 7.50% Tangible Equity Units (the "**Units**") issued pursuant to that certain Purchase Contract Agreement, dated as of July 16, 2012, between the Company, Trustee and U.S. Bank National Association, as Purchase Contract Agent and as Trustee of the Indenture (the "**Purchase Contract Agreement**"). Holders of the Units have the right to separate such Units into their constituent parts, consisting of Purchase Contracts (as defined in the Purchase Contract Agreement) and Notes, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent parts, the Notes will be transferable independently from the Purchase Contracts. In addition, separated Notes can be recombined with separated Purchase Contracts to recreate Units, as provided for in the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement for a more complete description of the terms thereof applicable to the Units and Notes.

Transfer and Exchange. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note shall be registered on the Security Register of the Company, upon surrender of this Note for registration of transfer at the office or agency of the Company in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, shall be issued to the designated transferee or transferees.

The Securities of this series are initially issued in registered, global form without coupons in initial minimum denominations of one Note and integral multiples in excess thereof.

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

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Issuer or the Trustee may treat the Holder in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

This Note and the Indenture, and any claim, controversy or dispute arising under or related to the Indenture or this Note, shall for all purposes be governed by, and construed in accordance with, the laws of the State of New York (without regard to the conflicts of law principles that would result in the application of law other than the law of the State of New York).

All terms used in this Note which are defined in the Indenture and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

No recourse shall be had for the payment of any installment on this Note, or for any claim based hereon, or upon any obligation, covenant or agreement of the Company in the Indenture, against any incorporator, stockholder, officer or director, past, present or future of the Company or of any predecessor or successor corporation, either directly or through the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment of penalty or otherwise; and all such personal liability is expressly released and waived as a condition of, and as part of the consideration for, the issuance of this Note.

The Company and each Holder agrees, for U.S. tax purposes, to treat the Notes as indebtedness.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints:

as agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Date: _____

_____

Signature:

_____

Signature Guarantee

(Sign exactly as your name appears on the other side of this Note)

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

By: _____
Name:
Title:

_____
as Trustee

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

FORM OF REPURCHASE NOTICE

TO: Beazer Homes USA, Inc. and U.S. Bank National Association, as Trustee

The undersigned registered Holder hereby irrevocably acknowledges receipt of a notice from Beazer Homes USA, Inc. (the "**Company**") regarding the right of Holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to repay the entire principal amount of the number of Notes below designated, in accordance with the terms of the Indenture and the Notes, together with accrued and unpaid interest to, but excluding, the Repurchase Date to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture, dated as of April 17, 2002, between the Company and U.S. Bank National Association, as trustee (the "**Trustee**," which term includes any successor trustee under the Indenture), as supplemented by the Sixteenth Supplemental Indenture, dated as of July 16, 2012, between the Company and the Trustee. The Notes shall be repurchased by the Company as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

_____

Signature:

_____

NOTICE: The above signature of the Holder hereof must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Notes Certificate Number (if applicable): _____

Number of Notes to be repurchased (if less than all, must be one Note or integral multiples in excess thereof): _____

Social Security or Other Taxpayer Identification Number: _____

SCHEDULE A

The initial number of Notes evidenced by this certificate is [ ]. The following increases or decreases in this Note have been made:

Date	Amount of decrease in number of Notes evidenced hereby	Amount of increase in number of Notes evidenced hereby	Number of Notes evidenced hereby following such decrease (or increase)	Signature of authorized officer of Trustee

Exhibit 5.1

KING & SPALDING LLP

1180 Peachtree Street
Atlanta, Georgia 30309
Phone: 404/572-4600
www.kslaw.com

July 16, 2012

Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 260
Atlanta, Georgia 30328

Re: Beazer Homes USA, Inc. Form S-3 Registration Statement

Ladies and Gentlemen:

We have acted as counsel for Beazer Homes USA, Inc., a Delaware corporation (the "Company"), in connection with the offering by the Company of 25,300,000 shares (the "Shares") of the Company's common stock, par value $0.001 per share (the "Common Stock"), including 3,300,000 shares of Common Stock that may be issued pursuant to the option granted to the Underwriters to purchase up to an additional 3,300,000 shares of Common Stock. The Shares will be issued pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-172483) (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 June 20, 2011 (the "Base Prospectus"), and the prospectus supplement relating to the Shares, dated July 10, 2012 (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.

As such counsel, we have examined and relied upon such records, documents, certificates and other instruments, including the Registration Statement and the Prospectus, as in our judgment are necessary or appropriate to form the basis for the opinions hereinafter set forth. In all such examinations, we have assumed the genuineness of signatures on original documents and the conformity to such original documents of all copies submitted to us as certified, conformed or photographic copies. We have relied, as to the matters set forth therein, on certificates of public officials. As

to matters of fact material to this opinion, we have relied, without independent verification, upon certificates of officers of the Company.

The opinions expressed herein are limited in all respects to the federal laws of the United States of America and the corporate law of the State of Delaware (which includes the Delaware General Corporation Law, applicable provisions of the Delaware Constitution and reported judicial interpretations concerning those laws), and no opinion is expressed with respect to the laws of any other jurisdiction or any effect which such laws may have on the opinions expressed herein. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

Based upon the foregoing and subject to the other limitations and qualifications set forth herein, we are of the opinion that the Shares have been duly authorized, and, when issued in accordance with terms and conditions of the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable.

This opinion is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in law that occur which could affect the opinions contained herein. This letter is being rendered for the benefit of the Company in connection with the matters addressed 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.

Sincerely,

/s/ King & Spalding LLP

Exhibit 5.2

KING & SPALDING LLP

1180 Peachtree Street
Atlanta, Georgia 30309
Phone: 404/572-4600
www.kslaw.com

July 16, 2012

Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 260
Atlanta, Georgia 30328

Re: Beazer Homes USA, Inc. Form S-3 Registration Statement

Ladies and Gentlemen:

We have acted as counsel for Beazer Homes USA, Inc., a Delaware corporation (the "Company"), in connection with the offering by the Company of 4,600,000 7.50% Tangible Equity Units (the "Units") of the Company, including 600,000 Units that may be issued pursuant to the option granted to the Underwriters to purchase up to an additional 600,000 Units to cover over-allotments. The Units will be issued pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-172483) (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 June 20, 2011 (the "Base Prospectus"), and the prospectus supplement relating to the Units, dated July 10, 2012 (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.

Each Unit is comprised of a prepaid stock purchase contract (each, a "Purchase Contract") and a senior amortizing note (each, a "Note") issued by the Company. The Units and the Purchase Contracts will be issued pursuant to the Purchase Contract Agreement, dated as of July 16, 2012 (the "Purchase Contract Agreement"), by and between the Company and U.S. Bank National Association ("U.S. Bank"), as trustee and purchase contract agent. The Company will issue shares of its common stock, par value $0.001 per share (the "Common Stock"), upon the settlement of the Purchase Contracts (the "Issuable Common Stock"). The Notes will be issued pursuant to the Indenture, dated as of April 17, 2002 (the "Base Indenture"), by and between the Company and U.S.

Bank, as trustee, as supplemented by the Sixteenth Supplemental Indenture, dated as of July 16, 2012 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture").

As such counsel, we have examined and relied upon such records, documents, certificates and other instruments, including the Registration Statement, the Prospectus, the Purchase Contract Agreement and the Indenture, as in our judgment are necessary or appropriate to form the basis for the opinions hereinafter set forth. In all such examinations, we have assumed the genuineness of signatures on original documents and the conformity to such original documents of all copies submitted to us as certified, conformed or photographic copies. We have relied, as to the matters set forth therein, on certificates of public officials. As to matters of fact material to this opinion, we have relied, without independent verification, upon certificates of officers of the Company.

The opinions expressed herein are limited in all respects to the federal laws of the United States of America and the corporate law of the State of Delaware (which includes the Delaware General Corporation Law, applicable provisions of the Delaware Constitution and reported judicial interpretations concerning those laws), and no opinion is expressed with respect to the laws of any other jurisdiction or any effect which such laws may have on the opinions expressed herein. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

Based on the foregoing examination, we are of the opinion that:

1. The Units and Purchase Contracts, upon proper execution, delivery and authentication in accordance with the provisions of the Purchase Contract Agreement, when issued by you in the manner contemplated by the Registration Statement and the Prospectus, will be valid and binding obligations of the Company, enforceable against the Company in accordance with and subject to their respective terms and the terms of the Purchase Contract Agreement, 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;

2. The Notes, upon proper execution, delivery and authentication in accordance with the provisions of the Indenture when issued by you in the manner contemplated by the Registration Statement and the Prospectus, will be 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

3. The shares of Issuable Common Stock, when issued upon settlement of the Purchase Contracts and in accordance with the terms of the Purchase Contract Agreement, will be validly issued, fully paid and nonassessable.

This opinion is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in law that occur which could affect the opinions contained herein. This letter is being rendered for the benefit of the Company in connection with the matters addressed 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.

Sincerely,

/s/ King & Spalding LLP