As filed with the Securities and Exchange Commission on November 13, 2009

Registration No. 333-

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

Form S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Beazer Homes USA, Inc.
Exact name of registrant as specified in its charter

Delaware	**58-2086934**
State or other jurisdiction of incorporation or organization	*I.R.S. Employer Identification No.*

Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 1200
Atlanta, Georgia 30328
(770) 829-3700

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

Kenneth F. Khoury
Executive Vice President and General Counsel
Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 1200
Atlanta, Georgia 30328
(770) 829-3700
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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

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

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

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

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

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

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

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

Large accelerated filer o	Accelerated filer ☑	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

Co-Registrants

	State of Incorporation/ Formation	Primary Standard Industrial Classification Code Number	IRS Employer Identification No.
Beazer Homes Corp.	TN	1531	62-0880780
Beazer/Squires Realty, Inc.	NC	1531	56-1807308
Beazer Homes Sales, Inc.	DE	1531	86-0728694
Beazer Realty Corp.	GA	1531	58-1200012
Beazer Homes Holdings Corp.	DE	1531	58-2222637
Beazer Homes Texas Holdings, Inc.	DE	1531	58-2222643
Beazer Homes Texas, L.P.	DE	1531	76-0496353
April Corporation	CO	1531	84-1112772
Beazer SPE, LLC	GA	1531	not applied for(1)
Beazer Homes Investments, LLC	DE	1531	04-3617414
Beazer Realty, Inc.	NJ	1531	22-3620212
Beazer Clarksburg, LLC	MD	1531	not applied for(1)
Homebuilders Title Services of Virginia, Inc.	VA	1531	54-1969702
Homebuilders Title Services, Inc.	DE	1531	58-2440984

	State of Incorporation/ Formation	Primary Standard Industrial Classification Code Number	IRS Employer Identification No.
Texas Lone Star Title, L.P.	TX	1531	58-2506293
Beazer Allied Companies Holdings, Inc.	DE	1531	54-2137836
Beazer Homes Indiana LLP	IN	1531	35-1901790
Beazer Realty Services, LLC	DE	1531	35-1679596
Paragon Title, LLC	IN	1531	35-2111763
Trinity Homes, LLC	IN	1531	35-2027321
Beazer Commercial Holdings, LLC	DE	1531	not applied for(1)
Beazer General Services, Inc.	DE	1531	20-1887139
Beazer Homes Indiana Holdings Corp.	DE	1531	03-3617414
Beazer Realty Los Angeles, Inc.	DE	1531	20-2495958
Beazer Realty Sacramento, Inc.	DE	1531	20-2495906
BH Building Products, LP	DE	1531	20-2498366
BH Procurement Services, LLC	DE	1531	20-2498277
Arden Park Ventures, LLC	FL	1531	not applied for(1)
Beazer Mortgage Corporation	DE	6163	58-2203537
Beazer Homes Michigan, LLC	DE	1531	20-3420345
Dove Barrington Development LLC	DE	6531	20-1737164
Elysian Heights Potomia, LLC	VA	6531	30-0237203
Clarksburg Arora LLC	MD	6531	52-2317355
Clarksburg Skylark, LLC	MD	6531	52-2321110

The address for each Co-Registrant is 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328.

(1) Does not have any employees.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Unit(1)(2)	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee(2)
Senior Debt Securities	—	—	—	—
Subordinated Debt Securities	—	—	—	—
Common Stock, par value $.001 per share(3)	—	—	—	—
Preferred Stock, par value $.01 per share	—	—	—	—
Depositary Shares(4)	—	—	—	—
Warrants	—	—	—	—
Rights(5)	—	—	—	—
Stock Purchase Contracts	—	—	—	—
Stock Purchase Units(6)	—	—	—	—
Guarantees with respect to Debt Securities(7)				
TOTAL	$750,000,000	(1)(2)	$750,000,000	$41,850

(1) Not specified as to each class of securities to be registered pursuant to General Instruction II.D of Form S-3. Securities registered hereunder may be sold separately, together or in units with other securities registered hereby. Subject to Rule 462(b) under the Securities Act, in no event will the aggregate initial offering price of the securities issued under this Registration Statement exceed $750,000,000 or if any securities are issued in any foreign currencies, composite currencies or currency units, the U.S. dollar equivalent of $750,000,000. Such amount represents the principal amount of any debt securities (or issue price, in the case of debt securities issued at an original issue discount), and the issue price of any common stock, preferred stock, depositary shares, warrants, rights, stock purchase contracts or any stock purchase units. This Registration Statement includes such presently indeterminate number of securities registered hereunder as may be issuable from time to time upon conversion of, or in exchange for, or upon exercise of, convertible or exchangeable securities as may be offered pursuant to the prospectus filed with this Registration Statement. No separate consideration will be received for any securities registered hereunder that are issued upon conversion of, or in exchange for, or upon exercise of, as the case may be, convertible or exchangeable securities.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) of the rules and regulations under the Securities Act, and exclusive of accrued interest and dividends, if any.

(3) Each share of common stock includes one preferred stock purchase right as described under “Description of Capital Stock.” No separate consideration will be received for the preferred stock purchase rights.

(4) Each depositary share will be issued under a deposit agreement, will represent an interest in a fractional share or multiple shares of preferred stock and will be evidenced by a depositary receipt.

(5) Rights evidencing the right to purchase common stock, preferred stock, depositary shares or debt securities.

(6) Each unit will be issued under a unit agreement or indenture and will represent an interest in two or more debt securities, warrants or purchase contracts, which may or may not be separable from one another.

(7) No separate consideration will be received for the guarantees with respect to the debt securities. In accordance with Rule 457(n), no separate fee is payable with respect to the guarantees of the debt securities being registered.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that the Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION DATED NOVEMBER 13, 2009

PRELIMINARY PROSPECTUS

BEAZER HOMES USA, INC.

$750,000,000
Senior Debt Securities
Subordinated Debt Securities
Common Stock
Preferred Stock
Depositary Shares
Warrants
Rights
Stock Purchase Contracts
Stock Purchase Units
Guarantees of Debt Securities

Beazer Homes USA, Inc. may offer, from time to time, up to $750,000,000 in aggregate initial offering price of senior debt securities, subordinated debt securities, common stock, preferred stock, depositary shares, warrants, rights, stock purchase contracts or stock purchase units.

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

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

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

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

These securities are speculative and involve a high degree of risk. You should carefully read the information under the heading “Risk Factors” on page 3 of this prospectus and the risk factors contained in any applicable prospectus supplement before making a decision to purchase our securities.

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

The date of this prospectus is , 2009.

TABLE OF CONTENTS

You should rely only on the information contained or incorporated by reference in this prospectus and any applicable prospectus supplement. We have not authorized anyone else to provide you with additional or different information. We may only use this prospectus to sell securities if it is accompanied by a prospectus supplement. We are only offering these securities in states where the offer is permitted. You should not assume that the information in this prospectus or the applicable prospectus supplement is accurate as of any date other than the dates on the front of these documents.

FORWARD-LOOKING STATEMENTS

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

These forward-looking statements are subject to risks, uncertainties and other factors, many of which are outside of our control, that could cause actual results to differ materially from the results discussed in the forward-looking statements. For a more detailed description of the risks and uncertainties involved, you should also carefully consider the statements contained in, or incorporated by reference to, our filings with the Securities and Exchange Commission. Factors that could lead to material changes in our performance may include, but are not limited to:

- the final outcome of various putative class action lawsuits, the derivative claims, multi-party suits and similar proceedings as well as the results of any other litigation or government proceedings and fulfillment of the obligation in the Deferred Prosecution Agreement and other settlement agreements and consent orders with governmental authorities;
- additional asset impairment charges or writedowns;
- economic changes nationally or in local markets, including changes in consumer confidence, volatility of mortgage interest rates and inflation;
- continued or increased downturn in the homebuilding industry;
- estimates related to homes to be delivered in the future (backlog) are imprecise as they are subject to various cancellation risks which cannot be fully controlled;
- continued or increased disruption in the availability of mortgage financing;
- our cost of and ability to access capital and otherwise meet our ongoing liquidity needs including the impact of any further downgrades of our credit ratings or reductions in our tangible net worth or liquidity levels;
- potential inability to comply with covenants in our debt agreements or satisfy such obligations through repayment or refinancing;
- increased competition or delays in reacting to changing consumer preference in home design;
- shortages of or increased prices for, labor, land or raw materials used in housing production;
- factors affecting margins such as decreased land values underlying land option agreements, increased land development costs on communities under development or delays or difficulties in implementing initiatives to reduce production and overhead cost structure;
- the performance of our joint ventures and our joint venture partners;
- the impact of construction defect and home warranty claims, including those related to possible installation of drywall imported from China;
- the cost and availability of insurance and surety bonds;
- delays in land development or home construction resulting from adverse weather conditions;
- potential delays or increased costs in obtaining necessary permits as a result of changes to, or complying with, laws, regulations or governmental policies and possible penalties for failure to comply with such laws, regulations and governmental policies;

- effects of changes in accounting policies, standards, guidelines or principles; or
- terrorist acts, acts of war and other factors over which we have little or no control.

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

ABOUT THIS PROSPECTUS

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

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, (the "SEC"), utilizing a "shelf" registration process. Under this shelf process, we may, from time to time, sell the securities or combinations of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities that we may offer. Each time we offer securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement also may add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find More Information."

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

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We also filed a registration statement on Form S-3, including exhibits, under the Securities Act with respect to the securities offered by this prospectus. This prospectus is a part of the registration statement, but does not contain all of the information included in the registration statement or the exhibits. You may read and copy the registration statement and any other document that we file at the SEC's public reference room at 100 F Street, N.E., Washington D.C. 20549. You can call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. You can also find our public filings with the SEC on the internet at a web site maintained by the SEC located at http://www.sec.gov. We also make available on our Internet website our annual, quarterly and current reports and amendments as soon as reasonably practicable after such documents are electronically filed with, or furnished to, the SEC. Our Internet address is http://www.beazer.com. The information on our website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus.

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

- incorporated documents are considered part of this prospectus;
- we are disclosing important information to you by referring you to those documents; and

- information we file later with the SEC will automatically update and supersede information contained in this prospectus.

We incorporate by reference the documents listed below, which we filed with the SEC under the Exchange Act:

- our Annual Report on Form 10-K for the year ended September 30, 2009, filed on November 10, 2009;
- the description of our capital stock contained in our Registration Statements on Form 8-A, filed on January 28, 1994 and August 7, 2009, including any amendment or report filed for the purpose of updating those descriptions; and
- all documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (i) after the date on which the registration statement that includes this prospectus was initially filed with the SEC and before the effectiveness of such registration statement and (ii) after the date of this prospectus and prior to the termination of this offering, unless otherwise stated therein, shall be deemed to be incorporated by reference in this prospectus and to be part hereof from the date of filing of such documents.

We will provide without charge to each person, including any beneficial owner, to whom a copy of this prospectus has been delivered, upon written or oral request, a copy of any or all of the documents referred to above that have been or may be incorporated in this prospectus by reference. Requests for copies should be directed to our Corporate Secretary, Beazer Homes USA, Inc., 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328, telephone (770) 829-3700.

BEAZER HOMES USA, INC.

We are a geographically diversified homebuilder with active operations in 16 states. Our homes are designed to appeal to homeowners at various price points across various demographic segments and are generally offered for sale in advance of their construction. Our objective is to provide our customers with homes that incorporate exceptional value and quality while seeking to maximize our return on invested capital over time.

Our and our co-registrants' principal executive offices are located at 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328, telephone (770) 829-3700. We also provide information about our active communities through our Internet website located at http://www.beazer.com. Information on our website is not a part of and shall not be deemed incorporated by reference in this prospectus.

RISK FACTORS

You should carefully consider the factors contained in our Annual Report on Form 10-K for the fiscal year ended September 30, 2009 under the headings "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Risk Factors," before investing in our securities. You should also consider similar information contained in any Annual Report on Form 10-K, Form 10-Q or other document filed by us with the SEC after the date of this prospectus before deciding to invest in our securities. If applicable, we will include in any prospectus supplement a description of those significant factors that could make the offering described herein speculative or risky.

USE OF PROCEEDS

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

RATIO OF EARNINGS TO FIXED CHARGES

The following table presents our ratios of consolidated earnings to fixed charges for the periods presented.

	Fiscal Year Ended September 30,				
	2009	2008	2007	2006	2005
Ratio of Earnings to Fixed Charges(1)(2)	—	—	—	5.45x	6.91x

(1) The ratio of earnings to fixed charges for each of the periods is determined by dividing earnings by fixed charges. Earnings consist of (loss) income from continuing operations before income taxes, amortization of previously capitalized interest and fixed charges, exclusive of capitalized interest cost. Fixed charges consist of interest incurred, amortization of deferred loan costs and debt discount, and that portion of operating lease rental expense (33%) deemed to be representative of interest. Earnings for fiscal years ended September 30, 2009, 2008 and 2007 were insufficient to cover fixed charges by $41 million, $542 million and $428 million, respectively.

(2) The ratio of earnings to combined fixed charges and preferred dividends is the same as the ratio of earnings to fixed charges for the periods presented because no shares of preferred stock were outstanding during these periods.

DESCRIPTION OF DEBT SECURITIES AND GUARANTEES

General

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

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

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

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

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

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

This section and your prospectus supplement summarize material terms of the indentures and your debt security. They do not, however, describe every aspect of the indentures and your debt security. For example, in this section and your prospectus supplement, we use terms that have been given special meaning in the indentures, but we describe the meaning for only the more important of those terms. Your prospectus

supplement will have a more detailed description of the specific terms of your debt security and any applicable guarantees.

Indentures

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

The trustee under each indenture has two main roles:

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

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

Series of Debt Securities

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

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

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

Amounts of Issuances

Neither indenture limits the aggregate amount of debt securities that we may issue or the number of series or the aggregate amount of any particular series. We may issue debt securities and other securities at any time without your consent and without notifying you.

Principal Amount, Stated Maturity and Maturity

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

The term "stated maturity" with respect to any debt security means the day on which the principal amount of your debt security is scheduled to become due. The principal may become due sooner, by reason of

redemption or acceleration after a default or otherwise in accordance with the terms of the debt security. The day on which the principal actually becomes due, whether at the stated maturity or earlier, is called the "maturity" of the principal.

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

Specific Terms of Debt Securities

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

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

- the percentage of the principal amount of the debt securities which is payable if the maturity of the debt securities is accelerated in the case of debt securities issued at a discount from their face amount;
- whether the debt security will be guaranteed by any guarantors and, if so, the identity of the guarantors and, to the extent the terms thereof differ from those described in this prospectus, a description of the terms of the guarantees;
- whether the debt security is secured or unsecured, and if secured, what the collateral will consist of; and
- any other terms in addition to or different from those contained in this prospectus.

Original Issue Discount Debt Securities

We may issue original issue discount debt securities at an issue price (as specified in the applicable prospectus supplement) that is less than 100% of the principal amount of such debt securities (i.e., par). Original issue discount debt securities may not bear any interest currently or may bear interest at a rate that is below market rates at the time of issuance. The difference between the issue price of an original issue discount debt security and par is referred to herein as the "discount." In the event of redemption, repayment or acceleration of maturity of an original issue discount debt security, the amount payable to the holder of an original issue discount debt security will be equal to the sum of (a) the issue price (increased by any accruals of discount) and, in the event of any redemption by us of such original issue discount debt security (if applicable), multiplied by the initial redemption percentage specified in the accompanying prospectus supplement (as adjusted by the initial redemption percentage reduction, if applicable) and (b) any unpaid interest on such original issue discount debt security accrued from the date of issue to the date of such redemption, repayment or acceleration of maturity.

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

Governing Law

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

Form of Debt Securities

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

Unless otherwise indicated in the prospectus supplement, the following is a summary of the depositary arrangements applicable to debt securities issued in global form and for which The Depositary Trust Company, New York, New York, or DTC, will act as depositary.

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

Ownership of beneficial interests in a global debt security is limited to institutions that have accounts with DTC or its nominee, or persons that may hold interests through those participants. In addition, ownership of beneficial interests by participants in a global debt security will be evidenced only by, and the transfer of that ownership interest will be effected only through, records maintained by DTC or its nominee for a global debt security. Ownership of beneficial interests in a global debt security by persons that hold those interests through participants will be evidenced only by, and the transfer of that ownership interest within that participant will be effected only through, records maintained by that participant. DTC has no knowledge of the actual beneficial owners of the debt securities. Beneficial owners will not receive written confirmation from DTC of their purchase, but beneficial owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the participants through which the beneficial owners entered the transaction. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities they purchase in definitive form. These laws may impair your ability to transfer beneficial interests in a global debt security.

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

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

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

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

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

In the event definitive securities are issued:

- holders of definitive securities will be able to receive payments of principal and interest on their debt securities at the office of our paying agent maintained in the Borough of Manhattan or, at our option, by check mailed to the address of the person entitled to the payment at his or her address in the security register;
- holders of definitive securities will be able to transfer their debt securities, in whole or in part, by surrendering the debt securities for registration of transfer at the corporate trust officer of The Bank of New York Mellon. We will not charge any fee for the registration or transfer or exchange, except that

we may require the payment of a sum sufficient to cover any applicable tax or other governmental charge payable in connection with the transfer; and

- any moneys we pay to our paying agents for the payment of principal and interest on the debt securities that remains unclaimed at the second anniversary of the date such payment was due will be returned to us, and thereafter holders of definitive securities may look only to us, as general unsecured creditors, for payment.

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

DTC has advised us as follows:

- DTC is:
  - a limited-purpose trust company organized under the New York Banking Law;
  - a “banking organization” within the meaning of the New York Banking Law;
  - a member of the Federal Reserve System;
  - a “clearing corporation” within the meaning of the New York Uniform Commercial Code; and
  - a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934.
- DTC was created to hold securities of its participants and to facilitate the clearance and settlement of securities transactions among its participants in those securities through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates.
- DTC’s participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations.
- DTC is owned by a number of its participants and by the New York Stock Exchange, Inc., the NYSE Amex LLC and the Financial Industry Regulatory Authority, Inc.
- Access to DTC’s book-entry system is also available to others, such as banks, brokers, dealers and trust companies, that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

The rules applicable to DTC and its participants are on file with the SEC.

Investors may hold interests in the debt securities outside the United States through the Euroclear System (“Euroclear”) or Clearstream Banking (“Clearstream, Luxembourg”) if they are participants in those systems, or indirectly through organizations which are participants in those systems. Euroclear and Clearstream, Luxembourg will hold interests on behalf of their participants through customers’ securities accounts in Euroclear’s and Clearstream, Luxembourg’s names on the books of their respective depositaries which in turn will hold such positions in customers’ securities accounts in the names of the nominees of the depositaries on the books of DTC. At the present time JPMorgan Chase Bank, National Association will act as U.S. depositary for Euroclear, and Citibank, National Association will act as U.S. depositary for Clearstream, Luxembourg. All securities in Euroclear or Clearstream, Luxembourg are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

The following is based on information furnished by Euroclear or Clearstream, Luxembourg, as the case may be.

Euroclear has advised us that:

- it was created in 1968 to hold securities for participants of Euroclear and to clear and settle transactions between Euroclear participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash;
- Euroclear includes various other services, including securities lending and borrowing and interfaces with domestic markets in several countries;
- Euroclear is operated by the Euroclear operator, under contract with Euroclear plc, a U.K. corporation. The Euroclear operator is a Belgian bank. The Belgian Banking Commission and the National Bank of Belgium regulate and examine Euroclear;
- the Euroclear operator conducts all operations, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts with the Euroclear operator, not Euroclear plc. Euroclear plc establishes policy for Euroclear on behalf of Euroclear participants. Euroclear participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries and may include underwriters of debt securities offered by this prospectus;
- indirect access to Euroclear is also available to other firms that clear through or maintain a custodial relationship with a Euroclear participant, either directly or indirectly;
- securities clearance accounts and cash accounts with the Euroclear operator are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear System, and applicable Belgian law (collectively, the “Terms and Conditions”);
- the Terms and Conditions govern transfers of securities and cash within Euroclear, withdrawals of securities and cash from Euroclear, and receipts of payments with respect to securities in Euroclear. The Euroclear operator acts under the Terms and Conditions only on behalf of Euroclear participants, and has no record of or relationship with persons holding through Euroclear participants; and
- distributions with respect to debt securities held beneficially through Euroclear will be credited to the cash accounts of Euroclear participants in accordance with the Terms and Conditions, to the extent received by the U.S. depositary for Euroclear.

Clearstream, Luxembourg has advised us that:

- it is incorporated as a limited liability company under the laws of Luxembourg, and is owned by Cedel International societe anonyme, and Deutsche Brse AG. The shareholders of these two entities are banks, securities dealers and financial institutions;
- it holds securities for its customers and facilitates the clearance and settlement of securities transactions between Clearstream, Luxembourg customers through electronic book-entry changes in accounts of Clearstream, Luxembourg customers, eliminating the need for physical movement of certificates;
- it can settle transactions in many currencies, including U.S. dollars, and provides its customers services for safekeeping, administration, clearance and settlement of internationally traded securities, securities lending and borrowing;
- it also deals with domestic securities markets in over 30 countries through established depository and custodial relationships, and interfaces with domestic markets in a number of countries;
- it has established an electronic bridge with Euroclear Bank S.A./N.V., the operator of Euroclear, or the Euroclear operator, to facilitate settlement of trades between Clearstream, Luxembourg and Euroclear;
- it is subject to regulation by the Luxembourg Commission for the Supervision of the Financial Sector;

- participants are recognized financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations and may include underwriters of debt securities offered by this prospectus;
- indirect access to Clearstream, Luxembourg is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Clearstream, Luxembourg participant either directly or indirectly; and
- distributions with respect to the debt securities held beneficially through Clearstream, Luxembourg will be credited to cash accounts of Clearstream participants in accordance with its rules and procedures, to the extent received by the U.S. depositary for Clearstream, Luxembourg.

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

Secondary market trading between Euroclear participants and Clearstream, Luxembourg participants will occur in the ordinary way in accordance with the applicable rules and operating procedures of Euroclear and Clearstream, Luxembourg and will be settled using the procedures applicable to conventional eurobonds in immediately available funds.

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

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

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

Redemption or Repayment

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

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

Mergers and Similar Transactions

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

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

Subordination Provisions

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

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

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

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

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

Even if the subordination provisions prevent us from making any payment when due on the subordinated debt securities of any series, we will be in default on our obligations under that series if we do not make the payment when due. This means that the trustee under the subordinated debt indenture and the holders of that

series can take action against us, but they will not receive any money until the claims of the holders of senior debt have been fully satisfied.

Defeasance, Covenant Defeasance and Satisfaction and Discharge

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

- we will be discharged from our obligations with respect to the debt securities of such series and all obligations of any guarantors of such debt securities will also be discharged with respect to the guarantees of such debt securities ("legal defeasance"); or
- we will be discharged from any covenants we make in the applicable indenture for the benefit of such series and the related events of default will no longer apply to us ("covenant defeasance").

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

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

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

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

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

Default, Remedies and Waiver of Default

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

Events of Default

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

- we do not pay the principal or any premium on any debt security of that series on the due date;
- we do not pay interest on any debt security of that series within 30 days after the due date;

- we do not deposit a sinking fund payment with regard to any debt security of that series when due, but only if the payment is required under provisions described in the applicable prospectus supplement;
- we remain in breach of our covenants we make in the indenture for the benefit of the relevant series, for 60 days after we receive a notice of default stating that we are in breach and requiring us to remedy the breach. The notice must be sent by the trustee or the holders of at least 25% in principal amount of the relevant series of debt securities;
- we file for bankruptcy or other events of bankruptcy, insolvency or reorganization relating to the Company occur;
- with respect to any series of debt securities that is guaranteed, such guarantee shall cease to be enforceable for any reason, except as contemplated or permitted in the indenture governing such debt security; or
- if the applicable prospectus supplement states that any additional event of default applies to the series, that event of default occurs.

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

Remedies if an Event of Default Occurs

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

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

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

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

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

Before you bypass the trustee and bring your own lawsuit or other formal legal action or take other steps to enforce your rights or protect your interests relating to any debt security, all of the following must occur:

- the holder of your debt security must give the trustee written notice that an event of default has occurred with respect to the debt securities of your series, and the event of default must not have been cured or waived;
- the holders of at least a majority in principal amount of all debt securities of your series must make a written request that the trustee take action because of the default, and they or other holders must offer

to the trustee indemnity reasonably satisfactory to the trustee against the cost and other liabilities of taking that action;

- the trustee must not have taken action for 60 days after the above steps have been taken; and
- during those 60 days, the holders of a majority in principal amount of the debt securities of your series must not have given the trustee directions that are inconsistent with the written request of the holders of at least a majority in principal amount of the debt securities of your series.

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

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

Waiver of Default

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

Modifications and Waivers

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

Changes Requiring Each Holder's Approval

Without the consent of each holder affected, we may not

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

The right of any holder to participate in any consent required or sought pursuant to any provision of the indentures (and the obligation of the Company to obtain any such consent otherwise required from such holder) may be subject to the requirement that such holder shall have been the holder of record of any debt securities with respect to which such consent is required or sought as of a date identified by the trustee in a notice furnished to holders in accordance with the terms of the indenture.

Changes Not Requiring Approval

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

Changes Requiring Majority Approval

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

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

Modification of Subordination Provisions

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

Form, Exchange and Transfer

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

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

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

Holders may exchange or transfer their debt securities at the office of the trustee. They may also replace lost, stolen, destroyed or mutilated debt securities at that office. We have appointed the trustee to act as our agent for registering debt securities in the names of holders and transferring and replacing debt securities. We may appoint another entity to perform these functions or perform them ourselves.

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

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

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

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

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

Payments

We will pay interest, principal and other amounts payable with respect to the debt securities of any series to the holders of record of those debt securities as of the record dates and otherwise in the manner specified below or in the prospectus supplement for that series.

We will make payments on a global debt security in accordance with the applicable policies of the depositary as in effect from time to time. Under those policies, we will pay directly to the depositary, or its nominee, and not to any indirect owners who own beneficial interests in the global debt security. An indirect owner's right to receive those payments will be governed by the rules and practices of the depositary and its participants.

We will make payments on a debt security in non-global, registered form as follows. We will pay interest that is due on an interest payment date by check mailed on the interest payment date to the holder at his or her address shown on the trustee's records as of the close of business on the regular record date. We will make all other payments by check at the paying agent described below, against surrender of the debt security. All payments by check will be made in next-day funds — i.e., funds that become available on the day after the check is cashed.

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

Regardless of who acts as paying agent, all money paid by us to a paying agent that remains unclaimed at the end of two years after the amount is due to a holder will be repaid to us. After that two-year period, the holder may look only to us for payment and not to the trustee, any other paying agent or anyone else.

Guarantees

The debt securities of any series may be guaranteed by one or more of our subsidiaries. However, the applicable indenture governing the debt securities will not require that any of our subsidiaries be a guarantor of any series of debt securities and will permit the guarantors for any series of guaranteed debt securities to be different from any of the subsidiaries listed above under "— General." As a result, a series of debt securities may not have any guarantors and the guarantors of any series of guaranteed debt securities may differ from

the guarantors of any other series of guaranteed debt securities. If we issue a series of guaranteed debt securities, the identity of the specific guarantors of the debt securities of that series will be identified in the applicable prospectus supplement.

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

Notwithstanding the foregoing, unless otherwise provided in the prospectus supplement relating to a series of guaranteed debt securities, the applicable indenture will contain provisions to the effect that the obligations of each guarantor under its guarantees and such indenture shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such guarantor, result in the obligations of such guarantor under such guarantees and such indenture not constituting a fraudulent conveyance or fraudulent transfer under applicable law. However, there can be no assurance that, notwithstanding such limitation, a court would not determine that a guarantee constituted a fraudulent conveyance or fraudulent transfer under applicable law. If that were to occur, the court could void the applicable guarantor's obligations under that guarantee, subordinate that guarantee to other debt and other liabilities of that guarantor or take other action detrimental to holders of the debt securities of the applicable series, including directing the holders to return any payments received from the applicable guarantor.

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

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

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

Paying Agents

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

Notices

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

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

Our Relationship With the Trustee

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

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

DESCRIPTION OF CAPITAL STOCK

General

The authorized capital stock of Beazer Homes USA, Inc. consists of 80,000,000 shares of common stock, $0.001 par value per share, and 5,000,000 shares of preferred stock, $0.01 par value per share.

The following description of our capital stock summarizes general terms and provisions that apply to our capital stock. Since this is only a summary, it does not contain all of the information that may be important to you. The summary is subject to and qualified in its entirety by reference to our certificate of incorporation and our bylaws, which are filed as exhibits to the registration statement of which this prospectus is a part and incorporated by reference into this prospectus. See "Where You Can Find More Information."

Common Stock

Holders of our common stock are entitled to one vote per share with respect to each matter submitted to a vote of our stockholders, subject to voting rights that may be established for shares of our preferred stock, if any. Except as may be provided in connection with our preferred stock or as otherwise may be required by law or our restated certificate of incorporation, our common stock is the only capital stock entitled to vote in the election of directors. Our common stock does not have cumulative voting rights.

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

The shares of our common stock issued through this prospectus will be fully paid and nonassessable. Our common stock does not have any preemptive, subscription or conversion rights. We may issue additional shares of our authorized but unissued common stock as approved by our board of directors from time to time, without stockholder approval, except as may be required by law or applicable stock exchange requirements.

Preferred Stock

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

- the designation of the series;
- the number of shares within the series;

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

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

Rights Agreement

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

Limitation on Directors' Liability

Our amended and restated certificate of incorporation provides, as authorized by Section 102(b)(7) of the Delaware General Corporation Law, that our directors will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omission not in good faith or which involve intentional misconduct or a knowing violation of law;

- for unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- for any transaction from which the director derived an improper personal benefit.

The inclusion of this provision in our amended and restated certificate of incorporation may have the effect of reducing the likelihood of derivative litigation against directors, and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited us and our stockholders.

Our bylaws provide that our directors and officers will be indemnified by us to the fullest extent authorized by Delaware law or by other applicable law. In addition, to the fullest extent authorized by Delaware law, we will advance funds to certain directors and officers sufficient for the payment of all expenses in connection with the investigation of, response to, defense (including any appeal) of or settlement of any proceeding. The indemnification and advancement of expenses provided in our bylaws shall be deemed independent of, and is deemed exclusive of or a limitation on, any other rights to which any person seeking indemnification or advancement of expenses may be entitled or acquired under any statute, provision of the certificate of incorporation, bylaw, agreement, vote of stockholders or of disinterested directors or otherwise, both as to such person's official capacity and as to action in another capacity while holding such office. In addition, our bylaws provide that the corporation may purchase and maintain liability insurance for directors and officers for certain losses arising from claims or charges made against them while acting in their capacities as directors or officers of the corporation.

In addition, we have entered into indemnification agreements with each of our executive officers and directors providing such officers and directors indemnification and expense advancement and for the continued coverage of such person under our directors' and officers' insurance programs.

Section 203 of the Delaware General Corporation Law

Section 203 of the Delaware General Corporation Law prohibits a defined set of transactions between a Delaware corporation, such as us, and an "interested stockholder." An interested stockholder is defined as a person who, together with any affiliates or associates of such person, beneficially owns, directly or indirectly, 15% or more of the outstanding voting shares of a Delaware corporation. This provision may prohibit business combinations between an interested stockholder and a corporation for a period of three years after the date the interested stockholder becomes an interested stockholder. The term "business combination" is broadly defined to include mergers, consolidations, sales or other dispositions of assets having a total value in excess of 10% of the consolidated assets of the corporation, and some other transactions that would increase the interested stockholder's proportionate share ownership in the corporation.

This prohibition is effective unless:

- the business combination is approved by the corporation's board of directors prior to the time the interested stockholder becomes an interested stockholder;
- the interested stockholder acquired at least 85% of the voting stock of the corporation, other than stock held by directors who are also officers or by qualified employee stock plans, in the transaction in which it becomes an interested stockholder; or
- the business combination is approved by a majority of the board of directors and by the affirmative vote of $66^{2}/_{3}$% of the outstanding voting stock that is not owned by the interested stockholder.

Special Bylaw Provisions

Our amended and restated bylaws contain provisions requiring that advance notice be delivered to us of any business to be brought by a stockholder before an annual meeting of stockholders and providing for certain procedures to be followed by stockholders in nominating persons for election to our board of directors. Generally, such advance notice provisions provide that the stockholder must give written notice to our Secretary not less than 120 days nor more than 150 days prior to the first anniversary of the date of our notice

of annual meeting for the preceding year's annual meeting; provided, however, that in the event that the date of the meeting is changed by more than 30 days from the anniversary date of the preceding year's annual meeting, notice by the stockholder to be timely must be received no later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made. The notice must set forth specific information regarding such stockholder and such business or director nominee, as described in the bylaws. Such requirement is in addition to those set forth in the regulations adopted by the SEC under the Securities Exchange Act of 1934.

Transfer Agent and Registrar

American Stock Transfer & Trust Company serves as the registrar and transfer agent for the common stock.

Stock Exchange Listing

Our common stock is listed on the New York Stock Exchange. The trading symbol for our common stock is "BZH."

DESCRIPTION OF DEPOSITARY SHARES

General

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

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

Dividends and Other Distributions

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

Redemption of Depositary Shares

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

Voting the Preferred Stock

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

Amendment and Termination of the Depositary Agreement

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

Charges of Depositary

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

Withdrawal of Preferred Stock

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

Miscellaneous

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

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

deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

Resignation and Removal of Depositary

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

DESCRIPTION OF WARRANTS

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

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

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

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

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

Each warrant will entitle the holder thereof to purchase such principal amount of debt securities or such number of shares of preferred stock, common stock or other securities at such exercise price as shall in each

case be set forth in, or calculable from, the prospectus supplement relating to the warrants, which exercise price may be subject to adjustment upon the occurrence of certain events as set forth in such prospectus supplement. After the close of business on the expiration date, or such later date to which such expiration date may be extended by us, unexercised warrants will become void. The place or places where, and the manner in which, warrants may be exercised shall be specified in the prospectus supplement relating to such warrants.

Prior to the exercise of any warrants to purchase debt securities, preferred stock, common stock or other securities, holders of such warrants will not have any of the rights of holders of debt securities, preferred stock, common stock or other securities, as the case may be, purchasable upon such exercise, including the right to receive payments of principal of, premium, if any, or interest, if any, on the debt securities purchasable upon such exercise or to enforce covenants in the applicable Indenture, or to receive payments of dividends, if any, on the preferred stock, or common stock purchasable upon such exercise, or to exercise any applicable right to vote.

DESCRIPTION OF RIGHTS

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

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

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

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

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

DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK PURCHASE UNITS

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

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

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

PLAN OF DISTRIBUTION

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

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

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

using this prospectus. Such financial institution or third party may transfer its short position to investors in our securities or in connection with a simultaneous offering of other securities offered by this prospectus or otherwise.

Sale Through Underwriters or Dealers

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

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

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

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

Direct Sales and Sales Through Agents

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

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

We may also make direct sales through subscription rights distributed to our existing stockholders on a pro rata basis that may or may not be transferable. In any distribution of subscription rights to our stockholders, if all of the underlying securities are not subscribed for, we may then sell the unsubscribed

securities directly to third parties or we may engage the services of one or more underwriters, dealers or agents, including standby underwriters, to sell the unsubscribed securities to third parties.

Remarketing Arrangements

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

Delayed Delivery Arrangements

If we so indicate in the prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

General Information

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

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

With respect to the sale of securities under this prospectus and any applicable prospectus supplement, the maximum commission or discount to be received by any member of the Financial Industry Regulatory Authority, Inc. or independent broker or dealer will not be greater than eight percent (8%).

LEGAL MATTERS

Unless otherwise indicated in the applicable prospectus supplement, the validity of the securities being offered by this prospectus will be passed upon for us by Kenneth F. Khoury, our General Counsel. As of November 1, 2009, Kenneth F. Khoury held (A) 66,672 restricted shares of our common stock, and (B) 100,007 options to purchase shares of our common stock, none of which options are fully vested. Additional legal matters may be passed on for us, or any underwriters, dealers or agents, by counsel we will name in the applicable prospectus supplement.

EXPERTS

The consolidated financial statements, incorporated in this prospectus by reference from our Annual Report on Form 10-K for the year ended September 30, 2009, and the effectiveness of our internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports (which report on the consolidated financial statements expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of new accounting guidance on the accounting for uncertainty in income taxes on October 1, 2007), which are incorporated herein by reference. Such financial statements have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. ***Other Expenses of Issuance and Distribution.***

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

SEC registration fee	$ 41,850
Printing fees and expenses	*
Accounting fees and expenses	*
Rating agency fees	*
Legal fees and expenses	*
Transfer Agent and Registrar, Trustee and Depositary fees and expenses	*
Miscellaneous	*
Total	$ *

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

Item 15. ***Indemnification of Directors and Officers.***

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

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

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

Section 145 of the DGCL provides that a corporation incorporated in the State of Delaware may indemnify any person or persons, including officers and directors, who are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee, or agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, for criminal proceedings, had no reasonable cause to believe that the challenged conduct was unlawful. A corporation incorporated in the State of Delaware may indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must provide indemnification against the expenses that such officer or director actually and reasonably incurred.

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

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

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

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

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

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

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

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

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

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

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

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

The bylaws of Beazer Homes Holdings Corp., Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc. provide that the corporation shall indemnify each person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (an "Indemnitee"), against expenses (including attorneys' and other professionals' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Indemnitee in connection with such action, suit or proceeding, if the Indemnitee acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The corporation shall indemnify an Indemnitee in an action by or in the right of the corporation under the same conditions, except that no indemnification shall be made in respect of any claim, issue or matter as to which the Indemnitee shall have been adjudged liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application, that despite the adjudication of liability, but in view of all the circumstances of

the case, the Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

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

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

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

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

Indemnification of the Officers and Directors of Beazer Allied Companies Holdings, Inc., Beazer Homes Indiana Holdings Corp., Beazer General Services, Inc., Beazer Realty Los Angeles, Inc. and Beazer Realty Sacramento, Inc.

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

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

Indemnification of the Officers and Directors of Homebuilders Title Services, Inc.

Homebuilders Title Services, Inc. is a corporation organized under the laws of the State of Delaware. For a description of the provisions of the DGCL addressing the indemnification of directors and officers see the discussion in "Indemnification of Officers and Director of Beazer Homes USA, Inc., Beazer Homes Holdings Corp., Beazer Homes Sales, Inc., Beazer Mortgage Corporation and Beazer Homes Texas Holdings, Inc." above.

The certificate of incorporation of Homebuilders Title Services, Inc. provides that that no director shall be personally liable to the corporation or its stockholders for violations of the director's fiduciary duties to the fullest extent permitted by the DGCL.

The bylaws of Homebuilders Title Services, Inc. provide that the corporation shall indemnify any director or officer who is or was a party or is threatened to be made a party to any threatened, pending or completed action suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding and/or the defense or settlement of such action or suit if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The corporation shall indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged liable to the corporation unless and only to the extent that a court in which such action or suit is brought determines that such person is fairly and reasonably entitled to indemnity.

Furthermore, the bylaws of Homebuilders Title Services, Inc. provide that the expenses incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it is ultimately determined that such director or officer is not entitled to be indemnified by the corporation. The indemnification and advancement of expenses provided in the bylaws is not be deemed to be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any other provision of the bylaws, agreement, contract or by vote of the stockholders or of the disinterested directors.

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

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

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

may be entitled to indemnification. If it is ultimately determined that their respective general partners or their affiliates are not entitled to indemnification, then such person must repay any amounts advanced by the limited partnership.

Indemnification of the Officers and Directors of April Corporation

April Corporation is a corporation organized under the laws of the State of Colorado. Sections 7-109-101 through 7-109-110 of the Colorado Business Corporation Act ("CBCA") provide for the indemnification of officers and directors by the corporation under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been an officer or director of the corporation. Under the CBCA, a corporation may purchase insurance on behalf of an officer or director of the corporation against any liability incurred in his or her capacity as an officer or director regardless of whether the person could be indemnified under the CBCA.

The articles of incorporation of April Corporation provide that the corporation may indemnify each person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee, fiduciary or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner reasonably believed to be in the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The corporation shall indemnify directors, officers, employees, fiduciaries and agents of the corporation in an action by or in the right of the corporation under the same conditions, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged liable for negligence or misconduct in the performance of the persons duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for those expenses which the court deems proper.

The articles of April Corporation provide that any indemnification pursuant to the articles (except indemnification ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination the indemnification of the director, employee, fiduciary or agent is proper in the circumstances because that person has met the applicable standard of conduct described above. However, to the extent that a director, employee, fiduciary or agent is successful on the merits or otherwise in the defense of any action, suit or proceeding described above, or in the defense of any claim, issue or matter therein, that person shall be indemnified against reasonable expenses (including attorneys' and other professionals' fees) actually and reasonably incurred by in connection therewith, without the necessity of authorization in the specific case.

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

The articles of April Corporation also provide that the indemnification and advancement of expenses shall not be deemed to be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any other provision of the bylaws, agreement or contract, by vote of the stockholders or of the disinterested directors.

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

Indemnification of the Officers and Directors of Beazer Realty Corp.

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

Indemnification of the Managers and Members of Beazer SPE, LLC

Beazer SPE, LLC is a limited liability company organized under the laws of the State of Georgia. Section 14-11-306 of the Georgia Limited Liability Company Act provides that subject to the standards and restrictions, if any, set forth in the article of organization or written operating agreement, a limited liability company may indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever arising in connection with the limited liability company; provided that a limited liability company shall not have the power to indemnify any member or manager for (i) for his or her intentional misconduct or knowing violation of the law or (ii) for any transaction for which the person received a personal benefit in violation of any provision of a written operating agreement. The operating agreement of Beazer SPE, LLC provides that members, employees and agents shall be entitled to indemnification to the fullest extent permitted by law.

Indemnification of the Partners of Beazer Homes Indiana LLP

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

Indemnification of the Members and Managers of Paragon Title, LLC and Trinity Homes, LLC

Paragon Title, LLC and Trinity Homes, LLC are limited liability companies organized under the laws of the State of Indiana. Section 23-18-4-4 of the Indiana Limited Liability Company Act provides that the operating agreement of a limited liability company may provide for the indemnification of a member or manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which a person is a party because such person is or was a member or manager.

The articles of organization of Paragon Title, LLC and Trinity Homes, LLC each provide that the company shall indemnify any member or manager (and the responsible officers and directors of such member or manager), to the greatest extent not inconsistent with the laws and public policies of the State of Indiana, who is made a party to any proceeding because such person was or is a member or manager (or the responsible officers and directors of such member or manager), as a matter of right against all liability incurred by such person in connection with such proceeding, provided that (i) the members determine that the person has met the standard required for indemnification or (ii) the person is wholly successful on the merits

or otherwise in the defense of such proceeding. A person will meet the standard required for indemnification if (i) the person conducted himself or herself in good faith, (ii) such person reasonably believed that his or her conduct was in or at least not opposed to the company, (iii) in the case of any criminal proceeding, such person had no reasonable cause to believe his or her conduct was unlawful, and (iv) such person's liability was not the result of the person's willful misconduct, recklessness, violation of the company's operating agreement or any improperly obtained financial or other benefit to which the person was not legally entitled.

The articles of organization of Paragon Title, LLC and Trinity Homes, LLC also provide that each company shall reimburse or pay the expenses of any member or manager (and the responsible officers and directors of such member or manager) in advance of the final disposition of the proceeding, provided that (i) the members make a determination that such person met the applicable standard of conduct, (ii) the person provides a written undertaking to repay any advancements if it is ultimately determined that such person is not entitled to them, and (iii) the person provides the company with an affirmation that he or she has met the applicable standard of conduct. The company may purchase insurance for the benefit of any person entitled to indemnification under the articles of organization.

Indemnification of the Members and Managers of Beazer Clarksburg, LLC, Clarksburg Arora LLC and Clarksburg Skylark, LLC

Beazer Clarksburg, LLC, Clarksburg Arora LLC and Clarksburg Skylark, LLC are limited liability companies organized under the laws of the State of Maryland. Section 4A-203 permits a limited liability company to indemnify and hold harmless any member, agent or employee from and against all claims and demands, except in the case of action or failure to act by the member, agent or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any set forth in the articles of organization or operating agreement.

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

The operating agreement of Clarksburg Arora LLC provides that the company will indemnify and defend the managers and members for all loss, liability, damage, cost or expense (including reasonable attorneys' fees) incurred by reason of any demands, claims, suits, actions or proceedings arising out of (i) the manager's or member's relationship to the company or (ii) the fact that the member or manager served in the capacity of a member or manager of the company, except of loss, liability, damage, cost or expense arising out theft, fraud, willful misconduct or gross negligence.

Indemnification of the Officers and Directors of Beazer/Squires Realty, Inc.

Beazer/Squires Realty, Inc. is a corporation organized under the laws of the State of North Carolina. Sections 55-8-50 through 55-8-58 of the North Carolina Business Corporation Act ("NCBA") provide for the indemnification of officers and directors by the corporation under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been an officer or director of the corporation. Under the NCBA, a corporation may purchase insurance on behalf of an officer or director of the corporation for amounts incurred in his or her capacity as an officer or director regardless of whether the person could be indemnified under the NCBA.

The bylaws of Beazer/Squires Realty, Inc. provide that any person who serves or has served as a director or who while serving as a director serves or has served, at the request of the corporation as a director, officer, partner, trustee, employee or agent of another entity or trustee or administrator under an employee benefit plan, shall have the right to be indemnified by the corporation to the fullest extent of the law for reasonable expenses, including attorneys' fees, and reasonable payments for judgments, decrees, fines, penalties or settlements of proceedings seeking to hold him or her liable as a result of his or her service to the corporation.

Indemnification of the Officers and Directors of Beazer Realty, Inc.

Beazer Realty, Inc. ("Beazer Realty") is a corporation organized under the laws of the State of New Jersey. Section 14A:3-5 of the New Jersey Business Corporation Act ("NJBA") provides for the indemnification of officers and directors by the corporation under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been an officer or director of the corporation. Under the NJBA, a corporation may purchase insurance on behalf of an officer or director of the corporation against incurred in his or her capacity as an officer or director regardless of whether the person could be indemnified under the NJBA. The certificate of incorporation and the bylaws of Beazer Realty provide that Beazer Realty shall indemnify its officers and directors to the fullest extent allowed by law.

Indemnification of the Officers and Directors of the Beazer Homes Corp.

Beazer Homes Corp. is a corporation organized under the laws of the State of Tennessee. Sections 48-18-501 through 48-18-509 of the Tennessee Business Corporation Act ("TBCA") provide for the indemnification of officers and directors by the corporation under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been an officer or director of the corporation. Under the TBCA, a corporation may purchase insurance on behalf of an officer or director of the corporation against incurred in his or her capacity as an officer or director regardless of whether the person could be indemnified under the TBCA. The charter and bylaws of Beazer Homes Corp. do not address the indemnification of officers and directors.

Indemnification of General Partner and Employees of Texas Lone Star Title, L.P.

Texas Lone Star Title, L.P. is a limited partnership organized under the laws of the State of Texas. Article 11 of the Texas Revised Limited Partnership Act ("TRLPA") provides for the indemnification of a general partner, limited partner, employee or agent by the limited partnership under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been a general partner, limited partner, employee or agent of the limited partnership. Under the TRLPA, a limited partnership may purchase insurance on behalf of a general partner, limited partner, employee or agent of the limited partnership against any liability incurred regardless of whether the person could be indemnified under the TRLPA.

The limited partnership agreement of Texas Lone Star Title, L.P. provides that in any threatened, pending or completed proceeding to which the general partner was or is a party or is threatened to be made a party by reason of the fact that the general partner was or is acting in such capacity (other than an action by or in the right of the limited partnership), the limited partnership shall indemnify the general partner against expenses, including attorney's fees, judgments and amounts paid in settlement actually and reasonably incurred by such general partner in connection with such action, suit or proceeding if the general partner acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the limited partnership, and provided that the conduct does not constitute fraud, gross negligence or gross misconduct.

Indemnification of the Officers and Directors of Homebuilders Title Services of Virginia Inc.

Homebuilders Title Services of Virginia Inc. is a corporation organized under the laws of the State of Virginia. Sections 13.1-697 through 13.1-704 of the Virginia Stock Corporation Act ("VSCA") provide for the indemnification of officers and directors by the corporation under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been an officer or director of the corporation. Under the VSCA, a corporation may purchase insurance on behalf of an officer or director of the corporation against any liability incurred in an official capacity regardless of whether the person could be indemnified under the VSCA. The bylaws of Homebuilders Title Services of Virginia Inc. provide that the corporation shall indemnify officers and directors to the fullest extent allowed by law.

Indemnification of the Members and Managers of Beazer Commercial Holdings, LLC, Beazer Homes Investments, LLC, Beazer Realty Services, LLC, Beazer Homes Michigan, LLC, Dove Barrington Development LLC and BH Procurement Services, LLC

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

The operating agreement of Dove Barrington Development LLC provides that the company will indemnify, defend and hold harmless members and their partners, officers, directors, shareholders, members, managers, employees and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties liabilities, costs and expenses (including, without limitation, attorneys' fees, court costs and other professional fees and costs incurred as a result of such claims) arising out of a good faith act or omission by such indemnified person.

Indemnification of the Members and Managers of Elysian Heights Potomia, LLC

Elysian Heights Potomia, LLC is a limited liability company organized under the laws of the State of Virginia. Section 13.1-1025 of the Virginia Limited Liability Company Act ("VLLCA") provides for a limitation on the amount of damages that can be assessed against a member of manager to the lesser of (i) the monetary amount provided for in the articles of organization or operating agreement or (ii) or the greater f $100,000 or the amount of compensation provided to the member or manager by the limited liability company in the preceding twelve months. However, under the VLLCA, the liability of a manager or member will not be limited if the manager or member engaged in willful misconduct or a knowing violation of criminal law.

The operating agreement of Elysian Heights Potomia, LLC provides that the company will indemnify and hold harmless members and their respective members, directors, officers, employees and agents from and against any cost, expense, claim, liability or damage incurred by reason of such individual's relationship to the company (including, without limitation, reasonable attorney's fees incurred in connection with defense of any such act or omission). However, the company will not indemnify members for any act or omission constituting willful misconduct or gross negligence.

Indemnification of the Members and Managers of Arden Park Ventures, LLC

Arden Park Ventures, LLC is a limited liability company organized under the laws of the State of Florida. Section 608.4229 of the Florida Limited Liability Company Act (the "FLLCA") provides that, subject to such standards and restrictions, if any, as are set forth in its articles of organization or operating agreement, a limited liability company shall have the power to indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever. Notwithstanding the foregoing, indemnification or advancement of expenses shall not be made to or on behalf of any member, manager, managing member, officer, employee, or agent if a judgment or other final adjudication establishes that the actions, or omissions to the act, of such person were material to the cause of action so adjudicated and certain additional requirements are met. The articles of organization of Arden Park Ventures, LLC do not address indemnification of members or managers. Arden Park Ventures, LLC does not currently have an operating agreement in place.

Item 16. ***Exhibits.***

Exhibit Number	Description
1.1*	Form of Underwriting Agreement
3.1(a)	Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc.(1)
3.1(b)	Articles of Incorporation of April Corporation(2)
3.1(c)	Certificate of Incorporation of Beazer Allied Companies Holdings, Inc.(2)
3.1(d)	Articles of Organization of Beazer Clarksburg, LLC(2)
3.1(e)	Charter of Beazer Homes Corp.(2)
3.1(f)	Certificate of Incorporation of Beazer Homes Holdings Corp.(2)
3.1(g)	Certificate of Formation of Beazer Homes Investments, LLC(3)
3.1(h)	Certificate of Incorporation of Beazer Homes Sales, Inc.(2)
3.1(i)	Certificate of Incorporation of Beazer Homes Texas Holdings, Inc.(2)
3.1(j)	Certificate of Limited Partnership of Beazer Homes Texas, L.P.(2)
3.1(k)	Articles of Incorporation of Beazer Realty Corp.(2)
3.1(l)	Certificate of Incorporation of Beazer Realty, Inc.(2)
3.1(m)	Certificate of Formation of Beazer Realty Services, LLC(3)
3.1(n)	Articles of Organization of Beazer SPE, LLC(2)
3.1(o)	Articles of Incorporation of Beazer/Squires Realty, Inc.(2)
3.1(p)	Registration to qualify as a limited liability partnership for Beazer Homes Indiana LLP(3)
3.1(q)	Certificate of Formation of Beazer Commercial Holdings, LLC(3)
3.1(r)	Certificate of Incorporation Beazer General Services, Inc.(3)
3.1(s)	Certificate of Incorporation of Beazer Homes Indiana Holdings Corp.(3)
3.1(t)	Certificate of Incorporation of Beazer Realty Los Angeles, Inc.(3)
3.1(u)	Certificate of Incorporation of Beazer Realty Sacramento, Inc.(3)
3.1(v)	Certificate of Limited Partnership of BH Building Products, LP(3)
3.1(w)	Certificate of Incorporation of Homebuilders Title Services of Virginia, Inc.(2)
3.1(x)	Articles of Incorporation of Homebuilders Title Services, Inc.(2)
3.1(y)	Articles of Organization of Paragon Title, LLC(2)
3.1(z)	Certificate of Formation of BH Procurement Services, LLC(3)
3.1(aa)	Certificate of Limited Partnership of Texas Lone Star Title, L.P.(2)
3.1(ab)	Articles of Organization of Trinity Homes LLC(2)
3.1(ac)	Articles of Organization of Arden Park Ventures, LLC(4)
3.1(ad)	Certificate of Incorporation of Beazer Mortgage Corporation(2)
3.1(ae)**	Certificate of Formation of Dove Barrington Development LLC
3.1(af)**	Certificate of Formation of Beazer Homes Michigan, LLC
3.1(ag)**	Articles of Organization of Elysian Heights Potomia, LLC
3.1(ah)**	Articles of Organization of Clarksburg Arora LLC
3.1(ai)**	Articles of Organization of Clarksburg Skylark, LLC
3.2(a)	Third Amended and Restated By-laws of Beazer Homes USA, Inc.(5)
3.2(b)	By-Laws of April Corporation(2)
3.2(c)	By-Laws of Beazer Allied Companies Holdings, Inc.(2)
3.2(d)	Operating Agreement of Beazer Clarksburg, LLC(2)
3.2(e)	By-Laws of Beazer Homes Corp.(2)
3.2(f)	By-Laws of Beazer Homes Holdings Corp.(2)
3.2(g)	Operating Agreement of Beazer Homes Investments, LLC(3)
3.2(h)	By-Laws of Beazer Homes Sales, Inc.(2)
3.2(i)	By-Laws of Beazer Homes Texas Holdings, Inc.(2)
3.2(j)	Agreement of Limited Partnership of Beazer Homes Texas, L.P.(2)

Exhibit Number	Description
3.2(k)	By-Laws of Beazer Realty Corp.(2)
3.2(l)	By-Laws of Beazer Realty, Inc.(2)
3.2(m)	Operating Agreement of Beazer Realty Services, LLC(3)
3.2(n)	Operating Agreement of Beazer SPE, LLC(2)
3.2(o)	By-Laws of Beazer/Squires Realty, Inc.(2)
3.2(p)**	Partnership Agreement of Beazer Homes Indiana LLP
3.2(q)	Operating Agreement of Beazer Commercial Holdings, LLC(3)
3.2(r)	By-Laws of Beazer Homes Indiana Holdings Corp.(3)
3.2(s)	By-Laws of Beazer Realty Los Angeles, Inc.(3)
3.2(t)	By-Laws of Beazer Realty Sacramento, Inc.(3)
3.2(u)	Limited Partnership Agreement of BH Building Products, LP(3)
3.2(v)	Operating Agreement of BH Procurement Services, LLC(3)
3.2(w)	By-Laws of Homebuilders Title Services of Virginia, Inc.(2)
3.2(x)	By-Laws of Homebuilders Title Services, Inc.(2)
3.2(y)	Amended and Restated Operating Agreement of Paragon Title, LLC(2)
3.2(aa)	Limited Partnership Agreement of Texas Lone Star Title, L.P.(2)
3.2(ab)	Second Amended and Restated Operating Agreement of Trinity Homes LLC(2)
3.2(ac)	By-Laws of Beazer General Services, Inc.(3)
3.2(ae)	By-Laws of Beazer Mortgage Corporation(2)
3.2(af)**	Limited Liability Company Agreement of Dove Barrington Development LLC
3.2(ag)**	Operating Agreement of Beazer Homes Michigan, LLC
3.2(ah)**	Amended and Restated Operating Agreement of Elysian Heights Potomia, LLC
3.2(ai)**	Operating Agreement of Clarksburg Arora LLC
3.2(aj)**	Operating Agreement of Clarksburg Skylark, LLC
4.1	Section 382 Rights Agreement, dated as of July 31, 2009, between Beazer Homes USA, Inc. and American Stock Transfer & Trust Company, LLC, as Rights Agent(12)
4.2(a)	Indenture, dated as of April 17, 2002, among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Company's $8^{3}/_{8}$% Senior Notes due 2012(6)
4.2(b)	First Supplemental Indenture dated as of April 17, 2002 among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Company's $8^{3}/_{8}$% Senior Notes due 2012(6)
4.2(c)	Second Supplemental Indenture dated as of November 13, 2003 among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Company's $6^{1}/_{2}$% Senior Notes due 2013(7)
4.2(d)	Form of Fifth Supplemental Indenture, dated as of June 8, 2005, by and among Beazer, the Subsidiary Guarantors party thereto and U.S. Bank National Association, as trustee(8)
4.2(e)	Seventh Supplement Indenture, dated as of January 9, 2006, to the Trust Indenture dated as of April 17, 2002(9)
4.2(f)	Form of Eighth Supplemental Indenture, dated June 6, 2006, by and among Beazer Homes USA, Inc., the guarantors named therein and UBS Securities LLC, Citigroup Global Markets Inc., J.P. Morgan Securities, Inc., Wachovia Capital Markets, LLC, Deutsche Bank Securities Inc., BNP Paribas Securities Corp. and Greenwich Capital Markets(10)
4.2(g)	Ninth Supplemental Indenture, dated October 26, 2007, amending and supplementing the Indenture, dated April 17, 2002, among the Company, US Bank National Association, as trustee, and the subsidiary guarantors party thereto(11)
4.3	Form of Senior Debt Security (included in Exhibit 4.2(a) hereto)
4.4**	Form of Indenture with respect to Subordinated Debt Securities
4.5**	Form of Subordinated Debt Security (included in Exhibit 4.4 hereto)
4.6*	Form of Guarantee Agreement

Exhibit Number	Description
4.7*	Form of Warrant Agreement
4.8*	Form of Warrant Certificate
4.9*	Form of Rights Certificate
4.10*	Form of Rights Agent Agreement
4.11*	Certificate of Designation for Preferred Stock
4.12*	Form of Preferred Stock Certificate
4.13*	Form of Depositary Agreement
4.14*	Form of Depositary Receipt
4.15*	Form of Stock Purchase Contract
4.16*	Form of Stock Purchase Unit
5.1**	Opinion of Kenneth F. Khoury
12.1**	Statement of Computation of Ratio of Earnings to Fixed Charges and Earnings to Combined Fixed Charges and Preferred Dividends
23.1**	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm
23.2**	Consent of Kenneth F. Khoury (included in Exhibit 5.1 hereto)
24.1**	Powers of Attorney (included in Part II of the registration statement)
25.1**	Form T-1 Statement of Eligibility and Qualification of the Trustee under the Indenture with respect to the Senior Debt Securities
25.2***	Form T-1 Statement of Eligibility and Qualification of the Trustee under the Indenture with respect to the Subordinated Debt Securities

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

** Filed herewith.

*** To be filed by amendment or as an exhibit to a current report on Form 8-K or separately pursuant to the Trust Indenture Act of 1939, as amended, Section 305(b)(2).

(1) Incorporated by reference to the exhibits to Beazer's Annual Report on Form 10-K filed on December 2, 2008.

(2) Incorporated herein by reference to the exhibits to Beazer's Registration Statement on Form S-4 (Registration No. 333-112147) filed on January 23, 2004.

(3) Incorporated by reference to the exhibits to Beazer's Registration Statement on Form S-4 (Registration No. 333-127165) filed on August 3, 2005.

(4) Incorporated by reference to the exhibits to Beazer's Registration Statement on Form S-4 filed on August 15, 2006.

(5) Incorporated by reference to the exhibits to Beazer's Form 8-K filed on July 1, 2008.

(6) Incorporated by reference to the exhibits to Beazer's Registration Statement on Form S-4 filed on July 16, 2002.

(7) Incorporated by reference to the exhibits to Beazer's Annual Report on Form 10-K filed on December 19, 2003.

(8) Incorporated by reference to the exhibits to Beazer's Form 8-K filed on June 13, 2005.

(9) Incorporated by reference to the exhibits to Beazer's Form 8-K filed on January 17, 2006.

(10) Incorporated by reference to the exhibits to Beazer's Form 8-K filed on June 8, 2006.

(11) Incorporated by reference to the exhibits to Beazer's Form 8-K filed on October 30, 2007.

(12) Incorporated by reference to the exhibits to Beazer's Form 8-K filed on August 3, 2009.

Item 17. ***Undertakings.***

The undersigned registrant hereby undertakes:

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

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

(b) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Atlanta, state of Georgia, on November 13, 2009.

BEAZER HOMES USA, INC.

By: /s/ Ian J. McCarthy
Ian J. McCarthy
President and Chief Executive Officer

POWER OF ATTORNEY

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

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

Signature	Title	Date
/s/ Ian J. McCarthy **Ian J. McCarthy**	President, Chief Executive Officer and Director (Principal Executive Officer)	November 13, 2009
/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President, Chief Accounting Officer and Controller (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Non-Executive Chairman, Director	November 13, 2009
/s/ Laurent Alpert **Laurent Alpert**	Director	November 13, 2009

Signature	Title	Date
/s/ Peter G. Leemputte **Peter G. Leemputte**	Director	November 13, 2009
/s/ Larry T. Solari **Larry T. Solari**	Director	November 13, 2009
/s/ Stephen P. Zelnak, Jr. **Stephen P. Zelnak, Jr.**	Director	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, each of the following registrants has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

APRIL CORPORATION
BEAZER ALLIED COMPANIES HOLDINGS, INC.
BEAZER GENERAL SERVICES, INC.
BEAZER HOMES CORP.
BEAZER HOMES HOLDINGS CORP.
BEAZER HOMES INDIANA HOLDINGS CORP.
BEAZER HOMES SALES, INC.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER REALTY CORP.
BEAZER REALTY, INC.
BEAZER REALTY LOS ANGELES, INC.
BEAZER REALTY SACRAMENTO, INC.
BEAZER/SQUIRES REALTY, INC.
HOMEBUILDERS TITLE SERVICES OF VIRGINIA, INC.
HOMEBUILDERS TITLE SERVICES, INC.

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Ian J. McCarthy **Ian J. McCarthy**	Director and President (Principal Executive Officer)	November 13, 2009
/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, each of the following registrants has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

BEAZER MORTGAGE CORPORATION

By: /s/ Kenneth F. Khoury
Kenneth F. Khoury
Executive Vice President and Assistant Secretary

POWER OF ATTORNEY

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

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Allan P. Merrill **Allan P. Merrill**	Director and President (Principal Executive Officer and Principal Financial Officer)	November 13, 2009
/s/ Kenneth F. Khoury **Kenneth F. Khoury**	Executive Vice President and Assistant Secretary	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Jeffrey Hoza **Jeffrey Hoza**	Vice President and Treasurer	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

BEAZER HOMES INDIANA LLP

By: BEAZER HOMES INVESTMENTS, LLC,
its Managing Partner

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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

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

Signature	Title	Date
/s/ Ian J. McCarthy **Ian J. McCarthy**	Director and President (Principal Executive Officer)	November 13, 2009
/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

ARDEN PARK VENTURES, LLC
BEAZER CLARKSBURG, LLC
BEAZER COMMERCIAL HOLDINGS, LLC
DOVE BARRINGTON DEVELOPMENT LLC
BEAZER HOMES INVESTMENTS, LLC
BEAZER HOMES MICHIGAN, LLC
ELYSIAN HEIGHTS POTOMIA, LLC

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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Signature	Title	Date
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/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

BEAZER HOMES TEXAS, L.P.
TEXAS LONE STAR TITLE, L.P.

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

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

BEAZER REALTY SERVICES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

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BEAZER SPE, LLC

By: BEAZER HOMES HOLDINGS CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

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BH BUILDING PRODUCTS, LP

By: BH PROCUREMENT SERVICES, LLC,
its General Partner

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

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

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

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BH PROCUREMENT SERVICES, LLC

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

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

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

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PARAGON TITLE, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member and Manager

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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/s/ Ian J. McCarthy **Ian J. McCarthy**	Director and President (Principal Executive Officer)	November 13, 2009
/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

TRINITY HOMES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Member

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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Signature	Title	Date
/s/ Ian J. McCarthy **Ian J. McCarthy**	Director and President (Principal Executive Officer)	November 13, 2009
/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

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CLARKSBURG ARORA LLC

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 13, 2009.

CLARKSBURG SKYLARK, LLC

By: CLARKSBURG ARORA LLC,
its Sole Member

By: BEAZER CLARKSBURG, LLC,
its Sole Member

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Allan P. Merrill
Allan P. Merrill
Executive Vice President

POWER OF ATTORNEY

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Signature	Title	Date
/s/ Ian J. McCarthy **Ian J. McCarthy**	Director and President (Principal Executive Officer)	November 13, 2009
/s/ Allan P. Merrill **Allan P. Merrill**	Executive Vice President (Principal Financial Officer)	November 13, 2009
/s/ Robert Salomon **Robert Salomon**	Senior Vice President (Principal Accounting Officer)	November 13, 2009
/s/ Brian C. Beazer **Brian C. Beazer**	Director	November 13, 2009

Exhibit 3.1(ae)

CERTIFICATE OF FORMATION

OF

DOVE BARRINGTON DEVELOPMENT LLC

THIS IS TO CERTIFY that the undersigned authorized person hereby constitutes and forms a limited liability company under and by virtue of the provisions of the Delaware Limited Liability Company Act.

FIRST: The name of the limited liability company (the "Company") is:

DOVE BARRINGTON DEVELOPMENT LLC

SECOND: The address of the Company's initial registered office is c/o Beazer Homes Corp., 102 Jestan Boulevard, New Castle, Delaware 19720, and the name of the Company's initial registered agent at such address is William Hofherr.

THIRD: The Company will have perpetual existence, unless it is sooner dissolved in accordance with the terms and provisions of its Operating Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 22nd day of September, 2004.

/s/ Ryan J. Lehrfeld
Ryan J. Lehrfeld,
Authorized Person

STATE OF DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE OF FORMATION

FIRST

The name of the limited liability company is Beazer Homes Michigan, LLC.

SECOND

The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, Delaware 19808. The name of its Registered Agent at such address is Corporation Service Company.

THIRD

The period of duration for the limited liability company shall be perpetual, unless terminated in accordance with the limited liability company's operating agreement or by the consent of the members.

FOURTH

The limited liability company is to be managed by the members.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation this 1st day of September, 2005.

By: /s/ Kenneth J. Gary
Kenneth J. Gary
Authorized Person and Executive Vice President of Beazer Homes Corp., its Managing Member

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

ARTICLES OF ORGANIZATION OF A
DOMESTIC LIMITED LIABILITY COMPANY

Pursuant to Chapter 12 of Title 13.1 of the Code of Virginia the undersigned states as follows:

1. The name of the limited liability company is

Artery Potomia, LLC

(The name must contain the words **limited company** or **limited liability company** or the abbreviation **L.C.**, **LC**, **L.L.C.** or **LLC**)

2. A. The name of the limited liability company's initial registered agent is

Commonwealth Legal Services Corporation

B. The registered agent is **(mark appropriate box):**

(1) an INDIVIDUAL who is a resident of Virginia **and**

- o a member or manager of the limited liability company.
- o a member or manager of a limited liability company that is a member or manager of the limited liability company.
- o an officer or director of a corporation that is a member or manager of the limited liability company.
- o a general partner of a general or limited partnership that is a member or manager of the limited liability company.
- o a trustee of a trust that is a member or manager of the limited liability company.
- o a member of the Virginia State Bar.

OR

(2) ☑ domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in Virginia.

3. The limited liability company's initial registered office address, including the street and number, if any, which is identical to the business office of the initial registered agent, is

4701 Cox Road, Suite 301	Glen Allen, VA	23060
(number/street)	(city or town)	(zip)

which is physically located in the ☑ county **or** o city of Henrico

4. The limited liability company's principal office address, including the street and number, is

7200 Wisconsin Avenue, Suite 1000	Bethesda	MD	20814
(number/street)	(city or town)	(state)	(zip)

5. Signatures:

/s/ Laura Murrer	10/16002
(signature)	(date)
Laura Murrer	
(printed name)	(telephone number (optional))

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

ARTICLES OF AMENDMENT
CHANGING THE NAME AND/OR THE PRINCIPAL OFFICE ADDRESS OF
A VIRGINIA LIMITED LIABILITY COMPANY
By the Members

The undersigned, on behalf of the limited liability company set forth below, pursuant to § 13.1-1014 of the Code of Virginia, states as follows:

1. The current name of the limited liability company, as it appears on the records of the State Corporation Commission, is

   Artery Potomia, LLC

2. The name of the limited liability company is changed to

   Elysian Heights Potomia, LLC

   (The name must contain the words **limited company** or **limited liability company** or the abbreviation **L.C.**, **LC**, **L.L.C.** or **LLC**)

3. The limited liability company's principal office address, including the street and number, is changed to

7200 Wisconsin Ave., Suite 1000	Bethesda	MD	20814
(number/street)	(city or town)	(state)	(zip)

4. *(See "Approval" Instructions for requisite vote.)* The foregoing amendment was adopted by a vote of the members in accordance with the provisions of the Virginia Limited Liability Company Act on 6/19/2009 (date)

Executed in the name of the limited liability company by:

/s/ B. Hayes McCarty	6/23/09
(signature)	(date)
B. Hayes McCarty	Manager
(printed name)	(title (e.g., manager or member))
S085668	301-961-8000
(limited liability company's SCC ID no. (optional))	(telephone number (optional))

CHECK IF APPLICABLE **(see instructions)**:

o The person signing this document on behalf of the limited liability company has been delegated the right and power to manage the company's business and affairs.

(The articles must be executed in the name of the limited liability company by any manager or other person who has been delegated the right and power to manage the business and affairs of the limited liability company, or if no managers or such other persons have been selected, by any member of the limited liability company.)

PRIVACY ADVISORY: Information such as social security number, date of birth, maiden name, or financial institution account numbers is NOT required to be included in business entity documents filed with the Office of the Clerk of the Commission. Any information provided on these documents is subject to public viewing.

Exhibit 3.1(ah)

ARTICLES OF ORGANIZATION
OF
ARTERY-BEAZER CLARKSBURG, LLC

The undersigned Authorized Person, for the purpose of forming Artery-Beazer Clarksburg, LLC, a Maryland limited liability company under and by virtue of the Maryland Limited Liability Company Act as set forth in Title 4A of the Corporations and Associations Article of the Annotated Code of Maryland, as amended from time to time (the "Act"), does hereby set forth the following:

1. Name. The name of the limited liability company (which hereafter is called the "Company") is Artery-Beazer Clarksburg, LLC.

2. Purpose. The Company is organized to: (a) acquire, buy, own, invest in, manage, develop, construct, improve, refinance, exchange, dispose, market, promote, sell and otherwise deal with that certain real property, containing approximately 374 acres of unimproved land located in Clarksburg, Maryland ("Property"), directly or through acquisition and ownership of 100% of the interests of an entity which owns the Property; (b) obtain all preliminary plans, site plans, subdivision, engineering, land use and zoning and related approvals from the applicable governmental authorities required to develop and sell the Property pursuant to the Development Management Agreement and the Operating Agreement; (c) petition Montgomery County to create a special taxing district for the Property and to enter into any and all agreements required to effectuate the creation and implementation of such a special taxing district for the Property; (d) oversee the subdivision of the Property into single family detached townhouse and multifamily residential and commercial building lots and the development and sale of such building lots pursuant to the Development Management Agreement and the Operating Agreement; (e) have and to exercise all power now or hereafter conferred by the laws of the State of Maryland on limited liability companies formed pursuant to the Act; and (f) do any and all things necessary, convenient, or incidental to the foregoing.

3. Principal Office and Resident Agent. The address of the principal office of the Company is 300 East Lombard Street, Suite 1400, Baltimore, Maryland 21202. The resident agent of the Company shall be the Corporation Trust Incorporated. The post office address of the Resident Agent of the Company is 300 East Lombard Street, Suite 1400, Baltimore, Maryland 21202.

4. Operating Agreement. A written operating agreement ("Operating Agreement") shall establish and regulate the Company's affairs, the conduct of its business and the relations of its members.

5. Management of the Company: Authority of Members. The Company shall be managed by its Managers. Members of the Company shall have no authority to act for and on behalf of the Company solely by virtue of being members of the Company.

DATED this 14th day of May 2009.

By: /s/ John R. Ortick, Jr.
John R. Ortick, Jr.
Authorized Person

CONSENT OF RESIDENT AGENT

The undersigned, a corporation duly organized in the State of Maryland, does hereby consent to its appointment as Resident Agent of Artery-Beazer Clarksburg, LLC, a Maryland limited liability company.

THE CORPORATION TRUST INCORPORATED

/s/ Billie J. Swoboda

Billie J. Swoboda, VP

ARTICLES OF AMENDMENT
of
ARTERY-BEAZER CLARKSBURG, LLC

The undersigned, being duly authorized to execute and file these Articles of Amendment for record with the Maryland State Department of Assessment and Taxation, hereby certifies that:

First: The name of the limited liability company (hereinafter referred to as the "Company") is Artery-Beazer Clarksburg, LLC.

Second: **The charter of the limited liability company is hereby amended as follows:**

First: The name of the limited liability company (hereinafter referred to as the "Company") shall be "Clarksburg Arora LLC"

Third: The forgoing Articles of Amendment of the Company have been approved by unanimous consent of the members of the Company.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment this 13th day of July, 2009.

/s/ B. Hayes McCarty
B. Hayes McCarty
Authorized Person/Co-Manager

Filer Information
Raqual C. Crea
Artery Group, LLC
7200 Wisconsin Ave.
Suite 1000
Bethesda, Maryland 20814

Exhibit 3.1(ai)

ARTICLES OF ORGANIZATION

CLARKSBURG SKYLARK, LLC

THIS IS TO CERTIFY:

FIRST: That I, Robert L. Brownell, whose post office address is 8601 Georgia Avenue, Suite 908, Silver Spring, Maryland 20910, being at least eighteen (18) years of age, and authorized to file these Articles of Organization by the members forming this limited liability company, do hereby form a limited liability company under the general laws of the State of Maryland.

SECOND: That the name of the limited liability company (which is hereinafter called the "Company") is:

"CLARKSBURG SKYLARK, LLC"

THIRD: The purpose for which the Company is formed and the business or objects to carried on and promoted by it are to own, develop, lease and sell property and conduct all activities related thereto.

The foregoing enumeration of the purposes, objects and business of the Company is made in furtherance and not in limitation of the powers conferred upon the Company by law, and it is not intended, by the mention of any particular purpose, object of business mentioned, to limit or restrict any other purpose, object or business mentioned, or to limit or restrict any of the powers of the Company, and the said Company shall have, enjoy and exercise all of the powers and rights now or hereafter conferred by law or statue upon limited liability companies.

FOURTH: The post office address of the principal office of the Company in this State is c/o Wheeler & Korpeck, LLC, 8601 Georgia Avenue, Suite 908, Silver Spring, Maryland 20910. The Resident Agent of the Company in this State is William T. Wheeler, whose post office address is 8601 Georgia Avenue, Suite 908, Silver Spring, Maryland 20910. Said Resident Agent is a citizen of the State of Maryland and actually resides therein.

FIFTH: The operating agreement to regulate or establish any aspect of the affairs of the Company or the relations of its members shall be a written agreement.

SIXTH: The authority of members to act for the Company solely by virtue of being members is limited.

IN WITNESS WHEREOF, I have signed these Articles of Organization, and I acknowledge the same to be my act and that to the best of my knowledge, information and belief all matters and facts stated herein are true in all material respects and that this statement is made under the penalties of perjury.

/s/ Robert L. Brownell
Robert L. Brownell

Dated: April 27, 2001

STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this 27th day of April, 2001, before me, the undersigned officer, personally appeared Robert L. Brownell, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

/s/ Linda E. Katz
Notary Public

My Commission expires: 11-1-03

I HEREBY CONSENT TO ACT AS RESIDENT AGENT IN MARYLAND FOR THE ENTITY NAMED IN THE ATTACHED INSTRUMENT.

/s/ William T. Wheeler
SIGNATURE

WILLIAM T. WHEELER
PRINTED NAME

LIMITED LIABILITY COMPANY AGREEMENT

DOVE BARRINGTON DEVELOPMENT LLC

BY AND BETWEEN

CENTEX HOMES,
A NEVADA GENERAL PARTNERSHIP

AND

BEAZER HOMES CORP.,
A TENNESSEE CORPORATION

OCTOBER 4, 2004

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

LIMITED LIABILITY COMPANY AGREEMENT
OF
DOVE BARRINGTON DEVELOPMENT LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (this **"Agreement"**) is entered into effective as of October 4, 2004, between CENTEX HOMES, a Nevada general partnership (**"Centex"**), and BEAZER HOMES CORP., a Tennessee corporation (**"Beazer"**).

RECITALS

A. Centex and Beazer (each, a **"Member"**, together, the "Members") desire to create a limited liability company under the Delaware Limited Liability Company Act (the **"Act"**) for the purpose of acquiring, for sale or development, certain real property in Sussex County, Delaware.

B. The Members have filed, as of September 22, 2004, with the Secretary of State of the State of Delaware (the **"Secretary of State"**) a Certificate of Formation (the **"Certificate"**) for Dove Barrington Development LLC (the **"Company"**). The Certificate constituted the Company as a limited liability company under the Act. This Agreement sets forth the terms and conditions under which the Company shall operate.

NOW, THEREFORE, in consideration of the mutual promises of the Members set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Members acknowledge, the Members agree as follows:

1. FORMATION.

1.1 **Formation of Company.** The Company has been organized as a Delaware limited liability company by the filing of the Certificate pursuant to the Act.

1.2 **Name.** The name of the Company is "Dove Barrington Development LLC" and all Company business shall be conducted under that name or such other names that comply with applicable law and as the Executive Committee may select from time to time.

1.3 **Purpose and Scope.** The purpose of the Company shall be to acquire the Real Property; to dedicate property to public authorities and to convey property to the homeowners association to be formed for the Project, all as contemplated by site plans and public improvement plans approved by governmental authorities from time to time; to administer existing leases on portions of the Real Property through the date of their respective terminations; to sell certain commercial parcels within the Real Property to third parties; to develop the residential portion of the Project for distribution of Lots to the Members in accordance with the Annual Business Plan in effect from time to time; to act as a declarant with respect to the homeowners association to be formed for the Project; and to do any and all other acts or things that the Executive Committee may determine to be necessary, appropriate, proper, advisable, incidental to or convenient for the accomplishment of the purpose of the Company.

1.4 **Term.** The Company commenced on the date the Certificate was filed and shall continue until the date set forth in the Certificate, unless earlier dissolved pursuant to the terms of this Agreement or the Act.

1.5 **Office; Agent.** The registered office of the Company required by the Act to be maintained in the State of Delaware shall be located at 102 Jestan Boulevard, New Castle, Delaware 19720, or such other office (which need not be a place of business of the Company) as the Executive Committee may designate from time to time in the manner provided by law. The name and address of the registered agent of the Company shall be Corporation Services Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The Company may have such other offices as the Executive Committee may designate from time to time.

1.6 **Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"Additional Capital Contributions": Contributions, if any, made by the Members under Section 2.2.

"Adjusted Proportionate Shares for Distributions": As defined in Section 11.2(e).

"Administrative Member": As defined in Section 4.3.

"Affiliate": When used with reference to a specified Person, means any Person controlling, controlled by, or under common control with the specified Person, which, in the case of a Person which is a partnership or a limited liability company, shall include each of the partners or members thereof and each of their Affiliates.

"Annual Business Plan": As defined in Section 4.5. Unless otherwise indicated by the context, references to the Annual Business Plan shall mean the latest approved Annual Business Plan. It is acknowledged that each iteration of the Annual Business Plan, while primarily intended to govern expenditures of the then current year, will in each case also contain projections for operations for the Project through completion. The Members intend to update the Annual Business Plan at the end of each calendar year during the term hereof, beginning with December 31, 2004.

"Applicable Laws": All statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, Board of Fire Underwriters and similar quasi-governmental agencies or entities, and any judgment, injunction, order, directive, decree or other judicial or regulatory requirement of any court or Governmental Authority of competent jurisdiction affecting or relating to the Person or property in question.

"Barrington Real Property Contract": That certain Agreement of Sale between Tyre Farm, L.L.C., a Delaware limited liability company, as seller, and Beazer, as purchaser, dated February 23, 2004.

"Bazzoli Real Property Contract": That certain Real Estate Sale Contract between James and Francis K. Bazzoli, as seller, and Windmill Associates, GP, a Delaware general partnership ("Windmill"), as purchaser, dated May 16, 2004, together with that certain Agreement to Assign Real Estate Purchase and Sale Agreement [sic] dated May 19, 2004, between Windmill, as assignor, and Centex, as assignee.

"Business Day": Any day other than Saturday on which national banking associations in the Washington, D.C. Metropolitan Area are open for business.

"Call": As defined in Section 2.2.

"Capital Account": As defined in Section 2.4.

"Code": The Internal Revenue Code of 1986 or any successor statute, as amended from time to time.

"Company's Accountant": The independent certified public accountancy firm retained by the Executive Committee from time to time to render accounting services to the Company.

"Contract Rights": All right, title, and interest of Centex in and to the Dove Real Property Contract, the Dove Property Management Agreement, the Bazzoli Real Property Contract, and the Freeman Real Property Contract, and all right, title, and interest of Beazer in and to the Barrington Real Property Contract, including all rights in respect of the Real Property accruing to Centex and Beazer, respectively, as purchaser under the Real Property Contracts, together with all right, title, and interest of Centex and Beazer, respectively, in and to any and all Service Contracts.

"Contributing Member": A Member who makes a Deficit Contribution.

"Control": The term "control," and its cognates "controlling," "controlled by," and the like, means, with respect to a Member that is a corporation, the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a Member that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Member.

"Defaulting Member": As defined in Section 8.1.

"Deficit Contribution": A Member's contribution to the Company in response to a failure to contribute by a Noncontributing Member.

"Distributable Cash": Cash funds of the Company from any source, less the sum of (i) an amount sufficient for the payment of all expenses of the Company then due and payable, and (ii) reasonable working capital reserves for the Company as determined by the Executive Committee.

"Dove Property Management Agreement": That certain Project Management Consulting Agreement dated September 21, 2002, between Centex and Russell V. Banks.

"Dove Real Property Contract": That certain Real Estate Sale Contract dated as of September 22, 2002, together with that certain Project Management Consulting Agreement of even date between Centex and Russell V. Banks.

"Executive Committee": The committee described in Section 4.1(a).

"Finished Lot Contract": A Contract for the purchase and sale of finished Lots between the Company, as Seller, and a Member, as purchaser, in the form attached hereto as Exhibit E.

"Fiscal Year": The taxable year of the Company, as determined under Section 706 of the Code.

"Freeman Real Property Contract": That certain Real Estate Sale Contract between Marianne Freeman, as seller, and Windmill Associates, GP, a Delaware general partnership (**"Windmill"**), and Centex, collectively, as purchaser, dated May 29, 2004, together with that certain Agreement to Assign Real Estate Purchase and Sale Agreement [sic] of even date between Windmill, as assignor, and Centex, as assignee.

"Interest Rate": The annual rate of interest equal to the lesser of (i) five percent (5%) plus the prime rate quoted in *The Wall Street Journal* from time to time; or (ii) the maximum rate allowable by law.

"Lot Prices": As defined in Section 11.2.

"Lots": As defined in Section 11.1.

"Major Decisions": As defined in Section 4.1(b).

"Member": A Person who (i) has been admitted to the Company as a Member in accordance with this Agreement and (ii) has not resigned, withdrawn, or been expelled as a Member or, if other than an individual, been dissolved.

"Membership Interest": A Member's rights in the Company, collectively, including the Member's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the Company, any right to vote or participate in management, and any right to information concerning the business and affairs of the Company provided by the Act.

"Net Income and Net Loss": As defined in Section 3.7.

"Noncontributing Member": As defined in Section 2.3.

“Percentage Interests”: Initially, 50% for each of the Members as such percentages may be adjusted from time to time pursuant to the terms of this Agreement. The aggregate Percentage Interests shall at all times equal 100%.

“Person”: An individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

“Project”: The development of the Real Property, as contemplated by the Annual Business Plan in effect hereunder from time to time.

“Project Director”: As defined in Section 4.3.

“Proportionate Share”: The Proportionate Share of Centex shall be fifty percent (50%), and the Proportionate Share of Beazer shall be fifty percent (50%). Anything herein to the contrary notwithstanding, solely for purposes of calculating the Members’ respective obligations to make subsequent Additional Capital Contributions, the adjustment of the Percentage Interests and Capital Accounts of the Members pursuant to Section 2.3 below in the event of a failure of one Member to make a required Additional Capital Contribution under Section 2.2 below shall not serve to increase or reduce the Proportionate Shares applicable to the Members following such dilution. The Members acknowledge that the Proportionate Shares established hereby are based, in material part, on the relative aggregate value of the Lots allocated hereby to each Member. The Members agree, accordingly, that in the event that the total number of Lots of any product type to be developed within the Real Property, or the allocation between the Members of Lots of any product type, shall change at any time during the term hereof, the Members shall attempt in good faith to adjust their respective Proportionate Shares at the time of the next succeeding review of the Annual Business Plan. Any such adjustment that shall be agreed upon shall be retroactive to the beginning of the Project and shall require a reconciliation of costs from the beginning of the Project.

“Real Property Contracts”: (i) the Dove Real Property Contract; (ii) the Barrington Real Property Contract; (iii) the Bazzoli Real Property Contract; and (iv) the Freeman Real Property Contract.

“Real Property”: The real property that is the subject of the Real Property Contracts.

“Service Contracts”: All existing contracts and agreements between Members and any civil and soils engineers, surveyors, environmental firms, and other third-party providers of goods and services entered into in connection with either Member’s due diligence investigation of the Real Property.

“Treasury Regulations”: Final and temporary income tax regulations issued by the U.S. Treasury Department.

“Unanimous Vote”: The affirmative vote or written consent by members of the Executive Committee representing all of the Members other than Defaulting Members.

2. CAPITALIZATION OF THE COMPANY.

2.1 **Prior Contributions.** The Members acknowledge that each Member has made, as of the date of this Agreement, capital contributions equal to its Proportionate Share of the total of each category of capital contributions required to be made by the Members as of the data of this Agreement, as set forth on Exhibit A attached hereto (the **"Initial Capital Contributions"**); provided, it is acknowledged by the Members that the reconciliation of the Members' respective prior expenses, and the provision of substantiation for such expenses to the other Members, has only been completed as of the date of this Agreement. Accordingly, the Member that, as a result of such reconciliation, is required to make a payment hereby covenants and agrees to make such payment in current funds within fifteen (15) days following the date hereof. In addition to the Initial Capital Contributions by each Member, Beazer is contributing to the Company contemporaneously herewith all of its Contract Rights, which contribution of Contract Rights shall be effective automatically upon its execution of this Agreement, without the necessity of any additional instrument of assignment or transfer. The Members agree that the contribution of the Contract Rights shall have a zero value and no amount shall be credited to Beazer's Capital Account by reason of the contribution of the Contract Rights. Additionally, Centex is contributing to the Company contemporaneously herewith all of its Contract Rights, which contribution of Contract Rights shall be effective automatically upon its execution of this Agreement, without the necessity of any additional instrument of assignment or transfer. The Members agree that the contribution of the Contract Rights shall have a zero value and no amount shall be credited to Centex's Capital Account by reason of the contribution of the Contract Rights. All goods and services furnished under the Service Contracts shall have been paid for in full, all such payments being included within the Initial Capital Contributions referenced above.

2.2 **Additional Contributions.** The Administrative Member shall call for Additional Capital Contributions under this Section 2.2 when (a) such Additional Capital Contributions are required to enable the Company to perform its obligations under the Real Property Contract, (b) such Additional Capital Contributions have been authorized by an Annual Business Plan, (c) such Additional Capital Contributions have been specifically approved by the Executive Committee in accordance with Section 4.1(b), or (d) such Additional Capital Contributions are necessary to fund a repurchase of Lots from a Member in accordance with Section 4.1(c) (each, a "Call"). The Administrative Member shall in each Call furnish to the other Member copies of invoices, requisitions, or other reasonable evidence of the costs or obligations to be funded by such Additional Capital Contributions. The Members shall contribute such Additional Capital Contributions to the Company in readily available funds in proportion to their Proportionate Shares, within fifteen (15) Business Days after receipt of the Administrative Member's Call therefor. The right to Call for Additional Capital Contributions is a personal right belonging to the Administrative Member of the Company and cannot be exercised by any third party under any circumstances. If any Member fails to make an Additional Capital Contribution within such fifteen (15) Business Day period, the Administrative Member shall, or any member of the Executive Committee may, send a written delinquency notice to such Member. The Member's failure to make the Additional Capital Contribution within five (5) Business Days after receipt of the delinquency notice shall be a failure to contribute for purposes of Section 2.3, and shall constitute a default for purposes of Section 8.1(a) below.

2.3 **Failure to Contribute.** If a Member fails to contribute its Proportionate Share of any Additional Capital Contribution within the 15-Business Day or the 5-Business Day periods described in Section 2.2 above (a **"Noncontributing Member"**) then the Company and/or the other Member may elect any of the following remedies:

(a) The other Member may elect to make a Deficit Contribution equal to the Noncontributing Member's Proportionate Share of the Additional Capital Contribution. A Contributing Member who makes a Deficit Contribution under this Section 2.3(a) shall have the following remedies:

(i) The Contributing Member may elect, by written notice to the other Member, to treat the Deficit Contribution as a loan from the Contributing Member to the Noncontributing Member (a **"Default Loan"**). A Default Loan shall bear interest at the lesser of (x) the rate of twenty percent (20%) per annum, cumulative but not compounded, or (y) the maximum rate allowable by law. Unless and until the Contributing Member elects to adjust the Percentage Interests and Capital Accounts of the Noncontributing Member and the Contributing Member under the following paragraph, the Default Loan shall be treated as a capital contribution by the Noncontributing Member and shall be credited to its Capital Account Until the Default Loan is paid in full, Company distributions that would otherwise be distributed to the Noncontributing Member shall be applied to the Default Loan. Such distributions shall be credited first to unpaid interest and then to the principal balance of the Default Loan, and shall be treated for accounting purposes as distributions to the Noncontributing Member. The Default Loan shall be a recourse obligation of the Noncontributing Member, shall be a demand loan, and shall be due and payable in full 30 days after written demand for payment is received by the Noncontributing Member. As collateral for a Default Loan, the Contributing Member shall have a first priority lien upon and security interest in the Noncontributing Member's Membership Interest, and the Contributing Member shall have all rights of a secured creditor with respect to the Noncontributing Member's Membership Interest. The preceding sentence is intended to constitute a security agreement within the meaning of Article 9 of the Uniform Commercial Code. Each Member agrees that the Contributing Member may execute such documents and instruments, including but not limited to UCC Financing Statements, as the Contributing Member determines to be necessary to perfect the foregoing security interest; or

(ii) The Contributing Member may elect, by written notice to the other Member, to adjust the Capital Accounts and the Percentage Interests of the Contributing Member and the Noncontributing Member, as follows: (1) calculate the **"Adjustment Amount"** by multiplying the Deficit Contribution by four (4); (2) reduce the Noncontributing Member's Capital Account (but not below zero) by the Adjustment Amount; (3) increase the Contributing Member's Capital Account by the amount of the reduction of the Noncontributing Member's Capital Account; and (4) adjust each Member's Percentage Interest to the ratio, expressed as a percentage, of its adjusted Capital Account divided by the total adjusted Capital Accounts of both Members. For purposes of the adjustments described in this Section 2.3(a)(ii), the Members' Capital Accounts shall be determined as of the end of the most recent fiscal quarter and shall be adjusted for any subsequent distributions and contributions, including Deficit Contributions, and for year-to-date income or loss.

(iii) The Contributing Member shall have the right until repayment in full of the Default Loan to elect to adjust the Percentage Interests and Capital Accounts, as described in Section 2.3(a)(ii) above. Until such election is made, the Deficit Contribution shall be a Default Loan. At the time the election is made, for purposes of calculating the Adjustment Amount the "Deficit Contribution" shall be equal to the then unpaid principal balance of the Default Loan. If the election is made, the Noncontributing Member's Capital Account shall be reduced, but not below zero, by the unpaid principal balance of the Default Loan and the Contributing Member's Capital Account shall be increased by the same amount. Any accrued interest on the Default Loan shall be paid to the Contributing Member out of distributions that otherwise would be paid to the Noncontributing Member.

Example: Assume each of the Members has a Capital Account of $45 million and a Percentage Interest of 50%, and that the Company requires Additional Capital Contributions of $3 million. Assume that Member A fails to contribute, and Member B makes its $1.5 million contribution and also makes a $1.5 million Deficit Contribution. Member A's Capital Account would be reduced from $45 million to $39 million ($45 million – [$1.5 million x 4]) and its Percentage Interest would be reduced to 41.94% ($39 million ÷ $93 million). Member B's Capital Account would be increased to $54 million ($45 million + $1.5 million Additional Capital Contribution + $1.5 million Deficit Contribution + $6 million reduction in Member A's Capital Account) and its Percentage Interest would be increased to 58.06%.

(b) The Company may bring an action to enforce the obligation of the Noncontributing Member to make Its Proportionate Share of the Additional Capital Contribution, together with interest thereon at the Interest Rate.

(c) The nondefaulting Member may purchase the Membership Interest of the Noncontributing Member pursuant to the provisions of Section 8.2 below.

(d) **THE MEMBERS ACKNOWLEDGE AND AGREE THAT THE REMEDIES IN THIS AGREEMENT FOR A MEMBER'S FAILURE TO MAKE ADDITIONAL CAPITAL CONTRIBUTIONS WHEN DUE ARE REASONABLE UNDER THE CIRCUMSTANCES THAT EXIST AS OF THE DATE OF THIS AGREEMENT. THE MEMBERS ACKNOWLEDGE AND AGREE THAT THE CAPITAL ACCOUNT AND PERCENTAGE INTEREST OF A NONCONTRIBUTING MEMBER MAY BE SUBSTANTIALLY REDUCED OR ELIMINATED AND THAT REDUCTION OR ELIMINATION IS REASONABLE BECAUSE, IN THE EVENT OF A MEMBER'S FAILURE TO MAKE ADDITIONAL CAPITAL CONTRIBUTIONS (I) OTHER SOURCES OF EQUITY CAPITAL MAY BE AVAILABLE TO THE COMPANY ONLY IN EXCHANGE FOR SUBSTANTIAL DILUTION OR SUBORDINATION OF THE OTHER MEMBER'S INTEREST, AND (II) DEBT FINANCING MAY REQUIRE MEMBER GUARANTEES OR OTHER ADVERSE CONSEQUENCES, INCLUDING VIOLATION OF EXISTING LOAN COVENANTS.**

THE MEMBERS AGREE THAT A NONCONTRIBUTING MEMBER SHALL LOSE ITS RIGHT TO APPROVE OR DISAPPROVE COMPANY DECISIONS AND ITS RIGHT TO PURCHASE LOTS. THE MEMBERS ACKNOWLEDGE THAT EACH MEMBER THOROUGHLY REVIEWED THIS AGREEMENT AND THESE REMEDIES WITH INDEPENDENT LEGAL COUNSEL AND EACH HAS EQUAL BARGAINING POWER AND THE REQUISITE EXPERIENCE, SOPHISTICATION, AND FINANCIAL STRENGTH TO UNDERSTAND, INTERPRET, AND AGREE TO THE TERMS OF THIS AGREEMENT AND THESE REMEDIES.

Beazer initials

Centex initials

2.4 **Capital Accounts.** A separate Capital Account (a **"Capital Account"**) shall be maintained for each Member for the full term of this Agreement in accordance with the capital accounting rules of section 1.704-1(b)(2)(iv) of the Treasury Regulations. Pursuant to the basic rules of section 1.704-1(b)(2)(iv) of the Treasury Regulations, the balance in each Member's Capital Account shall be:

(a) increased by the amount of money contributed by the Member (or the Member's predecessor in interest) to the capital of the Company pursuant to this Section 2 and decreased by the amount of money distributed to the Member (or the Member's predecessor in interest) pursuant to Section 3 or Section 9 hereof;

(b) increased by the fair market value of each item of property (determined without regard to section 7701(g) of the Code) contributed by the Member (or the Member's predecessor in interest) to the capital of the Company pursuant to this Section 2 (net of all liabilities secured by the property that the Company is considered to assume or take subject to, under section 752 of the Code) and decreased by the fair market value of each item of property (determined without regard to section 7701(g) of the Code) distributed to the Member (or the Member's predecessor in interest) by the Company pursuant to Section 3, Section 9 or Section 11 hereof (net of all liabilities secured by the property that the Member is considered to assume or take subject to, under section 752 of the Code);

(c) increased by the amount of Net Income and items of income or gain allocated to the Member (or the Member's predecessor in interest) pursuant to Section 3 hereof;

(d) decreased by the amount of Net Loss and items of loss or expense allocated to the Member (or the Member's predecessor in interest) pursuant to Section 3 hereof;

(e) to the extent that Company property is reflected in the Capital Accounts and on the books of the Company at a book value that differs from the adjusted tax basis of such property, adjusted in accordance with Treasury Regulations Section 1.704- 1.(b)(2)(iv)(g) for allocations to Members of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to such property;

(f) adjusted as provided in Section 2.3 upon a Member's failure to make capital contributions; and

(g) otherwise adjusted in accordance with the other Capital Account maintenance rules of section 1.704-1(b)(2)(iv) of the Treasury Regulations.

2.5 **Valuation of Company Assets.** The book values of all Company assets shall be adjusted to equal their respective fair market values (taking Code Section 7701(g) into account), as reasonably determined by the Executive Committee, upon the occurrence of any of the following events: (i) a contribution of money or Real Property (other than a de minimis amount) to the Company by a new or existing Member as consideration for a Membership Interest; (ii) a distribution of money or Real Property (other than a de minimis amount) by the Company to a Member as consideration for a Membership Interest; and (iii) the liquidation of the Company within the meaning of Treasury Regulations section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (i) and (ii) of this sentence shall be made only if the Executive Committee reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members. My such adjustments shall be reflected by corresponding adjustments to the Capital Accounts which reflect the manner in which the unrealized income, gain, loss, or deduction inherent in such Real Property (that has not been reflected in the Capital Accounts previously) would be allocated among the Members if there were a taxable disposition of such assets for such fair market values.

2.6 **Other Matters.** A Member shall not have the right to make capital contributions to the Company other than as expressly permitted in this Agreement. No Member shall have the right to withdraw any capital from the Company or to receive any distribution or return of its capital contributions, except as provided in this Agreement. Except as otherwise provided in this Agreement, no interest shall be payable on or with respect to the capital contributions or Capital Accounts of the Members.

3. DISTRIBUTIONS AND ALLOCATIONS

3.1 **Maintenance of Reserves.** The Company shall maintain a reserve for the development of the Project in an amount deemed appropriate by the Executive Committee from time to time to meet the reasonably anticipated operating and capital needs of the Company. If the Executive Committee does not agree on the amount of the reserve, the Company shall maintain a minimum reserve equal to FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00). There shall be no distributions to Members (other than in the event of the dissolution and liquidation of the Company) at any time that the Company does not have the amount of reserve required by this Section 3.1.

3.2 **Nonliquidating Distributions.** Except as otherwise provided in Section 9, Distributable Cash shall be allocated and distributed to the Members in the following order of priority:

(a) Distributable Cash shall be distributed to the Members from time to time and in such amounts as determined by the Executive Committee. Subject to Section

2.3(a)(ii) and Section 3.2(b), each distribution of Distributable Cash shall be allocated among the Members in proportion to their Percentage Interests as of the date of distribution.

(b) A Member may not receive a distribution under this Section 3.2 if the distribution would reduce the Member's Capital Account balance to a deficit amount that exceeds the amount the Member is deemed obligated to restore to its Capital Account pursuant to the next to last sentences of Treasury Regulations sections 1.704-2(g)(1)(ii) and (i)(5). If a distribution to a Member is prohibited by this Section 3.2(b), the prohibited distribution shall be distributed to the other Members in proportion to their Percentage Interests (subject to the limitation of the first sentence of this Section 3.2(b)).

3.3 **Allocation of Net Income and Net Loss.** After giving effect to the special allocations set forth in Section 3.4 and Section 11.3, if any, Net Income or Net Loss for a Fiscal Year shall be allocated between the Members so that, to the extent possible, each Member's Capital Account balance is equal to the amount the Member would receive if the Company were to dispose of each of its assets on the last day of the Fiscal Year for an amount equal to the asset's book value (or, if greater, the amount of nonrecourse indebtedness secured by the asset) and then liquidate, distributing the net proceeds in the manner described in Section 9 below.

3.4 **Special Allocations.** Prior to making the allocations described in Section 3.3 above, Company income, gain, loss and deduction shall be allocated in accordance with the following provisions and applied in the following order:

(a) Except as otherwise provided in section 1.704-2(f) of Treasury Regulations, if there is a net decrease in Company Minimum Gain (as defined below) during any Company taxable year, each Member shall be specially allocated items of Company income and gain for the year (and, if necessary, subsequent years) in an amount equal to the portion of the Member's share of the net decrease of Company Minimum Gain, determined in accordance with Treasury Regulations section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations section 1.704-2(j)(2). This Section 3.4 is intended to comply with the "minimum gain chargeback" requirements of Treasury Regulations section 1.704-2(f) and shall be interpreted consistently therewith. **"Company Minimum Gain"** shall have the same meaning as "partnership minimum gain" in Treasury Regulations section 1.704-2(b)(2).

(b) If there is a net decrease in Member minimum gain (determined in accordance with Treasury Regulation Section 1.704-2(i)(3)) attributable to a Member nonrecourse debt during any Fiscal Year, each Member who has a share of the Member minimum gain attributable to such debt, determined in accordance with Treasury Regulation Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in the amount equal to such Member's share of the net decrease in Member minimum gain attributable to such debt, determined in a manner consistent with the provisions of Treasury Regulation Section 1.704-2(g)(2). This Section 3.4(b) is intended to comply with the Member non-recourse debt minimum gain

chargeback requirement of Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently with that requirement.

(c) If a Member unexpectedly receives an adjustment, allocation or distribution of any item described in Treasury Regulations sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and the adjustment, allocation or distribution creates a deficit balance in the Member's Capital Account in excess of the amount the Member is deemed obligated to restore to its Capital Account pursuant to the next to last sentences of Treasury Regulations sections 1.704-2(g)(1)(ii) and (i)(5) (an "excess deficit"), items of income and gain shall be allocated to the Member in an amount and manner sufficient to eliminate the excess deficit as soon as possible. Solely for purposes of applying this Section 3.4, each Member's Capital Account shall be reduced to the extent of adjustments, allocations or distributions described in subparagraphs (4), (5) and (6) of Treasury Regulations section l.704-1(b)(2)(ii)(d) which are reasonably expected as of the end of the taxable year. This Section 3.4(c) is intended to comply with the "qualified income offset" provisions of Treasury Regulations section l.704-1(b)(2)(ii)(d) and these provisions shall be interpreted, and allocations hereunder shall be made, in conformity with the regulations.

(d) Nonrecourse Deductions for any taxable year or other period shall be allocated to the Members in proportion to their Percentage Interests. The term **"Nonrecourse Deductions"** shall have the meaning set forth in Treasury Regulations section 1.704-2(b)(1).

(e) The allocations set forth in Section 3.4(a) through Section 3.4(c), inclusive (the **"Regulatory Allocations"**) are intended to comply with certain requirements of Treasury Regulations Section 1.704-1(b). The Regulatory Allocations shall be taken into account in allocating other net profits, net losses, and items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of the allocations of other net profits, net losses, and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

3.5 **Tax Allocations.** Except as otherwise provided in the second sentence of this Section 3.5, all items of Company taxable income, gain, loss and deduction shall be allocated among the Members consistent with the allocations of Net Income and Net Loss under Section 3.3. If Company property is reflected in the Capital Accounts and on the books of the Company at a book value that differs from the adjusted tax basis of the property, than depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to the property, shall be determined and allocated among the Members, solely for tax purposes, so as to take account of the variation between the adjusted tax basis and the book value of the property in any reasonable method determined by the Executive Committee and permitted under Section 704(c) of the Code and Treasury Regulations thereunder.

3.6 **Other Allocation and Distribution Rules.**

(a) For purposes of determining Net Income or Net Loss, or any other items allocable to any period, Net Income, Net Loss and any such other items shall be

determined on a daily, monthly, or other basis, as determined by the Executive Committee using any permissible method under Code Section 706 and Treasury Regulations thereunder.

(b) Any amounts withheld by the Company pursuant to the Code or any provision of any state or local law with respect to any allocation or distribution to a Member shall be treated as a distribution to the Member for all purposes under this Agreement.

(c) No Member shall become entitled to any distribution from the Company until such time as the distribution is actually paid by the Company. No Member has any right to demand and receive any distribution from the Company in any form other than money. No Member may be compelled to accept from the Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members.

(d) No distribution shall be made by the Company if the distribution is prohibited by Section 18-607 of the Act. Any Member who receives a distribution from the Company which is determined to have been prohibited by Section 18-607 of the Act shall, within 30 days following notice, return the distribution to the Company.

3.7 **Interest on Capital.** Except as otherwise expressly provided in this Agreement, no Member shall receive any interest on its capital contributions or its Capital Account.

3.8 **Determining Net Income and Net Loss. "Net Income"** and **"Net Loss"** shall mean, for each Fiscal Year or other taxable period, an amount equal to the Company's taxable income or loss for the year or period, determined in accordance with Code section 703(a) [for this purpose, all items of income (including, without limitation, rental income from tenants on certain portions of the Real Property), gain, loss, or deduction required to be stated separately pursuant to Code section 703(a)(1) shall be included in taxable income or loss], with the following adjustments:

(a) Any income that is exempt from federal income tax shall be added to the Company's gross income;

(b) Any expenditures of the Company described in Code section 705(a)(2)(B) (or treated by Treasury Regulations as if described in that section) shall be treated as a deduction of the Company;

(c) Gain or loss from any disposition of Company Real Property shall be computed with reference to the book value of the Real Property if its book value differs from its adjusted tax basis;

(d) If the book value of any Company Real Property differs from its adjusted tax basis, depreciation, amortization, or other cost recovery deductions with respect to the Real Property shall be computed with reference to the book value;

(e) Any items that are specially allocated pursuant to Section 3.4 or Section 11.3 hereof shall be taken into account prior to computing, and shall be excluded from the computation of, Net Income or Net Loss for purposes of this Section 3.8; and

(f) Any other adjustments that the Executive Committee determines are necessary to comply with Treasury Regulations section 1.704-1(b) shall be made.

4. MANAGEMENT

4.1 **Executive Committee.**

(a) Except as otherwise expressly provided in this Agreement, the business and affairs of the Company shall be vested in and controlled by the Members, acting through their designated representatives on the Executive Committee. The Executive Committee shall have responsibility for establishing the policies and operating procedures with respect to the business and affairs of the Company and for making all decisions as to all matters which the Company has authority to perform. All voting rights of the Members shall be exercised by their designated representatives on the Executive Committee and the Members shall not possess any separate voting rights. Each Member entitled to vote shall have one (1) vote on the Executive Committee, which vote may be exercised by any of its designated representatives. All decisions with respect to the management and control of the Company approved by the Executive Committee shall be binding upon the Company and all Members.

(b) Except as otherwise expressly provided in this Agreement or provided for in any Annual Business Plan, the following decisions, and all other decisions except those expressly delegated herein or in the Annual Business Plan to the Administrative Member **("Major Decisions")** shall require a Unanimous Vote of the Executive Committee:

(1) Approval and implementation (to the extent not expressly delegated) of Annual Business Plans and any amendments or modifications thereto;

(2) selection and removal of the Administrative Member and the Project Director, except as provided in Section 8.2(d) below;

(3) the expenditure of any amount that exceeds the line item for such type of expenditure for such calendar year in the Budget for the Project contained in the then current Annual Business Plan by more than Ten Thousand Dollars ($10,000.00) for any single item or more than Fifty Thousand Dollars ($50,000) in the aggregate for any given Development Phase; provided, the Administrative Member shall have the authority to make any expenditure it deems to be necessary or appropriate as a result of an emergency to protect life or property;

(4) any call for Additional Capital Contributions not otherwise required by the Real Property Contract or the Annual Business Plan;

(5) submission of rezoning plans, preliminary plans, site plans, and Subdivision Plat applications and the approval of any material additions or changes to land use entitlements or other agreements relating to the development of the Real Property;

(6) any sale of any portion of the Real Property to a Person other than a Member, and the execution of contracts of sale, deeds, and other instruments in connection therewith;

(7) Any sale of any portion of the Real Property, or any grant of a lease, option, or other right to acquire any portion of the Real Property, except pursuant to terms contemplated by the Annual Business Plan, or any purchase of any real property in addition to the Real Property;

(8) Except as specifically authorized by the Annual Business Plan or this Agreement, any transaction between the Company and a Member (or an Affiliate of a Member) and any amendment, modification, or waiver of any provision of any agreement between the Company and a Member (or an Affiliate of a Member);

(9) Any financing, refinancing or securitization of the Real Property or any portion thereof, the execution and delivery of any documents, agreements or instruments evidencing, securing or relating to any such financing;

(10) The scope and form of insurance to be carried by the Company, and any modification, termination, making of any claim under, or any other decision that materially affects, any insurance policies carried by the Company;

(11) The amount of reserves to be maintained by the Company as provided in Section 3.1;

(12) Any decision that will (A) cause the termination of the Company for federal income tax purposes, or (B) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation;

(13) The commencement by the Company of any case under the Bankruptcy Code (Title 11 of the United States Code) or commencement by the Company of any other bankruptcy, arrangement, reorganization, receivership, custodianship, or similar proceeding under any federal, state, or foreign law;

(14) Admission of additional Members to the Company and the terms and conditions of any such admission;

(15) Any amendment of this Agreement or the Certificate, or of any of the Real Property Contracts;

(16) Any merger of the Company with or into another business entity; and

(17) The dissolution of the Company pursuant to Section 9.1(b).

(18) The execution on behalf of the Company of any contract or agreement providing for payments in excess of Ten Thousand Dollars ($10,000.00) for any single item or more than Fifty Thousand Dollars ($50,000) in the aggregate for any given Development Phase, and all contracts and agreements in excess of such amount shall be executed on behalf of the Company by both Members;

(19) Making any distributions to Members;

(20) Settling or compromising any insurance claim or legal proceedings or claims brought by or against the company or the Real Property;

(21) Confessing a judgment against the Company; and

(22) Binding the Company as guarantor or surety for any Person.

(23) Causing the Company to acquire any real property other than the Real Property.

(24) Agreeing to the terms upon which any existing lease of a portion of the Real Property shall be modified or terminated.

(25) Establishing the accounting procedures used by the Company, including, without limitation, the guidelines used for capitalization and expensing of development costs.

(c) If the Company has the right, but not the obligation, to repurchase Lots that the Company has sold to a Member or an Affiliate of a Member, the Company's decision to repurchase the Lots shall require the approval of the other Member unless such Member has lost its right to vote pursuant to Section 8.3(a).

(d) Meetings of the Executive Committee shall be held at the office maintained by the Administrative Member pursuant to Section 4.3, or such other office (which need not be a place of business of the Company) as the Executive Committee may designate from time to time. The Executive Committee shall meet at least once each calendar month throughout the remaining term of the Company. Regular meetings of the Executive Committee may be held without notice if the time of such meetings is fixed by the Executive Committee. Special meetings of the Executive Committee may be called by any Member upon not less than three (3) business days written notice to all representatives on the Executive Committee, except as waived in writing by the Members. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Executive Committee. The representatives on the Executive Committee may participate in a meeting of the Executive Committee through the use of conference telephones or similar communications equipment, as long as all persons participating in the meeting can hear one another. Participation in a meeting pursuant to the preceding sentence constitutes presence in person at the meeting.

(e) Any action required or permitted to be taken at any meeting may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, is signed on behalf of each Member by one of its designated representatives on the Executive Committee; provided, however, that any solicitation for a written consent and any supporting information shall be sent to all representatives on the Executive Committee in the same manner and at approximately the same time.

(f) Project Director's chief operating officer, or another representative of Project Director reasonably acceptable to the Executive Committee, shall meet with the Executive Committee as frequently as twice in each calendar month at the request of the Executive Committee to review the status of the Project. At such meetings, Project Director's representative shall deliver reports respecting all current and prospective developments respecting the Project and shall submit such other reports as may be reasonably requested by the Executive Committee.

4.2 **Representatives on Executive Committee.**

(a) Each Member may designate as many as three individuals as its representatives on the Executive Committee. The Members' initial representatives shall be the individuals whose names are set forth on Exhibit B hereto. A Member may replace either of its designated representatives to the Executive Committee by written notice to the other representatives on the Executive Committee.

(b) A written record of all meetings of the Executive Committee and all decisions made by it shall be made by the Administrative Member, kept in the records of the Company, and shall be initialed or signed by a designated representative of each Member. The approval of each Annual Business Plan will be evidenced by the signing or initialing of a copy of the approved version by a designated representative of each Member. Failure to maintain a written record of an action shall not invalidate an otherwise valid action of the Executive Committee.

(c) Each representative on the Executive Committee shall be entitled to act and to vote on all matters coming before the Executive Committee in the best interests of the Member whom he represents, and shall have no duty to consider or to vote with regard to the best interests of the Company or any other Member. The representatives on the Executive Committee shall not be entitled to receive any compensation from the Company by reason of their service on the Executive Committee, nor shall the Members be entitled to any reimbursement for the services of their representatives on the Executive Committee.

(d) All actions of the Executive Committee shall be approved by both Members; provided, however, that a Defaulting Member shall not have any right to approve or disapprove any action of the Executive Committee, and all actions of the Executive Committee and the Company may be taken by the nondefaulting, or active, Member, as the case may be, acting alone.

4.3 **Administrative Member and Project Director.**

(a) Administrative Member.

(1) The Executive Committee shall designate one of the Members to manage the day-to-day financial and administrative affairs and record keeping of the Company and to implement the decisions of the Executive Committee as delegated to it (the **"Administrative Member"**). The Administrative Member shall (i) conduct the administrative business of the Company on a day-to-day basis, and will use commercially reasonable efforts to conduct such business of the Company in accordance with the approved Annual Business Plan for the applicable Fiscal Year and such other guidelines as may be adopted by the Executive Committee, (ii) perform the duties assigned to it under this Agreement, and (iii) carry out all decisions and resolutions of the Executive Committee (other than as assigned to the Project Director). The Administrative Member shall maintain the principal office of the Company in the Washington D.C. Metropolitan Area. The initial Administrative Member shall be Beazer, which shall remain as Administrative Member (i) until removed, for any reason and with or without cause, by the Executive Committee, (ii) until it resigns as the Administrative Member, or (iii) is determined to be a Defaulting Member. If the Executive Committee proposes to remove an Administrative Member, it shall give the Administrative Member not less than 30 days prior written notice of any proposed vote for removal.

(2) Subject to the limitations set forth in this Agreement, including, without limitation, those contained in Section 4.1(b)(3) and (18) above, the Administrative Member, on behalf of the Company after approval by the Executive Committee, shall have the power and authority to execute contracts on behalf of the Company, and it is acknowledged and agreed that all such contracts and agreements shall be entered into in the name of the Company, and to make expenditures as are required to implement the Annual Business Plan. The Administrative Member is hereby expressly authorized to:

(i) Set up accounts payable for the Company and pay in a timely manner all non-disputed operating expenses of the Company in accordance with the terms of the Annual Business Plan or as otherwise provided herein;

(ii) Obtain and maintain insurance coverage on the Real Property and with respect to the activities of the Company as required by the Executive Committee, and pay all non-disputed taxes, assessments, charges and fees payable in connection with the ownership., development and use of the Real Property;

(iii) Deliver to the other Members promptly upon the receipt or sending thereof, copies of all notices, reports and communications between the Company and any holder of a mortgage affecting all or any portion of the Real Property, or any tenant under any lease of any portion of the Real Property, or any other Person with whom the Company is under contract, which relates to any existing or pending default thereunder or to any financial or operational information required by such Person;

(iv) Deposit all receipts from operations of the Real Property to a separate account in the name of the Company established and maintained in the

Washington, D.C. Metropolitan Area by the Administrative Member, and shall not commingle those receipts with any other funds or accounts of the Administrative Member;

(v) Prepare and maintain those Records and Reports required by Section 5 of this Agreement; and

(vi) Undertake any activity reasonably related to satisfaction of the duties expressly provided in this Agreement as those of the Administrative Member.

(3) If at the end of a Fiscal Year, the Annual Business Plan or any item or portion thereof for the next succeeding Fiscal Year has not been approved by the Executive Committee, then:

(i) Any items or portions of the Annual Business Plan and amounts of expenses provided therein that have been so approved shall become operative immediately and the Administrative Member shall be entitled to expend funds in accordance with those operative portions;

(ii) The Administrative Member shall be entitled to expend funds in respect of debt service on the Company's financing (if any), real estate taxes and assessments, emergency repairs and other immediately necessary expenditures to continue the development and maintenance of the Real Property, utility charges, additions, modifications or repairs to comply with applicable laws or insurance requirements, insurance premiums for insurance policies approved by the Executive Committee, the performance of contracts that the Company has entered into, any final orders, judgments or other proceedings and all costs and expenses related thereto, and other fees and expenses approved by the Executive Committee; and

(iii) With respect to any noncapital, recurring expenses in any quarterly period, the Administrative Member shall be entitled to expend an amount equal to the budgeted amount for the corresponding quarter of the immediately preceding Annual Business Plan, after giving effect to any dispositions or other material changes to the Real Property or its operations during the prior year; provided, however, that if any contract approved by the Executive Committee provides for an automatic increase in costs thereunder after the beginning of the then-current year, the Administrative Member shall be entitled to expend the amount of such increase.

(4) The Administrative Member shall obtain on behalf of the Company, from financially sound and reputable insurers who may lawfully do business in the jurisdiction in which the Real Property is located, such insurance as the Executive Committee determines in its reasonable business judgment to be appropriate. When purchased, the cost of the insurance shall be an expense of the Company. If the Administrative Member is unable to secure and maintain any of the insurance required by, and at a cost acceptable to, the Executive Committee, then the Administrative Member shall propose an alternative risk financing procedure for the approval of the Executive Committee. Whenever insurance is purchased for the Company, the Administrative Member shall arrange for all Members to be named as

additional insureds, and shall arrange for the other Member to receive certificates evidencing the insurance. The certificates shall identify the insurance policy by policy number, inception and expiration dates, named insureds, additional insureds, if any, coverages, and limits of liability.

(5) Any limitation in Section 4.1(b) above to the contrary notwithstanding, the signature of the Administrative Member or the Project Director shall bind the Company as against any bona fide unaffiliated third party providing value who has no actual knowledge of any pertinent limitation on the authority of the Administrative Member or the Project Director, as the case may be, and who shall have no duty of inquiry regarding the authority of the Administrative Member or Project Director.

(b) Project Director.

(1) The Executive Committee will designate a Member to oversee development of the Project (the **"Project Director"**) who will have primary responsibility for supervision of the day-to-day development operations and activities of the Company. Project Director shall devote its skill and such time and effort as are necessary and proper for the provision of the Development Services; provided, however, that the Project Director shall not be obligated to devote its full time and attention or that of its officers, directors, employees, and Affiliates to the activities required herein. It is contemplated that the Project Director shall designate one of its full time employees to perform the duties of Project Director and that employee shall devote its full time to the business and affairs of the Company (the "Project Manager"). The Executive Committee shall determine the appropriate time for such designation, based on the pace of activity at the Project, but it is currently contemplated that such appointment will take effect approximately thirty (30) days before commencement of physical land development work at the Project. The Project Director shall be entitled to reimbursement from the Company for the said employee's personnel cost (salary and benefits) in accordance with the Annual Business Plan. Each of the Members shall have full access to the Project Manager, on a daily basis, and shall be entitled to participate fully in the development of Company strategy. In addition to the Project Director, the Executive Committee may retain consultants and/or employees as may be provided in the Annual Business Plan and the Members shall make their employees available to the Company as may be provided in the Annual Business Plan. Each Member will designate one of its senior local executives as a designated point of contact for the Project Director. The initial Project Director shall be Centex, which shall remain as Project Director (i) until removed, for any reason and with or without cause, by the Executive Committee, (ii) until it resigns as the Project Director, or (iii) is determined to be a Defaulting Member. If the Executive Committee proposes to remove a Project Director, it shall give the Project Director not less than 30 days prior written notice of any proposed vote for removal.

(2) Subject to the limitations set forth in this Agreement, the Project Director, on behalf of the Company after approval by the Executive Committee, shall have the power and authority to carry out the work required to develop the Project. The Project Director is hereby expressly authorized and directed to perform the tasks and duties set forth in the Project Director's Responsibility Checklist attached hereto and incorporated herein as Exhibit F.

(c) Limitation on Liability. A basic premise of this Agreement is that the Members are sharing on a pro rata basis through their ownership interests in the Company in all of the development risks that relate to or are in any way connected with the ownership of the Real Property and the development of the Lots, and that the Members will work closely and cooperatively to mitigate these risks. The Administrative Member and Project Director shall manage the affairs of the Company as an accommodation to the other Member, but the Members expressly acknowledge and agree that this accommodation shall not give rise to any obligation of the Administrative Member or the Project Director to the other Member with respect to the nature or scope of the conditions attached to any entitlements, the amount of development costs incurred, the quality of the work performed, timetable for completion of the development work, or any other matter, except when the Administrative Member or Project Director has been grossly negligent or acted with willful misconduct. The Administrative Member and Project Director shall use commercially reasonable efforts to satisfy the requirements of the Company delegated to it in the same manner and using the same degree of care that it exercises in the performance of similar work for its own account. Without limiting the generality of the foregoing, the other Member expressly acknowledges and agrees that the Administrative Member and the Project Director shall have no liability for construction defects, for delays in the completion of the development work or issuance of building permits, or for cost overruns of any sort, or for administrative errors (except and only to the extent caused by or resulting from the gross negligence or willful misconduct of the Administrative Member or the Project Director respectively), it being the intent of the parties that the Company shall bear all such risks.

4.4 **Company Expenses.** Except as provided in the Annual Business Plan or as otherwise approved by the Executive Committee, neither any Member nor any partner, shareholder, officer, director, employee, agent or representative of any Member shall receive any salary or other compensation from the Company for services rendered pursuant to this Agreement. Each Member shall be entitled to reimbursement of any expenses it pays on behalf of the Company, including the costs of personnel engaged in the business of the Company, subject to the following sentence. In the event any such costs and expenses have been paid or incurred by any Member, such Member shall be entitled to be reimbursed for such costs and expenses so long as such payment is reasonably necessary for Company business or operations and has been expressly authorized in an Annual Business Plan or approved by the Executive Committee. The Company shall pay to the Project Director on a progress payment basis all costs incurred by the Project Director in connection with its performance of the Development Services and the Development Work described on Exhibit F hereto pursuant to the Annual Business Plan. On or prior to the tenth (10th) day of each calendar month, the Project Director shall submit a requisition for payment (the **"Payment Requisition Form"**) requesting progress payments to be paid in the respective amounts listed for the work identified in the Payment Requisition Form. At the time of each request for progress payment, the Project Director shall provide to the Executive Committee a release of liens providing that all material and labor paid for by the prior progress payments have been, in fact, paid. Within fifteen (15) days after receipt of the Payment Requisition Form, Company shall deliver the amount requested to Project Director in full in immediately available funds. Anything herein to the contrary notwithstanding, unless expressly approved by the Executive Committee, in no event shall the Members be responsible for, or required to make any capital contribution in respect of:

(a) any profit or management fee to the Project Director or its affiliates except for the personnel cost of the Project Manager as set forth in Section 4.3(b) above;

(b) the cost of repairs or restoration of damaged or destroyed portions of the Development Work paid by insurance proceeds;

(c) the cost of repairs or replacements paid or reimbursed under any third party warranties applicable to the item repaired or replaced;

(d) any costs incurred as a result of the gross negligence or intentional misconduct of the Project Director;

(e) any interest or penalties incurred as a result of the failure of the Project Director to pay bills as the some shall become due, except to the extent such interest or penalties are attributable to the Company's failure to make timely payment for the Development Work or to the Company's good faith contest of any sums alleged to be due by Contractors; or

(f) the cost of any work not encompassed within the Project Director's responsibilities herein, unless agreed to in writing in advance by the Executive Committee.

4.5 **Annual Business Plan.** Not later than sixty (60) days before the last Executive Committee meeting scheduled for each Fiscal Year, the Administrative Member and Project Director shall prepare and submit to the Executive Committee for its approval a budget and plan for the development of the Real Property and operation of the Company for the upcoming Fiscal Year. The Project Director shall facilitate the submission by the Administrative Member of a proposed annual budget, together with any interim adjustments to the Annual Business Plan for the Project as required by Section 4.5 of the Operating Agreement. The expenses incurred by the Project Director in establishing a field office at the site of the Project, including the renting of trailers and on-site office equipment, payment of utilities, and purchase of office supplies shall be included in the Annual Business Plan submitted to the Executive Committee. As and when such budget and plan for development shall be approved by the Executive Committee, it shall become the **"Annual Business Plan"** for the Fiscal Year to which it relates. If the Executive Committee shall reject or be unable to agree on the Annual Business Plan for the Project, or any interim adjustments to the Annual Business Plan, then Company, and accordingly, Project Director, shall, until a revised Annual Business Plan shall be approved, be subject to the same financial limitations established by the last annual approved Annual Business Plan for the Project, as if the last Annual Business Plan had been in effect during the then present calendar year, increasing, however, the amount of the budget in the Annual Business Plan by the Consumer Price Index (Washington, D.C./Baltimore metropolitan area) for the preceding fiscal year and shall continue in effect, but excluding extraordinary and non-recurring items set forth in such last Annual Business Plan budget. Each such budget and development plan shall set forth all anticipated income, operating expenses and capital and other costs and expenses of the Company, together with anticipated calls for Additional Capital Contributions. Any decision to sell Lots, or the commercial parcels, or other portions of the Real Property, to Persons other than Members shall be part of the Annual Business Plan. An Annual Business Plan may be reviewed

and modified at any time during a Fiscal Year, but only upon the Unanimous Vote of the Executive Committee. The Members acknowledge that they have heretofore agreed upon the initial Annual Business Plan in the form of the financial model attached hereto as Exhibit D.

4.6 **Bonds.** The Company expects to be able to obtain all bonds that the Company may be required to obtain in connection with construction of the improvements on the Real Property. No Member shall be required to be individually responsible for guaranteeing more than its Proportionate Share of any such bond. To the extent that any Member does guarantee any bond of the Company, or shall incur liability in excess of its Proportionate Share under any such bond, the Company shall provide such Member with appropriate indemnification and assurances. As requested by any Member from time to time, the Company shall obtain fidelity bonds in reasonable amounts with reputable surety companies covering all persons having access to the Company's funds, indemnifying the Company against loss resulting from fraud, theft, and dishonesty, and other wrongful acts of such persons. The foregoing notwithstanding, in the event the cost of acquiring bonds in the name of the Company is prohibitively expensive, the Executive Committee may direct the Members to obtain all required bonds in their respective names on a pro rata basis.

5. RECORDS AND REPORTS

5.1 **Maintenance of Records by Administrative Member.** The Administrative Member shall maintain, or cause to be maintained, at the expense of the Company, in a manner customary and consistent with good accounting principles, practices and procedures, a comprehensive system of office records, books and accounts (which books, records and accounts shall be and remain the property of the Company) in which shall be entered fully and accurately each and every financial transaction with respect to the ownership, development, lease, distribution, and sale of the Real Property. The Administrative Member shall maintain said books, records and accounts in a safe manner and separate from any records not having to do directly with the Company or the Real Property. Without limiting the generality of the foregoing, the Company shall maintain at the office of the Administrative Member all of the following:

(a) A current list of the full name and last known business or residence address of each Member set forth in alphabetical order, together with the contribution and share in profits and losses of each Member and such Member's designated representatives to the Executive Committee.

(b) A copy of the Certificate and all amendments thereto, together with any powers of attorney pursuant to which the Certificate or any amendments thereto were executed.

(c) Copies of the Company's federal, state and local income tax or information returns and reports, if any, for the six most recent taxable years.

(d) A copy of this Agreement and any amendments thereto, together with any powers of attorney pursuant to which this Agreement or any amendments thereto were executed.

(e) Copies of the financial statements of the Company, if any, for the six most recent Fiscal Years.

(f) The books and records of the Company as they relate to the internal affairs of the Company for at least the current and past four Fiscal Years.

(g) Copies of all Service Contracts and any other contracts and agreements between the Company and any third party.

5.2 **Delivery to Members and Inspection.**

(a) Upon the request of a Member, for purposes reasonably related to the interest of that Parson as a Member, the Administrative Member shall promptly deliver to the Member, at the expense of the Company, a copy of the information required to be maintained by Section 5.1.

(b) Each Member has the right upon reasonable request, for purposes reasonably related to the interest of that Person as a Member, to each of the following:

(1) To inspect and copy during normal business hours any of the records required by the terms of this Agreement to be maintained by the Administrative Member or the Project Director.

(2) To obtain from the Administrative Member promptly after becoming available, a copy of the Company's federal, state, and local income tax or information returns for each year.

(c) The Administrative Member shall promptly furnish to a Member a copy of any amendment to the Certificate or this Agreement executed by the Administrative Member pursuant to a power of attorney from the Member.

(d) Any request, inspection, or copying by a Member may be made by the Member or by its agent or attorney.

5.3 **Reports.**

(a) The Administrative Member shall prepare or cause to be prepared, at the expense of the Company, and shall furnish to each Member within ten (10) calendar days after the end of each calendar month an unaudited statement of cash receipts and disbursements for the month.

(b) The Administrative Member shall prepare or cause to be prepared, at the expense of the Company, and furnish to each Member within twenty-one (21) calendar

days after the end of each fiscal quarter of the Company (i) unless the fiscal quarter is the last quarter of any Fiscal Year, (A) an unaudited balance sheet of the Company dated as of the end of the fiscal quarter, (B) an unaudited related income statement of the Company for the fiscal quarter, (C) an unaudited statement of each Member's Capital Account for the fiscal quarter, and (D) an unaudited statement of cash receipts and disbursements for the fiscal quarter, and (ii) a status report of the Company's activities during the fiscal quarter reflecting summary descriptions of material development activities, additions to, material dispositions of and leasing of the Real Property, and any substantive discussions with prospective purchasers of the Real Property, and any material legal issues such as material claims filed or threatened against the Company, the arising of material claims by the Company against other parties and developments in any then pending material legal actions affecting the Company during the fiscal quarter, all of which shall be certified by the Administrative Member as being, to the best of its knowledge, true and correct.

(c) Either Member may, by written notice delivered to the Administrative Member a minimum of 90 days before the end of the Fiscal Year, elect to have the Company's Accountant to prepare and furnish to each Member within 90 days after the end of each Fiscal Year, (i) an audited balance sheet of the Company dated as of the end of such Fiscal Year, (ii) an audited related income statement of the Company for such Fiscal Year, (iii) an audited statement of cash flows for such Fiscal Year, and (iv) an audited statement of each Member's Capital Account for such Fiscal Year, all of which shall be certified in the customary manner by the Company's Accountant. Audits may not be requested more than once a year and, if requested, shall be an expense of the Company.

(d) The Administrative Member shall prepare, or cause the Company's Accountant to prepare, all federal, state and local tax returns required of the Company, submit those returns to the Executive Committee for its approval no later than 120 days after the end of each Fiscal Year, and file the tax returns after they have been approved by the Executive Committee. If the Executive Committee has not approved any such tax return prior to the date required for the filing thereof (including any extensions granted), the Administrative Member shall timely obtain an extension of such date to the extent such extension is available. If the Executive Committee has not approved the tax return before the required filing date after obtaining all available extensions, then the tax return shall be filed in the manner prepared by the Administrative Member or the Company's Accountant. The Administrative Member shall provide to each Member as of the end of each fiscal quarter an estimate of the Company's taxable income for the current Fiscal Year.

(e) All material accounting policies and elections for the Company (other than any specifically provided for elsewhere in this Agreement) shall be made in accordance with GAAP. All quarterly and annual financial statements for the Company shall be prepared in accordance with GAAP (on an accrual basis with a cash reconciliation of expenses).

(f) The Project Director shall maintain, and shall provide the Executive Committee with, an accurate record of all transactions undertaken by Project Director on behalf of the Company. The Project Director shall, together with each monthly requisition, which must be delivered by not later than fifteen (15) days after the end of each month, deliver to

the Administrative Member all necessary information to allow the Administrative Member to prepare a financial statement for the Project indicating in reasonable detail all of the expenses incurred for the Project, including reconciliations of budgeted to actual expenses and actual expenses to the cost of completion, together with such additional information as the Administrative Member may reasonably require.

(g) Any Member shall have the right, at any time and from time to time, to conduct or cause to be conducted a complete or partial audit of the Project, at the Company's sole cost and expense. Project Director shall cooperate in all reasonable respects in connection with such audit and shall make all of its books and records relating to the Project fully available to any party designated by the Executive Committee to conduct such audit.

5.4 **Tax Matters.** The Company's accounting method for income tax purposes shall be as determined under the Code and Treasury Regulations. The Administrative Member shall be the "tax matters partner" within the meaning of Section 6231(a)(7) of the Code, unless and until another Member is appointed to be the tax matters partner by the Executive Committee. The tax matters partner shall have all of the authority granted by the Code to a tax matters partner, provided that the tax matters partner shall keep each Member informed as to the status of any audit of the Company's tax affairs.

6. INTERESTS OF MEMBERS

6.1 **Admission of Members.** The initial Members of the Company are Centex and Beazer. Additional Persons may become Members only upon the approval of a Unanimous Vote.

6.2 **Withdrawal.** A Member shall not have the tight to withdraw from the Company. A Member who withdraws from the Company shall not be entitled to any distribution, return of capital or other payment from the Company or from the other Member for its Membership Interest.

6.3 **Transfers of Interests.** A Member may not sell, assign, transfer, pledge, encumber or otherwise dispose of all or any part of its Membership Interest, with the exception of (i) a transfer to the other Member pursuant to Section 10.4 below, (ii) in the case of Centex, with the exception of a transfer by Centex to an Affiliate, provided that such Affiliate shall be wholly owned by Centex Corporation; and (iii) in the case of Beazer, with the exception of a transfer by Beazer to an Affiliate, provided that such Affiliate shall be wholly owned by Beazer Homes USA. Inc. No Member may pledge or encumber its Membership Interest as security for any financial obligation, whether or not related to the business of the Company. All reasonable costs and expenses incurred by the Company and/or its Members in connection with any transfer or proposed transfer of all or part of a Membership Interest shall be paid by the transferring Member. An assignment, although permitted by the terms of this Agreement; shall not thereby cause the release of the assignor from its obligations hereunder. If either Member transfers its Membership Interest to an Affiliate as permitted under this Section 6.3, the transfer shall be effective and the transferee shall be admitted into the Company as a substituted Member (and this Agreement shall be amended in accordance with the Act to reflect the admission), when and

only when: (i) such Member and its transferee execute and acknowledge any instruments as the other Member may deem reasonably necessary to effect the admission, and (ii) the transferee in writing accepts and adopts all of the terms and conditions of this Agreement, as the same may have been amended. Net Income and Net Losses shall be allocated between the transferring Member and the transferee on the basis of a computation method that is in conformity with the methods prescribed by Section 706 of the Code and Treasury Regulation Section 1.706- 1(c)(2)(ii), and the transferee shall succeed to the transferring Member's Capital Account.

6.4 [Intentionally omitted]

6.5 **No Partition.** No Member shall have the right to partition any assets, or interests in any assets, of the Company, nor shall a Member make application or proceeding for a partition of any Company asset or interest and, upon any breach of the provisions of this Section 6.4 by any Member, the other Member (in addition to all rights and remedies afforded by law or equity) shall be entitled to a decree or order restraining or enjoining the application, action or proceeding.

6.6 **Other Activities.**

(a) Except as provided in Section 6.6(b) below, any of the Members and any of their Affiliates may engage in and/or possess an interest in other business ventures of any nature and description, independently or with others, whether or not in competition with the Company, including but not limited to land development and homebuilding, and neither the Company nor any of the Members shall have any right to any income or profits from any independent venture by virtue of being a Member of the Company or by virtue of this Agreement. Neither a Member nor any of its Affiliates shall be obligated to present any particular investment opportunity to the Company even if the opportunity is of a character that, if presented to the Company, could be taken by the Company, and each Member and any of its Affiliates shall have the right to take for its own account or to recommend to others any particular investment opportunity.

(b) If a Member withdraws from the Company or if a Member's interest in the Company is purchased pursuant to the terms of Section 10.4 below, then for a period of eighteen (18) months, neither that Person nor any of its Affiliates shall, directly or indirectly, acquire or seek to acquire the Real Property or any interest in the Real Property.

6.7 **No fiduciary Duty.** The Members do not intend to be fiduciaries or to have fiduciary duties to each other. Instead, the relationship of each Member to the other, and the relationship of the Administrative Member and the Project Director, respectively, to the Members, shall be a contractual relationship governed by this Agreement to the maximum extent allowed by law.

7. EXCULPATION AND INDEMNIFICATION

7.1 **Exculpation.** No shareholder, partner, member, or other holder of an equity interest in any Member, nor any officer, director, or manager of any of the foregoing, shall

be personally liable for the performance of any of such Member's obligations under this Agreement.

7.2 **Indemnification.**

(a) The Company shall indemnify, defend (with counsel selected by the Company and reasonably approved by the indemnified party) and hold harmless the Members and their partners, officers, directors, shareholders, members, managers, employees, agents and representatives of the Executive Committee (collectively, the **"Indemnified Parties"**) from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs incurred as a result of such claims or in enforcing this indemnity provision) of every kind and nature whatsoever (individually a **"Claim"**; collectively **"Claims"**) which may arise from or in any manner relate (directly or indirectly) to any act performed or omitted to be performed by any one or more of the Indemnified Parties in connection with the business of the Company; provided, however, that such act or omission was taken in good faith, was reasonably believed by the applicable Indemnified Party to be within the scope of authority granted to such Indemnified Party under this Agreement, and is not found by a court to have constituted fraud, bad faith, willful misconduct, or gross negligence. Any indemnity and/or defense under this Section 7.2(a) shall be paid solely out of and to the extent of Company assets and shall not be a personal obligation of any Member and in no event will any Member be required without the consent of all of the Members, to contribute additional capital under Section 2.2 to enable the Company to satisfy any obligation under this Section 7.2(a). All judgments jointly against the Company and any of the Indemnified Parties, in which an Indemnified Party shall be entitled to indemnification, must first be satisfied from Company assets before any Member will be responsible therefor.

(b) Each Member (the **"Indemnifying Member"**) shall indemnify, defend (with counsel selected by the Indemnifying Member and reasonably approved by the Company) and hold harmless the Company and the other Member from and against any and all Claims arising out of or incidental to (i) the fraud, bad faith, willful misconduct or gross negligence of the Indemnifying Member or any of its partners, officers, directors, shareholders, members, managers, employees, agents, or its Executive Committee representative, (ii) the breach by the Indemnifying Member or any of its Affiliates of any agreement with a third party to the extent the agreement relates to the Company or the Real Property and the breach is not due to any breach or failure by the Company, (iii) the breach by the Company of any of its representations or warranties made under any purchase, loan or other agreement entered into in connection with the acquisition or financing of the Real Property, which breach was the result of information known to be inaccurate by the Indemnifying Member and not disclosed to the other Member, (iv) negligent or faulty design, development, or construction by Purchaser, including, without limitation, Purchaser's failure to comply with all applicable laws, codes, ordinances, and regulations of governmental authorities, all development conditions applicable to the Project, and Purchaser's approved construction plans and building permits or (v) injuries to persons or

damage to property resulting from the acts or omissions of Purchaser or Purchaser's agents, employees, contractors or subcontractors.

(c) Except as otherwise provided in this Agreement, each Member (the **"indemnitee"**) shall be indemnified by the other Member (the **"indemnitor"**) to the extent the indemnitee pays more than its share of any third party obligation for which the Members are jointly and/or severally liable and to the extent the indemnitor has paid less than its share of such third party obligation. A Member's share of a third party obligation shall be equal to the Member's Percentage Interest as of the time the Members became liable for the third party obligation. For purposes of this subsection (c), "third party obligation" shall include, by way of illustration and not by way of limitation, Member Indemnities, obligations under surety bonds, obligations under letters of credit, obligations under any loans secured by the property, and obligations under the Real Property Contracts, the latter of which shall expressly include expenditures made by a Member in enforcing the rights of such Member or the Company under any of the Real Property Contracts, provided such enforcement action shall have been approved by the Executive Committee. The excess payment shall be deemed to be a demand loan to the indemnitor and shall bear interest at the Interest Rate from the date the excess payment is made until it is repaid in full. If the demand loan is not repaid in full within 5 Business Days after written demand for payment, the indemnitee Member may elect to treat the failure to repay the demand loan as a Deficit Contribution under Section 2.3.

(d) In each case where an indemnification payment is required under this Agreement, such payment shall be increased by interest at the Interest Rate, computed from the date that the indemnified party made the payment for which indemnification is provided.

8. DEFAULT BY MEMBER

8.1 **Events of Default.** Any one or more of the following acts, events or omissions by or involving a Member (the **"Defaulting Member"**) shall be deemed an event of default under this Agreement:

(a) The Member fails to make Additional Capital Contributions after notice thereof under Section 2.2 above, and within the period provided by a delinquency notice under Section 2.2; provided, that a Member shall cease to be a Defaulting Member if it shall repay all Default Loans made to it before any reduction of its Percentage Interest and Capital Account pursuant to Section 2.3(a)(ii);

(b) The Member withdraws, resigns, or retires from the Company as a Member, or becomes insolvent or files for bankruptcy relief, or transfers its Membership Interest, except as permitted under Section 6.3 above or Section 10.4 below;

(c) The Member breaches or fails to perform any covenant or obligation under any agreement or instrument if such breach or failure would give any other Person the right to enforce a lien, pledge, or other security agreement that encumbers the Member's Membership Interest within 10 Business Days after receipt of written notice from the other Member specifying the breach or failure or, if the nature of the breach or failure is such

that cure within 10 Business Days is not possible, the Member fails to commence curing the breach within 10 Business Days or subsequently fails to diligently pursue the cure to completion. The preceding sentence notwithstanding, if any Person has a right to enforce a lien, pledge or other security agreement against the Member's Membership Interest, the grace period to cure the breach or failure shall be reduced, if necessary, so that it expires 3 Business Days prior to the Person having the right to exercise any power of sale or similar remedy;

(d) The Member breaches or fails to perform any covenant or obligation under the Real Property Contract and fails to cure such breach or failure within the time provided therefor, if any, by the Real Property Contract; or

(e) The Member breaches, or fails to comply with, any other material non-monetary term or provision of this Agreement within 10 Business Days after receipt of written notice from another Member specifying the breach or failure, or, if the nature of the breach or failure is such that cure within 10 Business Days is not possible, the Member fails to commence curing the breach within 10 Business Days or subsequently fails to diligently pursue the cure to completion within 30 days after receipt of the written notice.

8.2 **Remedies.** Upon the occurrence of an event of default, the Company and the other Member shall have all of the following remedies, in addition to any other remedies provided in this Agreement:

(a) The Defaulting Member shall not be entitled to vote on any matter on which the Executive Committee is entitled to vote and shall not be taken into account for purposes of determining a Unanimous Vote;

(b) The Defaulting Member shall not be entitled to be the Initiating Member under Section 10.4 below;

(c) Subject to the provisions of Section 11.2(c), the Defaulting Member shall not be entitled to require the Company to sell Lots to the Defaulting Member, including Lots as to which the Company and the Defaulting Member have signed a Finished Lot Contract before the event of default;

(d) If the Defaulting Member is the Administrative Member and the default is in the performance of its obligations as Administrative Member, it shall cease to be the Administrative Member and the other Member shall succeed it as the Administrative Member. The former Administrative Member shall promptly turn over all of the books and records and other materials of the Company to the new Administrative Member. If the Defaulting Member is the Project Director and the default is in the performance of its obligations as Project Director, it shall cease to be the Project Director and the other Member shall succeed it as the Project Director.

(e) If the Defaulting Member has defaulted under Section 8.1(a), the other, non-defaulting Member (the **"Non-Defaulting Member"**) shall be entitled at any time thereafter to purchase the entire Membership Interest of the Defaulting Member for a cash purchase price equal to the lesser of (i) the balance of the Defaulting Member's Capital Account

or (ii) seventy-five percent (75%) of the sum of the aggregate capital contributions of the Defaulting Member less all distributions to such Defaulting Member other than any previous distributions in respect of a Default Loan. If the Non-Defaulting Member elects to purchase the Defaulting Member's Membership Interest, the closing of the purchase shall occur on a date selected by the Non-Defaulting Member, but in any event not more than 30 days after such election. Upon the closing of such purchase, the Defaulting Member shall be deemed to have withdrawn from the Company and shall have no further rights to receive distributions of cash or property or other benefits from the Company.

9. DISSOLUTION AND LIQUIDATION

9.1 **Events of Dissolution.** Except as otherwise provided in this Agreement, the Company shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) Upon the decision of the Executive Committee to dissolve the Company.

(b) Upon the distribution, sale, or other disposition of all or substantially all of the assets and properties of the Company and distribution to the Members of the proceeds of the sale or other disposition.

(c) Upon the entry of a decree of judicial dissolution pursuant to the Act.

(d) Upon the termination of the legal existence of the last remaining Member of the Company.

Anything herein to the contrary notwithstanding, in no event shall the withdrawal, retirement, resignation, or other dissociation of a Member from the Company, irrespective of the reason therefor, result in the dissolution of the Company, even if such action or event would result in the Company having only one Member. In such circumstance, the Company shall continue its business as a single-member limited liability company under the Act until the occurrence of one of the events described in clauses (a) through (d) above.

9.2 **Effect of Dissolution.** Upon any dissolution of the Company under this Agreement or the Act, except as otherwise provided in this Agreement, the continuing operation of the Company's business shall be confined to those activities reasonably necessary to wind up the Company's affairs, discharge its obligations, and liquidate its assets and properties in a businesslike manner.

9.3 **Liquidation and Termination.**

(a) If the Company is dissolved, then an accounting of the Company's assets, liabilities and operations through the last day of the month in which the dissolution occurs shall be made, and the affairs of the Company shall thereafter be promptly wound up and terminated. The Administrative Member, under the direction and control of the Executive

Committee, will be responsible for winding up and terminating the affairs of the Company (including, without limitation, the arrangements to be made with creditors, to what extent and under what terms the assets of the Company are to be sold, and the amount or necessity of cash reserves to cover contingent liabilities). To the extent assets of the Company are to be sold, the Executive Committee will liquidate the assets of the Company as promptly as is consistent with obtaining the fair market value thereof, and the proceeds therefrom, to the extent sufficient therefor, will be applied and distributed in the following order:

(1) To the payment and discharge of all of the Company's debts and liabilities to creditors (including Members) in the order of priority as provided by law, other than liabilities for distributions to Members; and

(2) The balance, if any, to the Members in accordance with the distribution priorities set forth in Section 3.2 above. Such distributions shall be made by the end of the Fiscal Year in which the liquidation occurs or, if later, within ninety (90) days after the date of such liquidation.

(b) After all of the assets of the Company have been distributed, the Company shall terminate; however, if at any time thereafter any funds in any cash reserve fund referred to in Section 9.3(a) are released because the need for the cash reserve fund has ended, the funds shall be distributed to the Members in the same manner as if the distribution had been made pursuant to Sections 9.3(a)(1) and (2) above.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Treasury Regulation section 1.704-1(b)(2)(ii)(g), if any Member bas a deficit or negative balance in the Member's Capital Account (after giving effect to all contributions, distributions, allocations, and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), the Member shall have no obligation to make any capital contribution to the Company, and the negative balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose whatsoever.

9.4 **Certificate of Cancellation.** Upon the completion of the winding up of the affairs of the Company, the Executive Committee shall prepare, execute and deliver to the Secretary of State a certificate of cancellation in accordance with Section 18-203 of the Act.

10. DISPUTE RESOLUTION

10.1 **Dispute; Confidentiality.** Any controversy or dispute arising out of this Agreement, or any failure of the Members to agree on a Major Decision (collectively, a **"Dispute"**), shall be subject to private negotiation among the Members, and if then not resolved shall be subject to non-binding mediation, both as set forth below, before any Member may institute litigation. Each Member agrees that any Dispute, and all matters concerning any Dispute, will be considered confidential and will not be disclosed to any Person outside the Company except (a) disclosures to a Member's attorneys, accountants, and other consultants who assist the Member in the resolution of the Dispute, and (b) as provided below with respect to

mediation or as otherwise required by applicable laws. The buy-sell provisions of Section 10.4 may be implemented in accordance with their terms at any time during the negotiation, mediation or litigation of a Dispute.

10.2 **Private Negotiation.** If a Dispute arises, the Members shall negotiate in good faith to resolve the Dispute. If negotiations do not resolve the Dispute to the reasonable satisfaction of all Members within 15 days following the commencement of negotiations, then each Member shall give notice to the other Member identifying the representative designated by such Member to meet in person with the other Member's representative. The representatives identified by the Members shall meet in person for one day during the 20-day period following the expiration of the 15-day period referred to in the preceding sentence and the representatives shall attempt in good faith to resolve the Dispute. The meeting shall be held in the Washington, D.C. Metropolitan Area, at a location designated by the first named representative and may be attended only by the Members' representatives and by one assistant for each representative, who shall not be an attorney. If the representatives are unable to resolve the Dispute, then the Dispute shall be submitted to mediation pursuant to Section 10.3.

10.3 **Mediation.**

(a) Within 15 days following the representatives' meeting described in Section 10.2, any Member may initiate non-binding mediation (the **"Mediation"**), conducted by Judicial Arbitration & Mediation Services, Inc. (**"JAMS"**) or other agreed upon mediator. Any Member may initiate the Mediation by written notice to the other Member. The date such notice is delivered shall be referred to as the **"Mediation Initiation Date."**

(b) The mediator shall be a retired judge or other mediator, selected by agreement of the Members. If they cannot agree within 15 days after the Mediation Initiation Date, the mediator shall be selected through such procedures as JAMS regularly follows. The Mediation shall be held in the Washington, D.C. Metropolitan Area within 15 days after the Mediator is selected, or such longer period as to which the Members and the mediator shall agree.

(c) If the Dispute is not fully resolved by agreement of the Members as a result of the Mediation, then upon completion of the Mediation any Member may bring an action in a court of competent jurisdiction to resolve the Dispute. However, nothing in this Section 10 shall limit a Member's right to seek an injunction or restraining order in circumstances where such relief is deemed necessary to preserve assets.

(d) The Company shall bear the cost of the mediator's fees and expenses, but each Member shall pay its own attorneys' and expert witness fees and any other associated costs.

EACH OF THE MEMBERS WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RIGHT TO A TRIAL BY JURY OF ANY DISPUTE.

10.4 **Buy-Sell.**

(a) If the Executive Committee is unable to reach agreement on any Major Decision that shall have been submitted to it at two (2) successive meetings, then any Member other than a Defaulting Member (the **"Initiating Member"**) shall have the right to cause the other Member (the **"Responding Member"**) either to purchase the Initiating Member's Membership Interest or to sell the Responding Member's Membership Interest to the Initiating Member, provided, that each of such meetings (i) shall be a regular or special meeting of the Executive Committee, as described in Section 4.1(d) above, (ii) shall have been called with the minimum notice required thereby, and (iii) notwithstanding the provisions of Section 4.1(d), but with respect to the second meeting only, with such notice specifying, as one of the purposes of such meeting, the consideration of the Major Decision in question. The Initiating Member may exercise this right by delivering written notice thereof to the Responding Member and to the Company's Accountant (the **"Buy/Sell Notice"**), setting forth the Initiating Member's estimate (the **"Stated Value"**) of the value of the Real Property (or such portion of the Real Property then owned by the Company), on an "all cash" basis, net of commissions and closing costs. The Buy/Sell Notice shall include the Initiating Member's estimate of each Member's Buy/Sell Amount (subject to the Company's Accountant's determination under Section 10.4(b)). In addition, the Initiating Member shall deposit into an escrow account selected by the Initiating Member an amount equal to 20% of the other Member's estimated Buy/Sell Amount. If a Buy/Sell notice is delivered, then (i) the other Member shall be precluded from delivering a Buy/Sell Notice and (ii) the Company shall not make any distributions to Members, until after the closing of the purchase and sale of Membership Interests or until the buy/sell procedures of this Section 10.4 are otherwise terminated.

(b) Promptly after receipt of the Buy/Sell Notice, the Company's Accountant shall compute the amount of distributions each Member would receive if (i) the Company Assets were sold for the Stated Value, (ii) all Company indebtedness and other accrued liabilities were paid, (iii) no reserve was established for any contingent, conditional, or unmatured liabilities, and (iv) the remaining amounts were distributed to the Members pursuant to Section 3.2 (as to each Member, the Member's **"Buy/Sell Amount"**). The Company's Accountant shall send to each Member a summary of its computations, which shall be conclusive on the Members absent any material computational error. The Company's Accountant shall be instructed to provide its computations within 15 days after receipt of the Buy/Sell Notice.

(c) Within 45 days following receipt of the Company's Accountant's computations, the Responding Member shall notify the Initiating Member whether the Responding Member elects (1) to purchase the Initiating Member's Membership Interest for a cash sum equal to the Initiating Member's Buy/Sell Amount, or (2) to sell to the Initiating Member the Membership Interest of the Responding Member for a cash sum equal to the Responding Member's Buy/Sell Amount. If a Responding Member fails to make any election within such 45-day period, such Responding Member shall be deemed to have elected to sell its Membership Interest to the Initiating Member.

(d) Within 15 days following the Responding Member's election (or deemed election) to buy or sell, the purchasing Member shall deposit into an escrow account selected by the purchasing Member established for the purpose of completing such sale an amount (the **"Buy/Sell Deposit"**) equal to 20% of the purchase price. If the Initiating Member is

the purchasing Member, the deposit under Section 10.4(a) shall be credited to this deposit. If the Responding Member is the purchasing Member, the Initiating Member's deposit shall be returned to the Initiating Member. The closing of the purchase and sale shall take place through such escrow on a date selected by the purchaser, but not more than 75 days following the Responding Member's election (or deemed election). The purchase price of the Membership Interest being conveyed shall be paid in cash at the closing by wire transfer of readily available funds, after taking into account the Buy/Sell Deposit. If the selling Member and the purchasing Member are parties to a Default Loan, the Default Loan shall be paid in full at the closing.

(e) Notwithstanding the other provisions of this Section 10.4, if the Members make capital contributions to the Company or if the Percentage Interests of the Members are adjusted pursuant to Section 2.3 after the Responding Member's election (or deemed election) to buy or sell, the purchase price of the selling Member's Membership Interest shall be recomputed by the Company's Accountant to take into account the capital contributions and/or the adjustments in the Members' Percentage Interests.

(f) If a Member (the **"Nonperforming Member"**) who is obligated to purchase a Membership Interest fails to do so in accordance with this Section 10.4, including the failure to timely deposit the Buy/Sell Deposit, the other Member shall have the right, in addition to the right to specific performance, to purchase the Membership Interest of the Nonperforming Member for a purchase price equal to 80% of the Nonperforming Member's Buy/Sell Amount. If a selling Member elects to purchase all or part of the Membership Interest of the Nonperforming Member as provided in this paragraph (f), such Member shall make such election at any time within 20 days after the default and by giving written notice thereof to the other Member and shall deposit its Buy/Sell Deposit into escrow within 15 days following its delivery of notice of exercise of this election and the Nonperforming Member's Buy/Sell Deposit shall be returned to the Nonperforming Member. Alternatively, the other Member may specifically enforce the Nonperforming Member's obligation to purchase the Membership Interest at the Buy/Sell Amount plus interest at the Interest Rate, in which case the Nonperforming Member's Buy/Sell Deposit shall be paid to the other Member and shall be a credit against the purchase price. The other Member shall retain all economic, management and voting rights until it has received payment in full.

(g) At the time a Membership Interest is purchased under this Section 10.4, the purchaser shall agree to indemnify, defend and hold the selling Member harmless from any loss, cost or expense, including, without limitation, the selling Member's reasonable attorneys' fees, arising out of (i) any liability of the Company that the Company's Accountant took into account under Section 10.4(b) or (e) in the computation of the purchase price (an **"Assumed Liability"**) and (ii) any liability incurred by the Company or the purchaser(s) on or after the date of purchase.

11. DISTRIBUTION OF LOTS.

11.1 **Declaration of Intent.** It is generally the intent of the Company and the Members to develop the Real Property into residential building lots (**"Lots"**) at the pace and in accordance with the provisions of the Annual Business Plan, as in effect from time to time, to

construct such community facilities and infrastructure improvements as may be required under applicable development approvals by governmental authorities or as otherwise deemed by the Executive Committee to be necessary or appropriate, and thereupon to distribute and convey such Lots to Members entitled thereto in accordance with the terms of this Agreement and the Finished Lot Contract with such Member. The term "Lot," as used herein, shall refer, as the context requires, to building lots for each type of residential dwelling contemplated by the Annual Business Plan. In the context of the condominium product, the term "Lot," for purposes of conveyancing, shall be deemed to refer to a condominium building pad, on each of which may be developed multiple condominium units. At the time of conveyance to a Member, the Lots shall have been improved as required by the terms of the Finished Lot Contract attached hereto as Exhibit E. Each Member, other than a Defaulting Member, shall have the right and the obligation to acquire Lots in the number and of the type contemplated for such Member in the Annual Business Plan, as and when such Lots become available, in accordance with the pace of development contemplated by the Annual Business Plan, as in effect from time to time. A Member who elects not to acquire any Lots from the Company, or is barred from acquiring Lots pursuant to the terms of this Agreement, when they are available to such Member will be deemed to have acquired those Lots for the purpose of making future allocations. The Members recognize that it may not be practical to make available to each of the Members exactly its Proportionate Share of the Lots, or to make available to each of the Members its Proportionate Share, or any portion, of the Lots of a particular size. Consequently, the Executive Committee shall consider, and the Annual Business Plan shall reflect, the equitable allocation of the Lots among the Members in accordance with good business practices for the development and sale of lots within a master-planned community as to the size, segmentation, number and location of Lots made available to the individual Members, with the overriding goal and premise that, even given disparities in the number, location and sizes of Lots that each Member has the option to acquire, each Member will have the ability to acquire Lots, subject to the provisions of Section 11.2 below, that will have an aggregate value that bears to the aggregate value of all the Lots the same proportion as the Proportionate Share of such Member bears to one hundred percent; provided, however, that such judgments shall be made prospectively only and no Member shall be entitled to share in the profits of the other Member, or entitled to question the prospective Lot valuations used in the Annual Business Plan retrospectively. In the event that one or more parcels containing a particular type of product cannot be divided or allocated equitably between the Members, and the Members shall not be in agreement on the fair market value of such parcel or parcels (the **"Fair Market Value"**), then the Executive Committee shall commission an appraisal of the Fair Market Value, pursuant to the following provisions. Upon receipt of such appraisal, if only one of the Members elects to acquire such parcel or parcels, it shall do so by paying the Company a purchase price equal to the Fair Market Value. If both Members wish to acquire such parcel or parcels, the matter shall be decided by a coin toss. Fair Market Value shall be determined as follows: (i) the Members together shall select an independent appraiser to determine the Fair Market Value; (ii) each Member shall submit its proposed dollar amount for the Fair Market Value to such independent appraiser, (iii) the independent appraiser shall determine which of the amounts proposed by the Members is closest to the independent appraiser's opinion of the correct Fair Market Value, which determination shall be deemed to be the Fair Market Value and shall be binding upon the parties as a final determination of such value; and (iv) the costs and fees of the independent appraiser shall be paid by the party

submitting the proposed Fair Market Value that was not selected by the independent appraiser. If the Members shall not be able to agree on an independent appraiser, each of them shall designate an appraiser as its representative and those two appraisers shall select the independent appraiser, who shall determine Fair Market Value as provided above.

11.2 **Distribution of Lots.**

(a) All Lots shall be distributed to the Members "at cost;" i.e. on the basis of the book value of such Lots (collectively, **"Lot Prices"**). At closing, such Lots shall be transferred to the Member by special warranty deed, in "AS IS" and "WHERE IS" condition and WITH ALL FAULTS, and with no representations, warranties or covenants other than the covenants in the deed; provided, that Lots will be distributed as finished lots pursuant to the terms of a Finished Lot Contract between the Company and each Member pursuant to the pertinent form of Contract attached hereto as Exhibit E.

(b) The Members do not intend to acquire Lots for the purpose of reselling the Lots to other builders. The provisions of this Section 11.2(b) shall not apply to sales of Lots to the homebuying public or to sales of Lots by a Member to its homebuilding Affiliate.

(i) If a Member (or its Affiliate) (the **"Selling Member"**) that has acquired Lots proposes to offer any of the Lots (the **"Re-Sale Lots"**) for sale, other than to the homebuying public, the Selling Member shall notify the other Member in writing of its intention to offer the Re-Sale Lots (the **"Re-Sale Notice"**). The Re-Sale Notice shall specify (1) the proposed sale price of each Re-Sale Lot, (2) the Lot Prices paid by the Member for such ReSale Lots, plus the total of any direct costs allocable to such Re-Sale Lots (the **"Adjusted Lot Cost"** of each Re-Sale Lot), and (3) the identity of the Person(s) to whom the Selling Member intends to offer the Re-Sale Lots. The other Member shall have 15 days after receiving the Re- Sale Notice to object, in its sole and absolute discretion, by written notice to the Selling Member, to any of the Persons to whom the Selling Member intends to offer the Re-Sale Lots and Re-Sale Lots may not be offered or sold to any such Person. Each Person to whom the Re-Sale Lots may be offered is an **"Approved Buyer."**

(ii) In addition to the right to object to the proposed offerees of the Re-Sale Lots, the other Member may elect, by written notice to the Selling Member delivered within 15 days of receiving the Re-Sale Notice, to purchase all, but not fewer than all, of the Re- Sale Lots, at the lower of the Adjusted Lot Cost of the Re-Sale Lots or the proposed sale prices. If the other Member elects to purchase the Re-Sale Lots, then: (1) the closing of the purchase shall occur within 15 days of the other Member's election to purchase; (2) the purchase price shall be paid in full in immediately available fluids at the closing; and (3) the Selling Member shall convey the Re-Sale Lots to the other Member free and clear of all liens or encumbrances other than the liens and encumbrances that existed when the Company conveyed the Re-Sale Lots to the Selling Member or its Affiliate and any liens or encumbrances created in the sale to the other Member.

(iii) If the other Member shall not elect to purchase the Re-Sale Lots, the Selling Member may offer the Re-Sale Lots to one or more Approved Buyers, subject to the following limitation: If the Selling Member receives a bona fide offer from an Approved Buyer to purchase any of the Re-Sale Lots under economic terms the net present value of which is less than 95% of the net present value of the economic terms offered to the other Member (calculated on a monthly basis using a discount rate of 18%), before the Selling Member may sell the Re-Sale Lots to the Approved Buyer, the Selling Member must first offer to the other Member, in writing, the right to purchase the Re-Sale Lots, at the prices at which the Approved Buyer proposes to purchase the Re-Sale Lots. The offer to the other Member shall include a copy of the Approved Buyer's offer. The other Member shall have 30 days after receipt of the offer to elect, in writing, to purchase all, but not fewer than all, of the Re-Sale Lots. If the other Member elects to purchase the Re-Sale Lots, then: (1) the closing of the purchase shall occur within 15 days of the other Member's election to purchase; (2) the purchase price shall be paid on the same terms as contained in the Approved Buyer's offer; and (3) the Selling Member shall convey the Re-Sale Lots to the other Member free and clear of all liens or encumbrances other than the liens and encumbrances that existed when the Company conveyed the Re-Sale Lots to the Selling Member or its Affiliate and any liens or encumbrances created in the sale to the other Member. If the other Member does not elect to repurchase the Re-Sale Lots, the Selling Member may sell them to the Approved Buyer, but not at prices lower than, or terms more favorable to the Approved Buyer than, those set forth in the Approved Buyer's offer.

(iv) Except for the sales prices of the Re-Sale Lots, the purchase and sale contract between the Selling Member and the Approved Buyer shall be substantially the same as the Finished Lot Contract, but shall not include any obligations on the part of the Company. Both a "clean" version and a "redlined" version (allowing any changes from the form of the Finished Lot Contract) of the purchase and sale contract shall be submitted to the other Member at least 5 Business Days prior to its execution to enable the other Member to determine if it complies with the requirements of this Agreement.

(c) If either Member shall fail at any time to make an Additional Capital Contribution as required under Section 2.2 above, and the Capital Account and Percentage Interest of such Defaulting Member shall be adjusted under Section 2.3(a)(ii) above, then and in such event, all Lots to be distributed to such Defaulting Member thereafter shall be offered to the Defaulting Member only upon the terms and conditions of this Section 11.2(c). Upon completion of the development of Lots, the Company shall offer to the Defaulting Member such Lots as are allocated to such Member in the Annual Business Plan then in effect, and the Defaulting Member shall have the obligation to acquire each such Lot from the Company, for an amount equal to the sum of (i) the relevant "Lot Price" for such Lot (defined in Section 11.2(a) above as the book value of such Lot) plus (ii)(A) the product of four (4) multiplied by the cumulative amount of all Capital Contributions that shall not have been made by the Defaulting Member at the times required under Section 2.2 above, divided by (B) the total number of Lots allocated to such Member in the Annual Business Plan then in effect that such Member shall not have previously acquired. The amount determined under clause (ii) of the immediately preceding sentence from time to time hereunder shall be referred to herein as the **"Per-Lot Dilution Amount."** [Example #1: if the Defaulting Member has failed to contribute $2,000,000, and 200 Lots allocated by the Agreement to the Defaulting Member have not yet

been acquired at the time of the computation, the Per-Lot Dilution Amount would be [4 x $2,000,000 = $8,000,000] ÷ 200 = $40,000.]

(i) The Per-Lot Dilution Amount shall be determined and established at the time of, and effective as of the date of, the adjustment of the Defaulting Member's Capital Account and Percentage Interest. As so established, the Per-Lot Dilution Amount shall remain unchanged for the remainder of the life of the Projects except only as and to the extent it shall be increased pursuant to the terms hereof from time to time by reason of additional defaults in respect of subsequent Capital Contribution obligations and resulting adjustments in the Defaulting Member's Capital Account and Percentage Interest. In no event may a Defaulting Member reduce the Per-Lot Dilution Amount by making contributions of additional capital between the time of its establishment and the time when Lots are made available to the Members.

(ii) The "Lot Price" portion of the sum to be paid by the Defaulting Member for each Lot (i.e., its book value) shall be paid in the form of a reduction in amount of the Capital Account of the Defaulting Member or, if the balance of its Capital Account is less than the amount required for such payment, the Defaulting Member shall pay the balance of the "Lot Price" to the Company in cash before conveyance of the Lot to the Defaulting Member.

(iii) The Per-Lot Dilution Amount for each Lot shall also be paid before conveyance of the Lot to the Defaulting Member, and shall be paid either in cash or in the form of a promissory note executed by the Defaulting Member (the **"Dilution Amount Note"**) payable to the order of the Company in the Dilution Amount, bearing interest at the Interest Rate, and a first lien deed of trust executed, acknowledged, and delivered to the Company (the **"Dilution Amount Deed of Trust"**) in recordable form encumbering all Lots acquired by the Defaulting Member from time to time thereafter and securing the payment of the Dilution Amount Note. The Dilution Amount Note shall be due and payable (i) in full, one (1) year following the date of its delivery, or (ii) on a pro rata basis upon the transfer of any Lot securing payment, based upon the Dilution Amount, the number of Lots then being transferred, and the total number of Lots then securing payment thereof. [Example #2: Using the facts from Example #1 above, and assuming the Defaulting Member is offered, and accepts, 20 Lots, and has a sufficient Capital Account to absorb the book value of the Lots being transferred, then it will make a Dilution Amount Note in the amount of 20 x $40,000 = $800,000, and will grant a Dilution Amount Deed of Trust encumbering the 20 Lots and securing the Dilution Amount Note. Each Lot will be released from the Dilution Amount Deed of Trust upon receipt by the Company of a curtailment in the amount of $40,000. At each subsequent Lot takedown, the Defaulting Member will make an additional Dilution Amount Note in respect of the Lots being acquired, and the Dilution Amount Deed of Trust will be modified to reflect the increase in the amount secured and to spread the lien thereof over the additional Lots.] Upon curtailments of the Dilution Amount Note, as set forth above, releases of Lots shall be granted from the Dilution Amount Deed of Trust for conveyance of residences to homebuyers. All such curtailments shall be treated for accounting purposes as additions to capital, and shall be added to and increase the Capital Account of the Defaulting Member to the extent thereof, as provided in Section 2.4(a) above,

(d) If the Defaulting Member shall decline to acquire the Lots on such terms, then each such Lot shall be made available for acquisition by the other Member at the relevant "Lot Price" (as defined in Section 11.2(a) above) less the Dilution Amount. Payment for such Lots may be in the form of a reduction in amount of the Capital Account of the acquiring Member or, if the balance of its Capital Account is less than the amount required for such payment, then to such extent it shall be paid in cash, before conveyance of the Lot to the acquiring Member. Any such cash payments shall be treated for accounting purposes as additions to capital, and shall be added to and increase the Capital Account of the acquiring Member to the extent thereof, as provided in Section 2.4(a) above. Anything herein to the contrary notwithstanding, the non-Defaulting Member shall have no obligation to acquire any Lot that the Defaulting Member shall have declined to acquire under Section 11.2(c) above.

(e) If the Defaulting Member shall decline to acquire the Lots allocated to it on the terms set forth in Section 11.2(c) above, and the other Member shall decline to acquire such Lots pursuant to Section 11.2(d), than the Company shall market and sell such Lots to third parties at market prices. The net proceeds from the sale of each such Lot shall be distributed to the Members in accordance with their respective "Adjusted Proportionate Shares for Distributions" (defined below). All net proceeds of such third-party Lot sales shall be deemed Distributable Cash, for purposes of this Agreement, and all such distributions to the Members shall decrease the Capital Accounts of the Members to the extent thereof; as provided in Section 2.4(a) above. The term **"Adjusted Proportionate Shares for Distributions"** shall mean the Proportionate Shares of the Members, adjusted to the same extent as the aggregate previous adjustments, if any, as of the date of such distribution, of the parties' Percentage Interests and Capital Accounts pursuant to Section 2.3 above. [For example, if Member A's Percentage Interest has previously been diluted on one or more occasions pursuant to Section 2.3(a)(ii) above by a total of 16.63%, and if Member A's Proportionate Share for purposes of contributions is 50%, then such Member's Adjusted Proportionate Share for Distributions shall equal 33.37% (50% — 16.63% = 33.37%).] All distributions of Distributable Cash under this Agreement shall be made in proportion to such Adjusted Proportionate Shares for Distributions.

11.3 **Direct Conveyance of Lots.** It is understood and agreed that each Member shall have the right to commence and complete any and all land development and house construction activities on any Lots allocated to such Member before recording the deed to such Lots from the Company, and such Member may require that, following completion of a residential dwelling on such Lots, such Lots shall be deeded directly by the Company to the homebuyers. As provided in more detail in the Finished Lot Contract, the Company and such Member shall carry out adjustments and prorations, settlement statements shall be executed and delivered, and the purchase price for the Lots shall be paid, at the time specified for Closing thereon in the Finished Lot Contract. At Closing, the Company shall deliver to such Member individual deeds for the Lots in question without identifying the grantees to be named in such deeds, and such Member shall have full right, power, and authority to insert the names of the grantees and to record the deeds at any time thereafter.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 **Centex Representations, Warranties and Covenants.** Centex represents, warrants and covenants to the Company and to Beazer that:

(a) Centex is a duly formed and validly existing general partnership under the laws of the State of Nevada.

(b) Centex has full power and authority to enter into and perform the obligations to be performed by it under this Agreement and other agreements and instruments that have been or are required to be executed, delivered, and performed by it in connection with the transactions contemplated by this Agreement, has obtained all consents and approvals requisite to those transactions, and this Agreement and other agreements and instruments required to be executed, delivered, and performed by it in connection with those transactions have been or will be properly executed and delivered by it and constitute or will constitute valid and binding obligations of Centex enforceable against it in accordance with their terms.

(c) Centex's execution and delivery of, and performance under, this Agreement and other agreements and instruments that have been or are required to be executed, delivered and performed by it in connection with the transactions contemplated by this Agreement, do not conflict with, and will not result in a breach of, any of the terms, conditions, or provisions of, or constitute a default under, any indenture, agreement, order, judgment, or other instrument to which Centex is a party or by which it is bound.

(d) There are no pending or, to the knowledge of Centex, threatened actions or proceedings before any court or administrative agency that could materially affect the Real Property or the development of the Real Property or the financial condition or the ability of Centex to perform its obligations under this Agreement and other agreements and instruments that have been or are required to be executed, delivered and performed by them in connection with the transactions contemplated by this Agreement.

(e) Centex has not retained a broker in connection with any of the transactions consummated under this Agreement or the Real Property Contract and no brokerage commissions are owing under any such agreements as a result of any action taken by Centex.

(f) Centex will use its best efforts to ensure its continued existence and good standing.

12.2 **Beazer Representations, Warranties and Covenants.** Beazer represents, warrants and covenants to the Company and to Centex that:

(a) Beazer is a duly formed and validly existing corporation in good standing under the laws of the State of Tennessee and is qualified to transact business in the jurisdiction in which the Real Property is located.

(b) Beazer has full power and authority to enter into and perform the obligations to be performed by it under this Agreement and other agreements and instruments that have been or are required to be executed, delivered, and performed by it in connection with the transactions contemplated by this Agreement, has obtained all consents and approvals

requisite to those transactions, and this Agreement and other agreements and instruments required to be executed, delivered, and performed by it in connection with those transactions have been or will be properly executed and delivered by it and constitute or will constitute valid and binding obligations of Beazer enforceable against it in accordance with their terms.

(c) Beazer's execution and delivery of, and performance under, this Agreement and other agreements and instruments that have been or are required to be executed, delivered and performed by it in connection with the transactions contemplated by this Agreement, do not conflict with, and will not result in a breach of, any of the terms, conditions, or provisions of, or constitute a default under, any indenture, agreement, order, judgment, or other instrument to which Beazer is a party or by which it is bound.

(d) There are no pending or, to the knowledge of Beazer, threatened actions or proceedings before any court or administrative agency that could materially affect the Real Property or the development of the Real Property or the financial condition or the ability of Beazer to perform its obligations under this Agreement and other agreements and instruments that have been or are required to be executed, delivered and performed by it in connection with the transactions contemplated by this Agreement.

(e) Beazer has not retained a broker in connection with any of the transactions consummated under this Agreement or the Real Property Contract and no brokerage commissions are owing under any such agreements as a result of any action taken by Beazer.

(f) Beazer will use its best efforts to ensure its continued existence and good standing.

13. GENERAL PROVISIONS

13.1 **Governing Law.** This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Delaware, excluding choice of laws principles.

13.2 **Attorneys' Fees.** If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party or parties shall pay the prevailing party's or parties' actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including without limitation contempt, garnishment, levy, discovery and bankruptcy. For this purpose "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

13.3 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Members, and their respective distributees, successors and assigns; provided, however, nothing contained in this Section 13.3 shall limit the effectiveness of any restriction on transfers of Membership Interests.

13.4 **Terms.** Any reference to the Act, the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty, this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

13.5 **Headings.** All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

13.6 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under the present or future laws effective during the term of this Agreement, the provision will be fully severable; this Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of the illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

13.7 **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single original document. Furthermore, this Agreement may be executed and delivered by the exchange of electronic facsimile copies or counterparts of the signature page, which facsimile copies or counterparts shall be binding upon the parties.

13.8 **Additional Documents and Acts.** Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated by this Agreement.

13.9 **No Third Party Beneficiary.** This Agreement is made solely and specifically among and for the benefit of the parties, and their respective successors and assigns subject to the express provisions relating to successors and assigns, and no other Person will have any rights, interest or claims or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

13.10 **Notices.** All notices, consents, requests, demands or other communications to or upon the respective parties shall be in writing and shall be effective for all purposes upon receipt on any Business Day before 5:00 PM local time and on the next Business Day if received after 5:00 PM or on other than a Business Day, including without limitation, in the case of (i) personal delivery, (ii) delivery by messenger, express or air courier or similar courier, (iii) delivery by United States first class certified or registered mail return receipt requested, postage prepaid and (iv) transmittal by facsimile, addressed to the parties as follows:

If to Beazer:	Beazer Homes Maryland 8965 Guilford Road Suite 290 Columbia, MD 21046 Attention: David Carney, President, Maryland Division
with a copy to:	William M. Shipp, Esq. Fossett & Brugger, Chartered 6404 Ivy Lane, Suite 720 Greenbelt, MD 20770
And:	Beazer Homes Corp. 1000 Abernathy Road Suite 1200 Atlanta, GA 30328 Attention: Lowell Ball, General Counsel
If to Centex:	Centex Homes 14121 Parke Long Court, Suite 201 Chantilly, VA 20151 Attn: Robert K. Davis, Division President
with a copy to:	David A. Raynes, Esq. Centex Homes 5400 Glenwood Avenue, Suite 100 Raleigh, NC 27612
And:	Kenneth W. Logwood, Esq. Womble Carlyle Sandridge & Rice, PLLC 1401 Eye Street, N.W., Seventh Floor Washington, D.C. 20005

Any party may change its address by written notice to the other parties in the manner set forth above. Receipt of communications by United States first class or registered mail will be sufficiently evidenced by return receipt. In the case of illegible or otherwise unreadable facsimile transmissions, the receiving party shall promptly notify the transmitting party of any transmission problem and the transmitting party shall promptly resend any affected pages.

13.11 **Amendments.**

(a) Amendments to Agreement. Any amendment to this Agreement shall be in writing, dated and signed by all Members. If any conflict arises between the provisions of the amendment, or amendments, and the terms hereof, the most recent provisions shall govern and control. No amendment may affect the rights of a withdrawn Member under this Agreement without the written consent of such withdrawn Member.

(b) Amendments to Certificate. The Certificate shall be amended whenever required by the provisions of this Agreement or by the Act. Any such amended Certificate shall be filed for record by the Members as required by the Act, and this Agreement shall also be amended as necessary to reflect such change.

13.12 **Title to Real Property.** Legal title to all Real Property of the Company will be held and conveyed in the name of the Company.

13.13 **Waiver.** No waiver of any obligations under this Agreement will be enforceable or admissible unless set forth in a writing signed by the party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

13.14 **Entire Agreement.** This Agreement and the Exhibits hereto, together with the Real Property Contract (collectively, the **"Transaction Documents"**), are all part of an integrated transaction, and contain the entire understanding between the Members and supersede any prior written or oral agreements between them regarding the same subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between the Members relating to the subject matter of this Agreement which are not fully expressed in the Transaction Documents.

13.15 **No State Law Partnership.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be an agent, partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Agreement shall not be construed to suggest otherwise.

13.16 **Other Businesses of Members.** The Company is one of several businesses in which the Members are active. It is not intended, therefore, that any of the Members will devote full-time effort to the Company, but it is understood that each of the Members shall use its commercially reasonable efforts to further the interests of the Company. However, nothing contained in this Agreement shall be consented as preventing a Member from engaging in any other business activity, including an activity that would compete with this Company's business. Any of the Members and any of their Affiliates may engage in and/or possess an interest in other business ventures of any nature and description, independently or with others, whether or not in competition with the Company, including but not limited to land development and homebuilding, and neither the Company nor any of the Members shall have any right in or to any income or profits from any independent venture by virtue of being a Member of the Company or by virtue of this Agreement. Neither a Member nor any of its Affiliates shall be obligated to present any particular investment opportunity to the Company even if such opportunity is of a character which, if presented to the Company, could be taken by the Company, and each Member and any of its Affiliates shall have the right to take for its own account or to recommend to others any such particular investment opportunity. Notwithstanding the foregoing, it is understood and agreed that any rebates of title insurance or mortgage insurance charges or premiums accruing to either Member in respect of the acquisition or sale of

any portion of the Real Property by the Company shall be the property of, and shall accrue to the benefit of, the Company.

13.17 **Waiver of Valuation and Accounting.** All Members, for themselves and for their successors and assigns, hereby waive, release, discharge, and dispense with the right, except if, as, and to the extent specifically provided herein, to valuation and payment of the Interest of any Member and the right to an accounting of the Interest of any Member, provided, that nothing contained in this Section 13.17 is intended to, nor shall it, modify in any manner the provisions of Section 5 above.

13.18 **Exhibits.** The following Exhibits attached to this Agreement shall be deemed to be a part of this Agreement and are fully incorporated herein by this reference:

Exhibit A Initial Capital Contributions of Members

Exhibit B Executive Committee Representatives

Exhibit C [Intentionally Omitted]

Exhibit D Initial Business Plan [Financial Model]

Exhibit E Form of Finished Lot Contract

Exhibit P Project Director's Responsibility Checklist

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date set forth above.

BEAZER HOMES CORP., a Tennessee corporation

By /s/ David Caenor (Seal)
Name: David Caenor
Title: President Maryland Division

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation, a Nevada corporation, its Managing Partner

By /s/ Joseph Ricketts (Seal)
Name: Joseph Ricketts
Title: Division Controller/ Auth Officer

EXHIBIT B

Executive Committee Representatives

Beazer:

Donald Knutson

Robert Gentry

William Hofherr

Centex:

Robert K. Davis

Joseph Ricketts

David Ryan

Exhibit D

Initial Business Plan

[financial plan not legible]

EXHIBIT E

Form of Finished Lot Contract

REAL ESTATE SALE CONTRACT
FINISHED RESIDENTIAL LOTS

(DOVE BARRINGTON)
SUSSEX COUNTY, DELAWARE

THIS REAL ESTATE SALE CONTRACT (this **"Contract"**) is made and entered into as of _____, 20___, by and between: (i) DOVE BARRINGTON DEVELOPMENT LLC, a Delaware limited liability company (**"Seller"**); and (ii) _____, a (**"Purchaser"**).

RECITALS:

R-1. Purchaser is one of the members of Seller and a party to that certain Limited Liability Company Agreement (the **"LLC Agreement"**) dated October 5, 2004. The LLC Agreement governs the affairs of Seller and, among other things, provides for the allocation among, and the distribution to, Purchaser and the other members of Seller of the residential building lots (the **"Lots"**) to be created on the Land owned by Seller and to be developed by Seller into the residential development known as Dove Barrington (**"Project"**).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. **Property.** Seller is the owner of fee simple title to certain real property located in Sussex County, Delaware, and more particularly described on Exhibit A attached hereto (the **"Land"**), from which the Lots that are the subject hereof have been or are to be created. The Land, together with any and all improvements, appurtenances, rights, privileges, and easements benefiting, belonging, or pertaining thereto, is hereinafter referred to as the **"Property."**

2. **Purchase and Sale.** Seller agrees to sell and convey to Purchaser those residential building lots (the **"Lots"**) legally and more particularly described on Exhibit A attached hereto, and Purchaser agrees to purchase and acquire the Lots from Seller on the terms and conditions hereinafter set forth. Seller and Purchaser acknowledge that the particular Lots that are to be the subject of this Contract may or may not have been created or allocated to Purchaser at the time of the execution hereof, in which case reference is made to the provisions of the LLC Agreement governing the allocation of Lots among the Members of the LLC for purposes of identifying the particular Lots that are to be the subject of this Contract and the manner of their designation.

3. **Purchase Price.** The purchase price for each Lot acquired hereunder shall be its "book value" (the **"Purchase Price"**), as provided in the LLC Agreement. The Purchase Price

for each Lot acquired, subject to the closing adjustments hereinafter provided, shall be payable to Closing Agent in full at the Closing at which such Lot shall be acquired either by payment of immediately available funds such as by wire transfer or certified or cashier's check, or by debit to the capital account of the Purchaser in accordance with the provisions of the LLC Agreement.

4. **Deposit.** No deposit shall be required.

5. **Closing.** Provided that the conditions precedent to Closing described in Section 10 below shall have been satisfied or waived, Purchaser and Seller shall be required to make full settlement on each group of Lots shown on Exhibit B attached hereto on the date set forth thereon for Closing with respect to such group of Lots. Purchaser may accelerate the date for any one or more Closing by ten (10) business days' written notice to Seller. Acceleration of any one Closing shall not accelerate or otherwise affect the dates scheduled for subsequent Closings, which shall continue to be scheduled as if the earlier Closings had proceeded according to referenced schedule.

6. **Title.** At Closing, Seller shall convey to Purchaser by special warranty deed with covenant of further assurances good and marketable title in fee simple free and clear of any and all liens, encumbrances, conditions, easements, assessments, restrictions and other conditions except the following, which shall be referred to herein as the **"Permitted Exceptions"**:

(a) general real estate taxes and special assessments for the year of Closing and subsequent years not yet due and payable; and

(b) easements, dedications and rights-of-way shown on the Record Plat or otherwise approved in writing by Purchaser.

7. **Community Association.**

7.1 **Formation, Governing Documents.**

7.1.1 Seller has formed the _____ Homeowners Association (the **"HOA"**) as the residential community association for the Property. The Lots will be subject to the Governing Documents (as defined below) of the HOA, as such Governing Documents may be amended from time to time, and the exercise of the rights and powers conferred on the HOA by such Governing Documents. Seller shall have the unilateral right to consent to changes to the Governing Documents without the consent or approval of Purchaser or any of Purchaser's purchasers. Purchaser has been furnished with copies of the following documents (the "**Governing Documents**"): (i) Articles of Incorporation of the HOA; (ii) Bylaws of the HOA; (iii) Declaration of Covenants, Conditions and Restrictions for _____ (the **"Declaration"**); (iv) _____ Residential Design Guidelines; (vi) the current budget for the HOA. Purchaser acknowledges that Purchaser, its homebuyers, and each Lot are bound by and subject in all respects to the Governing Documents.

7.1.2 The Lots are located within a development that is subject to the provisions of the **[Delaware Property Owners' Association Act – NEED TO CONFIRM TITLE AND REQUIREMENTS IN DE.]** (the **"Act"**). The Act requires the property owners'

association of the development in which the Lots are located to provide to an owner of a Lot with a disclosure packet (as defined in such Act). Such disclosure packets must be provided to each purchaser of a Lot. Purchaser agrees to observe fully and completely with the provisions of the Act in the course of its marketing of the Lots and any improvements thereon.

7.1.3 Seller reserves the right to amend the existing site development plans (**"Site Plans"**) for the Project without Purchaser's review or approval provided that such amendment does not affect Purchaser's right to construct dwellings as contemplated by this Contract or materially increase Purchaser's costs of development. Seller shall provide to Purchaser a copy of any amendment to the Site Plans. If the amendments to the Site Plans or any zoning or proffer amendments require Purchaser, as a contract purchaser or owner of the Lots, to join in their execution, than Purchaser acknowledges that by executing this Contract, the Purchaser shall be obligated to execute and deliver promptly all documents, instruments or agreements necessary to evidence Purchaser's consent.

7.2 **Purchaser's Sale Contracts.**

7.2.1 Purchaser's sale contract for each dwelling unit to be constructed on the Lots is to describe the HOA's role and shall acknowledge receipt by the Purchaser of such Lot of the Governing Documents and the other disclosure materials required by **[Delaware Code Sec. ?]**, all of which must be furnished at the time of execution of such purchaser's sales contract. One copy of these documents will be provided to Purchaser by Seller for each Lot. Purchaser will insert in each sales contract for a Lot the disclosure statement required by **[Delaware Code Sec. ?]**.

7.2.2 Purchaser's sale contracts for each of the Lots and the construction thereon shall contain the following provision:

> The property that is the subject of this agreement is part of _____, a planned community being developed in _____ County, _____. The parties agree that _____, or its successors or assigns, as the developer of _____, might from time to time rezone or amend the proffers and/or development conditions related to _____ after ratification of this Agreement or after the settlement date. Such applications might require the joinder of the Purchaser as a contract Purchaser or owner of the property. The Purchaser acknowledges that by executing this Agreement the Purchaser will be obligated to execute and deliver promptly all documents, instruments or agreements necessary to evidence such joinder. This provision shall survive settlement on this property, shall run with the land, and shall be a continuing obligation of Purchaser.

7.2.3 Purchaser must inform its purchasers of the requirements for **[PLACEHOLDER FOR PROJECT-SPECIFIC DISCLOSURE REQUIREMENTS REGARDING, FOR EXAMPLE, WETLANDS PROTECTION, FOREST**

PROTECTION, AND THE LIKE. NEED CONFIRMATION OF SUSSEX COUNTY, DELAWARE STATUTORY DISCLOSURES].

7.3 **Representations Regarding the HOA.** Purchaser covenants and agrees with Seller that Purchaser will make no representations, warranties or commitments to its Purchasers of any of the Lots or the improvements constructed thereon that are inconsistent with or contrary to any term or provision of any Governing Document. Purchaser will be solely responsible for, and hereby indemnifies and agrees to hold Seller harmless against and from all losses, liabilities, actions, costs and expenses (including reasonable attorney's fees) arising from all representations made by Purchaser, its agents or employees, to purchasers of dwelling units to be constructed on the Lots with respect to the HOA, including (without limitation) representations concerning fees and assessments of the HOA and the covenants and restrictions applicable to the Lots.

7.4 [Intentionally omitted]

7.5 **Control of the Community Association**. Purchaser recognizes and acknowledges that Seller contemplates during the term of this Contract that control of the HOA will remain vested in Seller or assignees of Seller, and that Seller or its assignees will have the sole and exclusive right to determine solely the reasonable extent and pace of development of common areas of the Project.

8. **Development Obligations.** As a supplement to the provisions of this Section 8, certain of the respective development obligations of Seller and Purchaser are described with specificity in the Development Responsibility Checklist (the **"Development Checklist"**) attached hereto as Exhibit C.

8.1 **Completion of Improvements.** Seller shall be responsible for and shall complete the construction and installation of the work identified as the responsibility of Seller on the Development Checklist (**"Seller's Improvements"**). Purchaser shall be responsible for and shall complete the construction and installation of the work identified as the responsibility of Purchaser on the Development Checklist (**"Purchaser's Improvements"**). Seller's Improvements and Purchaser's Improvements shall be completed in a timely and workmanlike manner, and shall conform to all applicable laws, codes, ordinances, and regulations of Governmental Authorities, all development conditions applicable to the Project, Purchaser's approved construction plans, all applicable building permits (collectively, **"Legal Requirements"**), the "Declaration" (hereinafter defined), and applicable Residential Design Guidelines, all as may be amended from time to time (collectively, the **"Project Documents"**), and all standards, rules and regulations promulgated pursuant to the Project Documents. The exterior design and location of all improvements constructed by Purchaser (including color, selection and landscaping design) shall be subject to the prior review and approval of the New Construction Committee established pursuant to the Project Documents (the **"Review Committee"**), which approval shall be obtained before commencement of construction. Any design or improvement location deemed unacceptable by the New Construction Committee shall be stated in writing and with specificity to Purchaser. Purchaser shall resubmit revisions to reasonably address any disapprovals by the New Construction Committee. Failure of the New

Construction Committee to approve or disapprove in writing the Purchaser's designs and improvement locations within thirty (30) days of submission shall be deemed to be an approval.

8.2. **Lot Inspections and Repair of Damage.** At least five (5) days before each Closing, Seller and Purchaser shall inspect the Lots to confirm that Seller has completed the work required to be completed before Closing, and to determine if there is any existing damage to Seller's Improvements. Within thirty (30) days following the issuance of a residential use permit on the last dwelling unit to be constructed by Purchaser on the Lots, the parties shall jointly re-inspect the Seller's Improvements and such of Purchaser's Improvements as may affect the release of any bonds or other security posted by Seller with Governmental Authorities, and shall sign a memorandum identifying the damages, if any, actually caused thereto by Purchaser or its agents, contractors, subcontractors or employees to such improvements (**"Purchaser's Damages"**). Purchaser shall be responsible for repairing, at its sole cost and expense, any such identified Purchaser's Damages and shall commence such repairs within thirty (30) days of the date of the joint re-inspection. In the event Purchaser shall fail to commence such repairs of Purchaser's Damages within the applicable thirty (30) day period or thereafter shall fail to diligently pursue completion of the repairs, Seller may, at its option, following written notice to Purchaser and ten (10) days opportunity to cure, proceed to repair Purchaser's Damages and Purchaser shall reimburse Seller for the costs thereof, plus overhead in the amount of fifteen percent (15%), within ten (10) days following receipt of an invoice therefor accompanied by reasonably adequate documentation of such costs.

8.3. **Marketing Activities; Sales Facilities.**

8.3.1 Purchaser will use Seller's Project logo and Project name on all printed advertising relating to the Lots, which advertising wording, design, location, material and construction shall be subject to the prior review and reasonable approval of Seller. Purchaser's merchandising name for its activities in the Project will be subject to the prior review and reasonable approval of Seller.

8.3.2 No later than commencement of Purchaser's sales program for the first of its Lots in the Project, Purchaser shall furnish information required by Seller, and conforming to Seller's specifications, for Seller to install the builder's display for use at Seller's Visitor Center for the Project. Purchaser shall reimburse Seller for Seller's costs for fabrication and installation of such display. Purchaser acknowledges that it is familiar with Seller's policies and procedures regarding displays, exhibits and other promotional items to be used at such Visitor Center and agrees to abide by and comply with such policies and procedures as they may be modified by Seller from time to time, in Seller's sole discretion. Purchaser will provide a place in its sales area for Seller's exhibit, which sales area will include, among other information, the general development plan for the Project.

8.3.3 If Purchaser desires to maintain a sales trailer on the Lots until model units am operational, the structure, location, size, color, signage and landscaping of such trailer will be subject to Seller's prior review and reasonable approval and shall be subject to approval of the appropriate building development or zoning officials having jurisdiction over the

Project. Purchaser will then use its best efforts to complete its initial model units as soon as is practicable and to remove the sales trailer from the Project thereafter.

8.3.4 In the course of marketing or developing improvements on the Lots and within the Project, Purchaser and Seller shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations (including, without limitation, all laws, ordinances, rules and regulations relating to equal opportunity and/or nondiscrimination, access by persons with disabilities, disclosure and licensure). In no event whatsoever will Purchaser conduct its marketing and development activities in any manner that affects in an adverse manner the good name and reputation of the Seller or the Project.

8.4 **Signage.** Purchaser shall install no signage, other than as required by safety rules and similar regulations, within or around the Lots without the prior written approval of Seller, which approval may be withheld in Seller's sole discretion. No paper signs of any type shall be posted within the Project. If Purchaser installs any (i) signage not approved in advance by Seller or (ii) paper signs, Seller shall have the right to remove such signs and to collect from Purchaser upon written demand thereafter a removal charge of Twenty-Five Dollars ($25.00) per sign removed. All project identification signs, marketing signs and entrance features are subject to the prior review and approval by the Covenants Committee pursuant to the Project Documents and must be submitted with Purchaser's landscaping plans far review and approval. Purchaser shall observe at all times (whether on-site or off-site of the Lots or Project) all applicable signage ordinances, tides and regulations.

8.5. **Maintenance at Construction Site.** Purchaser and Seller shall each maintain its construction sites in an orderly fashion and shall remove in a timely manner all debris and equipment. Further, Purchaser shall clean the streets in front of the Lots regularly while construction is underway by Purchaser, as needed. If Purchaser shall fail to keep the streets clean, and shall not cure such failure within 15 days after receiving written notice from Seller, Seller shall be entitled to use self-help and to clean the streets, in which event Purchaser shall be required to reimburse Seller for all costs incurred in connection therewith, plus an additional 10% for administrative and overhead expenses. Each party is to keep roads and pedestrian access ways within or adjacent to its construction sites free from storage of equipment, building materials, dirt and snow, and each party is to clean streets of mud and dust created by its activities daily or at such other intervals as are reasonably acceptable to Seller. Parking of vehicles for workers must be provided by Purchaser off publicly dedicated rights of way. Purchaser's construction trailer and surrounding area must be kept in a clean condition, and the location, color, design and landscaping for the construction trailer must be approved by Seller prior to placement of the trailer at the property. If Purchaser uses a construction trailer, the construction trailer shall be removed from the Project within sixty (60) days after Purchaser's completion of construction of its last home within the Project.

8.6 **Insurance.** To protect Seller from any liability arising out of Purchaser's activities on the Property, Purchaser shall, prior to any entry on the Property, and thereafter so long as this Contract remains in effect or Purchaser retains title to any portion of the Property, obtain and maintain in full force and effect: (i) comprehensive automobile liability insurance: (ii) workers' compensation insurance; and (iii) comprehensive commercial general liability

insurance for personal injury (including wrongful death) and damage to property covering any occurrence on the Property and any act or omission by Purchaser, its agents, employees, contractors, subcontractors and invitees. All such policies shall include a waiver of subrogation endorsement. The automobile liability insurance and commercial general liability insurance policies shall be written to have a combined single limit of liability for bodily injury and property damage of not less than Four Million Dollars ($4,000,000) per occurrence, of which at least $1,000,000 must be maintained as primary coverage, and of which no more than $3,000,000 may be maintained as umbrella coverage. Each liability policy shall contain an endorsement naming Seller as an additional insured, and shall require at least fifteen (15) days' prior written notice to Seller of any material change, non-renewal or cancellation of any such policy. All insurance policies required pursuant to this subparagraph shall be written as primary policies, not contributing with or in excess of any coverage that Seller may carry. All insurers issuing such policies must be listed in the most recent A.M. Best's rating guide with a rating of not less than A:X. Purchaser shall procure and maintain all policies entirely at its own expense and shall, at least twenty (20) days prior to the expiration of any such policy, furnish Seller with renewal certificates thereof.

8.7 **Commitments.** Purchaser acknowledges that the Property is subject to certain commitments undertaken in connection with obtaining necessary approvals for development of the Property, and acknowledges having received and reviewed copies of all such commitments. Seller shall be responsible for all monetary commitments, and Purchaser shall only be responsible for compliance with such commitments to the extent the same are applicable to Purchaser's Improvements and Purchaser's homebuilding activities on the Lots.

8.8. **Force Majeure**. Seller shall not be liable or responsible for (each, an event of "**force majeure**") (i) any delays in the performance of its obligations hereunder caused by moratoria imposed by applicable governmental authorities that prevent obtaining the approvals needed to perform said obligations, or caused by strikes, work stoppages, riots, acts of God (including inclement weather), casualty, war, governmental laws, or restrictions; provided, that Seller shall have exercised reasonable commercial diligence in attempting to perform said obligations or to obtain such approvals, or (ii) unanticipated delays by applicable governmental authorities in reviewing, considering or granting the approvals needed to perform such obligations; provided, that Seller shall have exercised reasonable commercial diligence in attempting to obtain such approvals and the delay shall not have been caused by the action or inaction of Seller.

8.9 **Cooperation; Easements.**

8.9.1 Prior to and after each Closing with respect to all or any portion of the Lots, Purchaser and Seller will cooperate with each other and other builders, developers or owners within the Project in a reasonable manner to facilitate development and construction within the Project in an efficient, expeditious and cost-effective manner. Promptly upon the request of Seller, or other builder or owner of property in the Project or any applicable governmental authority or utility, Purchaser shall dedicate or convey to the appropriate party any and all rights-of-way, drainage, detention and utility easements, trail easements, ingress/egress easements, construction and grading easements, easements for cable television and

telecommunications, and all such other similar easements, and Purchaser (or as applicable, Seller) shall undertake such minor boundary line adjustments as are reasonably necessary for Seller (or as applicable, Purchaser) or the builder, developer or owner of each portion of the Project to develop its land in accordance with approved development and construction plans, or to meet any requirements of applicable governmental authorities and utilities; provided, however, that no such action shall materially and adversely interfere with Purchaser's intended development of the Lots.

8.9.2 Purchaser acknowledges and agrees to the reservation by Seller either in the deeds to be delivered at Closings hereunder or in the Declaration, of all such drainage, detention, utility, cable television, telecommunication, construction, grading, ingress/egress, slope, sight distance and other easements over and across the Lots and all portions thereof as Seller may be reasonably necessary in connection with the orderly and efficient development of the Project; provided, that no such easement shall materially and adversely interfere with Purchaser's intended development of the Lots. Any such reservation shall expire upon the closing on the Lot between Purchaser and a third party Purchaser.

8.9.3 Purchaser acknowledges that Seller, or its designee, has the exclusive right to provide, telephone, high speed internet cable television and security service to the residents of the Lots. If Seller has not arranged to provide one or more of these services to a Lot by the date that is one hundred twenty (120) days prior to the date that Purchaser has contracted to deliver a particular Lot with a dwelling unit on it to a third party home Purchaser, then Purchaser shall have the right to contact a public utility service or other service provider to provide the missing services after Purchaser provides written notice to Seller of its intentions and Seller, within five (5) business days of its receipt of Purchaser's notice, cannot confirm in writing that such services will be provided prior to the scheduled closing date. Purchaser agrees to reasonably cooperated with Seller, or its designee, regarding the installation of pre-wiring for cable and other telecommunication services in homes constructed on the Lots. This cooperation may include, without limitation, the Purchaser, at Purchaser's expense, pre-wiring and installing certain technology and equipment in its dwelling units according to the standards and specifications provided by Seller (or its designee) to provide cable television, telephone, internet, security services and other telecommunication services to such dwelling unit.

8.10 **Indemnification.**

8.10.1. Anything in this Contract to the contrary notwithstanding, Purchaser hereby indemnifies and agrees to hold Seller harmless against and from any and all losses, claims, demands, damages, costs and expenses of whatever nature (including, without limitation, attorneys' fees and costs of litigation), to the extent of any excess liabilities over and above amounts actually received by Seller under any applicable insurance policies, relating to or arising out of (i) negligent or faulty design, development, or construction by Purchaser, (ii) injuries to persons or damage to property resulting from the acts or omissions of Purchaser or Purchaser's agents, employees, contractors or subcontractors, or (iii) Purchaser's failure to comply with Legal Requirements.

8.10.2. Anything in this Contract to the contrary notwithstanding, Seller hereby indemnifies and agrees to hold Purchaser harmless against and from any and all losses, claims, demands, damages, costs and expenses of whatever nature (including, without limitation, attorneys' fees and costs of litigation), to the extent of any excess liabilities over and above amounts actually received by Purchaser under any applicable insurance policies, relating to or arising out of (i) negligent or faulty design, development, or construction by Seller, (ii) injuries to persons or damage to property resulting from the acts or omissions of Seller or Seller's agents, employees, contractors or subcontractors, or (iii) Seller's failure to comply with Legal Requirements.

8.10.3. Notwithstanding any other provision of this Contract, the provisions of this Section 8.10 shall survive Closing.

9. **Representations and Warranties.**

9.1. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Purchaser as of the Effective Date and as of the Closing Date that Seller is a duly organized and validly existing limited liability company and in good standing under the laws of the jurisdiction in which the Project is situated; that Seller has the power to execute and perform this Contract that all necessary consents and approvals from the members of Purchaser have been obtained; and that the person executing this Contract on behalf of Purchaser is duly empowered to bind Purchaser to perform its obligations hereunder.

9.2. **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date that Purchaser is a duly organized and validly existing corporation or limited liability company and in good standing under the laws of the jurisdiction in which the Project is situated; that Purchaser has the power to execute and perform this Contract; that all necessary consents and approvals from the Board of Directors or members, as applicable, of Purchaser have been obtained; and that the person executing this Contract on behalf of Purchaser is duly empowered to bind Purchaser to perform its obligations hereunder.

9.3. **Survival.** The foregoing representations and warranties of the parties shall survive Closing and shall not be merged in the deeds delivered at Closing hereunder.

9.4 **As-Is. EXCEPT AS EXPRESSLY SET FORTH HEREIN, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESSED OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, REGARDING THE LOTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE, ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION. GOVERNMENTAL APPROVALS, GOVERNMENTAL**

REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE LOTS, AND SPECIFICALLY, THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING, (i) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, AND (ii) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE LOTS OF HAZARDOUS MATERIALS. PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT EXCEPT AS EXPRESSLY SET FORTH HEREIN, IT IS RELYING SOLELY ON ITS OWN EXPERTISE, AND THAT OF ITS CONSULTANTS IN PURCHASING THE LOTS. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE LOTS OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE LOTS AS PROVIDED FOR HEREIN IS MADE ON AN "AS-IS, WHERE IS" CONDITION AND BASIS WITH ALL FAULTS, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, THE PROVISIONS OF THIS SECTION 9.4 SHALL SURVIVE THE CLOSING.

10. **Conditions to Purchaser's Obligation to Close.** Purchaser shall not be obligated to close unless each of the following conditions are either fulfilled or waived, in writing, by Purchaser.

10.1. **Compliance with Covenants.** Seller shall have performed all material covenants, agreements and obligations required by this Contract to be performed or complied with by Seller prior to the Closing Date, including, without limitation, those identified as Pre- Closing obligations of Seller on the Development Checklist, and Seller's representations and warranties shall be true and correct in all material respects.

10.2. **Failure of Condition.** If, subject to the provisions of this Section 10.3 regarding events of **force majeure**, all conditions to Closing shall not have been satisfied on or before the outside date for any of the Closings set forth herein, Purchaser shall have the right to (i) terminate this Contract by written notice to Seller, whereupon the Deposit shall be refunded to Purchaser, (ii) waive the incomplete condition(s) and proceed to consummate Closing hereunder, or (iii) defer Closing for a period not to exceed ninety (90) days to permit satisfaction of such condition, following expiration of which, if such condition shall remain unsatisfied, Purchaser shall be required to elect one of the options described in clauses (i) or (ii) above. Notwithstanding the foregoing, if Seller shall have failed to substantially complete the Pre- Closing obligations of Seller in respect of the Lots that are the subject of such Closing as of the Closing Date for such group of Lots, and such failure shall be attributable to force majeure then, anything in this Contract to the contrary notwithstanding, either party shall have the right to extend the Closing Date for such group of Lots for a period equal to the delay caused by the

event of force majeure, by delivery of written notice to the other party no later than ten (10) business days before the relevant Closing Date; provided, that no such extension shall exceed one year.

11. **Seller's Closing Documents.** At Closing, Seller shall deliver the following documents (**"Seller's Closing Documents"**) to Purchaser:

11.1. **Deed.** A special warranty deed, which shall be duly executed and acknowledged by Seller so as to convey to Purchaser or as directed by Purchaser good and marketable fee simple title to the Property free and clear of all liens, encumbrances and other conditions of title other than the Permitted Exceptions.

11.2. **Owner's Affidavit.** An affidavit from Seller attesting that (a) no individual, entity or Governmental Authority has any claim against the Property under the applicable construction lien law, (b) no individual, entity or Governmental Authority is either in possession of the Property or has a possessory interest or claim in the Property, and (c) no improvements to the Property have been made for which payment has not been made.

11.3. **FIRPTA.** A FIRPTA Non-Foreign Transferor Certificate in accordance with Section 1445 of the Internal Revenue Code.

11.4. **Corrective Documents.** Documentation required to clear title to the Property of all unpermitted liens, encumbrances and exceptions, if any, and such other documents duly executed in recordable form as are contemplated herein or reasonably required from Seller or Title Company to consummate the Closing, and delete all standard title exceptions.

12. **Closing Procedure.** The Closing shall proceed in the following manner:

12.1. **Transfer of Funds.** Purchaser shall pay the purchase price determined pursuant to Section 3 to the Closing Agent in the manner described therein.

12.2. **Delivery of Documents.** Seller shall deliver Seller's Closing Documents to Closing Agent.

12.3. **Disbursement of Funds and Documents.** The Closing Agent shall record the Deed when the Closing Agent is holding proceeds in cleared funds. After the Deed is recorded, the Closing Agent shall disburse the sale proceeds to Seller, and the Seller's Closing Documents to Purchaser, and shall promptly issue and deliver to Purchaser the Title Policy.

12.4. **Direct Conveyance to Homeowners.** Anything in this Contract to the contrary notwithstanding, Purchaser shall have the right, with respect to any Lot, to direct Seller to deliver a deed directly to Purchaser's homebuyer. In each such case, Seller and Purchaser: (i) shall make the prorations and adjustments required herein, and shall execute and deliver settlement statements reflecting the same; (ii) shall transfer funds as required herein; and (iii) shall deliver documents as required herein effective as of the date of such Closing hereunder, with the exception that Seller shall deliver a deed to such Lot without identifying the grantee

therein, and shall authorize Purchaser to insert the name of the grantee at a later date, upon completion of the residence on such Lot and at such time as Purchaser is prepared to close on its sale of such residence to such homebuyer. On the conveyance of a Lot to Purchaser as described above, transfer and recordation taxes allocated between Seller and Purchaser shall be determined based upon the Purchase Price payable hereunder in respect of such Lot. Upon Purchaser's later conveyance of the residence to its homebuyer and its recordation of the deed to such residence from Seller to such homebuyer, Purchaser shall be solely responsible (together with its homebuyer) for payment of all recordation and transfer taxes assessed on such transfer in excess of the amount determined pursuant to the immediately preceding sentence. Purchaser may record such deed at any time in its sole discretion, but whether or not it elects to do so, in no event shall the Seller retain any ownership or other interest in any Lot so conveyed following Closing hereunder, irrespective of the fact that Seller may remain the owner of record for a period of time following such Closing. In each case of direct conveyance by Seller to Purchaser's homebuyer as provided above, Purchaser agrees to utilize, in its home sales contract, a title addendum substantially incorporating the provisions set forth in Exhibit D attached hereto.

13. **Prorations and Closing Costs.**

13.1. **Proration.** The following items shall be prorated and adjusted between Seller and Purchaser as of the midnight preceding Closing, except as otherwise specified:

13.1.1. **Taxes.** Real property taxes for the Property shall be prorated and adjusted between Seller and Purchaser as of midnight preceding the date of Closing.

13.1.2. **Special Assessments.** Special assessments with respect to improvements for which work has been substantially completed as of the date of this Contract shall be paid by Seller and all other special assessments shall be assumed by Purchaser; provided, however, that Purchaser shall be solely responsible for payment of any liens or assessments arising from its development or use of the Property.

13.1.3. **Other Items.** All other items required by any other provision of this Contract to be prorated or adjusted.

13.2. **Re-Proration of Taxes.** If subsequent to Closing, taxes for the year of Closing are determined to be higher or lower than as prorated, a re-proration and adjustment will be made at the request of Purchaser or Seller upon presentation of actual tax bills and any payment required as a result of the re-proration shall be made within 30 days following demand therefor. All other proration and adjustments shall be final.

13.3. **Seller's Closing Costs.** Seller shall pay for the following items at the time of Closing:

Special assessments for which the work has been substantially completed, pursuant to Subsection 13.1.2
Title Curative Instruments, if any
All Transfer and Recordation Taxes
[Rollback/Agricultural Land Transfer Tax, if any]

13.4. **Purchaser's Closing Costs.** Purchaser shall pay for the following items at the time of Closing:

Survey
Title Commitment Fee and Title Insurance Premium
Charges for recording of the Deed
Fees of Escrow Agent and Closing Agent

14. **Possession.** Purchaser shall be granted full possession of the Property at Closing.

15. **Condemnation.** In the event of the institution of any proceedings by any Governmental Authority which shall relate to the taking or proposed taking of any portion of the Property by eminent domain prior to Closing, or in the event of the taking of any portion of the Property by eminent domain prior to Closing, Seller shall promptly notify Purchaser and Purchaser shall thereafter have the right and option to terminate this Contract by giving Seller written notice of Purchaser's election to terminate within 10 days after receipt by Purchaser of the notice from Seller. Seller hereby agrees to furnish Purchaser with written notice of a proposed condemnation within 5 Business Days after Seller's receipt of such notification. Should Purchaser terminate this Contract, the Deposit shall immediately be returned to Purchaser and thereafter the parties hereto shall be released from their respective obligations and liabilities hereunder. Should Purchaser elect not to terminate, the parties hereto shall proceed to Closing and Seller shall assign all of its right, title and interest in all awards in connection with such taking to Purchaser. If Purchaser fails to notify Seller of its election to purchase the Property within the 10-day period, Purchaser will be deemed to have terminated this Contract and its Deposit shall be refunded.

16. **Default.**

16.1. **Purchaser's Default.** If Purchaser shall default in its obligation to close hereunder, Seller's remedies shall be strictly limited to the remedies contained therefor in the LLC Agreement, and Seller hereby waives any and all other remedies at law or in equity.

16.2. **Seller's Default.** If Seller shall default in its obligation to close hereunder, than Purchaser may, as its sole and exclusive remedy: (i) declare Seller's default under this Contract by written notice delivered to Seller and terminate this Contract, or (ii) enforce specific performance of this Contract.

16.3. **Notice.** Before declaring a default and exercising the remedies described herein, the non-defaulting party shall issue written notice of default to the defaulting party describing the event or condition of default in sufficient detail to enable a reasonable person to determine the action necessary to cure the default. The defaulting party shall have 10 days from delivery of the notice in which to cure the default. If the default has not been cured within the 10-day period, the non-defaulting party may exercise the remedies described above.

17. **Real Estate Commission.** Seller and Purchaser each represent and warrant to the other that no broker, agent or finder has been retained by such party, or will be due any commission or fee by such party, in connection with this Contract. Seller and Purchaser hereby indemnify and agree to hold the other harmless against and from any and all claims for any brokerage or finders' fees or similar commissions asserted by any broker or finder claiming by, through or under the indemnifying party. The provisions of this Section shall survive the Closing or termination of this Contract.

18. **Notices.** Any notice, request, demand, instruction or other communication to be given to either party hereunder, except where required to be delivered at the Closing, shall be in writing and shall be hand-delivered or sent by Federal Express or a comparable overnight mail service, or mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, to Purchaser, Seller, Purchaser's Counsel, Seller's Counsel and Escrow Agent, at their respective addresses as set forth in the LLC Agreement.

19. **Repurchase Right.** Purchaser hereby acknowledges the right of Seller pursuant to the LLC Agreement to repurchase any of the Lots that Purchaser shall propose to sell and convey without either (i) having first constructed thereon a residential dwelling, or (ii) having an agreement with the purchaser of such Lot to construct a dwelling thereon in the future. It is understood and agreed by Seller and Purchaser that Seller's repurchase rights (i) shall automatically and immediately terminate with respect to each Lot upon either (A) commencement of construction of the residential dwelling to be constructed on such Lot, or (B) conveyance to a purchaser with an agreement to construct a dwelling on such Lot for such purchaser in the future; and (ii) shall be subordinate to the lien of security instruments granted to institutional construction lenders financing the construction of improvements on the Lots. The provisions of this Section 19 shall survive the termination or expiration of this Contract and shall survive the Closing and the delivery of the deed and shall not be merged therein.

20. **General Provisions.**

20.1. **Counterparts.** This Contract may be executed in any number of counterparts, any one and all of which shall constitute the Contract of the parties and each of which shall be deemed an original.

20.2. **Section and Paragraph Headings.** The section and paragraph headings herein contained are for the purposes of identification only and shall not be considered in construing this Contract.

20.3. **Amendment.** No modification or amendment of this Contract shall be of any force or effect unless in writing executed by both Seller and Purchaser.

20.4. **Attorneys' Fees.** If any party obtains a judgment against any other party by reason of breach of this Contract, attorneys' fees and costs shall be included in such judgment.

20.5. **Governing Law.** This Contract shall be interpreted in accordance with the internal laws of the State in which the Project is situated, both substantive and remedial.

20.6. **Entire Contract.** This Contract, together with the LLC Agreement, sets forth the entire agreement between Seller and Purchaser relating to the Property and the subject matter hereof, and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

20.7. **Time of the Essence.** Time is of the essence in the performance of all obligations by Purchaser and Seller under this Contract.

20.8. **Computation of Time.** Any time period provided for in this Contract that ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full Business Day.

20.9. **Successors and Assigns.** This Contract shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto; provided, that Purchaser may not assign its rights hereunder without the prior written consent of Seller, and any attempted assignment without such consent shall be void. Seller shall not withhold such consent if the assignee from Purchaser is (i) an entity in which Purchaser holds a majority ownership interest, (ii) an entity that holds a majority ownership interest in Purchaser, or (iii) an entity that is under common ownership and control with Purchaser. Seller shall have the right to collaterally assign its rights hereunder to a lender providing secured financing for the Project.

20.10. **Construction of Contract.** All of the parties to this Contract have participated freely in the negotiation and preparation hereof; accordingly, this Contract shall not be more strictly construed against any one of the parties hereto.

20.11. **Exclusivity.** Neither Centex Corporation nor Beazer Homes USA, Inc. is a party to this Contract and neither such entity shall have any direct or derivative liability for any obligation of a party under this Contract.

20.12. **Non-Merger.** Subject to the limitation on survival of representations and warranties pursuant to Section 9.3 hereof, all provisions of this Contract that contemplate or provide for performance by either party after Closing shall survive Closing hereunder and shall not be deemed to have merged into the deed to be executed and delivered by Seller at Closing.

21. **DEFINITIONS.** The following terms when used in this Contract shall have the following meanings:

21.1 **Business Day.** Any day, except Saturdays, that the banks in Sussex County, Delaware, are open for business.

21.2 **Closing.** The act of conveyance of the Property to Purchaser concurrently with the delivery of the Purchase Price to Seller.

21.3 **Closing Agent.**

21.4 **Closing Date.** The date on which title to the Property is conveyed to Purchaser.

21.5 **Effective Date.** The "Effective Date" shall be the date on which this Contract shall have been executed by Purchaser and Seller and delivered to Purchaser.

21.6 **Escrow Agent.**

21.7 **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or other instrumentality of any of them, having jurisdiction over the Property, or any portion thereof, and whose approval is necessary for the satisfaction of any conditions contained in this Contract.

21.8 **Title Company.**

21.9 **Title Policy.** An ALTA Owners Title Insurance Policy in the amount of the Purchase Price, insuring Purchaser's title to the land, subject only to the Permitted Exceptions as herein defined.

22. **Deed of Trust; Noteholder.** Purchaser hereby acknowledges that Seller has entered into and granted a certain Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents, Proceeds and Agreements, bearing even date herewith, securing certain indebtedness pursuant to a note made by Seller (the "Note") and encumbering the Land (the "Deed of Trust"). Purchaser hereby acknowledges and consents to the right of the holder of the Note and the trustees under the Deed of Trust, at any time and in their sole discretion, to effect the subordination of the Deed of Trust to this Contract. Purchaser shall provide, on ten (10) days written notice, estoppel certificates confirming the priority of the Deed of Trust over this Contract (in the absence of a voluntary subordination described in the immediately preceding sentence) and certifying any of the following that the holder of the Note or any future mortgagee or purchaser of the Land may request: (i) that the Contract is in full force and effect, and has not been amended, modified or superseded; (ii) the Purchaser has received no notice of any sale, transfer, pledge or assignment of this Contract or of the sales proceeds hereunder by Seller (except for the assignment to such holder of the Note); (iii) Purchaser holds no claim against Seller that might be set off against the sales proceeds under the Contract; and (iv) Purchaser understands that the Contract has been assigned to the holder of the Note as security for a loan to Seller and that the Contract may not be amended, modified or superseded without the prior written approval of the holder of the Note.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Contract under seal as of the dates indicated below.

SELLER:

DOVE BARRINGTON DEVELOPMENT LLC, a
Delaware limited liability company
By: Beazer Homes Corp., Administrative Member

By: _____ (Seal)
Name: _____
Title: _____

Date: _____

PURCHASER:

_____, a _____

By: _____ (Seal)
Name: _____
Title: _____

Date: _____

List of Exhibits:
Exhibit A — Legal Description
Exhibit B — Product Types
Exhibit C — Development Responsibility Checklist
Exhibit D — Title Addendum

Exhibit A
(to Finished Lot Contract)

Legal Description

[To be added when lot descriptions are available]

Exhibit B
(to Finished Lot Contract)

Product Types

Dove Barrington Development LLC

Description	Lot Dimension	Price	Source	Centex	Beazer	Total
Single Family 56’	70’ x 125’	105,000	Barrington	67	86	133
Single Family 56’	70’ x 125’	105,000	Connector	1	1	2
Single Family 45’	60’ x 110’	95,000	Dove	70	70	148
Single Family 45’	58’ x 110’	95,000	Barrington	75	75	150
Town Home 32’	32’ x 60’	70,000	Dove	18	18	36
Town Home 32’	32’ x 66’	70,000	Dove	53	53	106
Town Home 32’	32’ x 65’	70,000	Barrington	56	70	125
Town Home 32’	32’ x 65’	70,000	Connector	15	0	15
Condo - Festival	na	50,000	Dove	120	0	120
Condo - 4 over 4	na	60,000	Barrington	0	36	36
Condo - 4 over 4	na	50,000	Connector	0	85	86
TOTAL				474	475	949

Exhibit C
(to Finished Lot Contract)

Development Responsibility Checklist

(not legible)

Exhibit D
(to Finished Lot Contract)

Addendum

THIS Addendum is part of the Purchase Agreement for Lot/Sec. or Unit/Bldg._____ Subdivision _____ dated _____, 20___, between _____ Buyer(s) and BEAZER HOMES CORP., Seller.

TITLE ADDENDUM

Notice is hereby given to You that Title to the Properly is held by Clarksburg Skylark LLC, a Maryland Limited Liability Company.

It is Our obligation and we have authority, at Closing, to cause Clarksburg Skylark LLC to grant and convey ownership of the Property to You pursuant to the provisions of Section 7 of this Purchase Agreement.

We will join in the execution of Your Deed as Vendor and the Builder of the House erected on Your Lot, within the meaning of Title 10 of the Real Property Article of the Annotated Code of Maryland, Chapter 31C of the Montgomery County Code and Your New Homeowners Warranty.

You acknowledge that Clarksburg Skylark, LLC will execute the Dead solely as the owner of the Lot and will have no involvement in or responsibility for the construction of the House upon the Lot or the performance of Our obligations under the Purchase Agreement. At Closing, the Deed that we deliver to You will contain the following language:

"Beazer Homes Corp. is the builder of the Improvements on the Lot hereinabove described. By execution of this Deed, the Grantee(s) acknowledge that Clarksburg Skylark, LLC did not construct the improvements erected on the Lot conveyed and is not the Vendor or Builder of the improvements erected on the Lot conveyed, within the meaning of Title 10 of the Real Property Article of the Annotated Code of Maryland or Chapter 31C of the Montgomery County Code; that Grantee(e) for themselves, their heirs, personal representatives and assigns, exclude and release Clarksburg Skylark, LLC from and acknowledge that Clarksburg Skylark LLC will not be the warrantor under any express and implied warranties provided by said Title 10, as to the improvements and will not otherwise have any liability with respect to the improvements; that Clarksburg Skylark, LLC executed this Deed solely to convey this to said Lot on which Beazer Homes Corp. constructed the improvements and that Beazer Homes Corp. is solely responsible for any express or implied warranties contained In Title 10 of the said Real Property Article, for any other warranty or representations made by Beazer Homes Corp. in its Purchase Agreement with Grantee(s); and for all other matters related to the improvements."

ALL OTHER TERMS AND CONDITIONS OF THE ABOVE-REFERENCED AGREEMENT, INSOFAR AS THEY ARE NOT INCONSISTENT WITH THIS ADDENDUM SHALL REMAIN AS ORIGINALLY AGREED, UNLESS AMENDED BY A SUBSEQUENT ADDENDUM EXECUTED BY THE PARTIES HERETO.

Buyer(e) Signature:

_____
Buyer Date

_____
Buyer Date

WITNESS: _____
Date

Seller's Signature:

BEAZER HOMES CORP.,
A TENNESSEE CORPORATION

BY: _____
Attorney-in-Fact

DATE: _____

Exhibit F

Project Director's Responsibility Checklist

Section 1. Development of the Protect.

1.1 Project Director shall provide, and is hereby authorized to implement or cause to be implemented, from and after the date hereof through the completion of the Project and the sale or other distribution of all Lots, the following services (the "Development Services"):

1.1.1 Serving as Project construction manager with authority and responsibility for the development and subdivision of the Real Property, including but not limited to the development of the Lots as such finishing is described in the Annual Business Plan and the Finished Lot Contract attached as Exhibit E to the Limited Liability Company Agreement of the Company (the "Agreement");

1.1.2 Developing the Real Property for residential use and, in connection with the development of the Real Property, performing development work that includes providing the Real Property with the infrastructure contemplated by the approved engineering plans and plats for the Project, including, generally, bringing all utility, water and sewer lines to the Real Property, stormwater management facilities and drainage lines; sediment control facilities; grading; and roads, curbs and gutters, assisting the Company in securing all legally required approvals, fees, licenses, inspections, bonds and permits and take all other actions appropriate or necessary far proper execution and completion of development of any pad construction within the Real Property approved as part of the Annual Business Plan or otherwise required by applicable governmental authority (the "Development Work"), all as more particularly described as the responsibility of Developer/Seller in the Finished Lot Contract and the Development Responsibility Checklist attached thereto;

1.1.3 Coordinating and conducting negotiations, and assisting the Company as such, for all contracts and similar agreements with engineers, suppliers, materialmen, contractors and other third parties who will furnish labor, professional services, supplies, equipment or materials to the Project to complete any of the Development Work, subject to the Annual Business Plan;

1.1.4 Administering, supervising and, at Company expense, enforcing all contracts entered into by or on behalf of Company in accordance with the terms and provisions hereof and including, without limitation, contracts for all services, labor and materials;

1.1.5 Coordinating and supervising the contractors, agents and independent contractors as may be engaged by Company to carry out the Development Work, including but not limited to the provision of public amenities and utilities to the Real Property;

1.1.6 Notifying the Executive Committee of, and submitting to the Executive Committee for payment, all bills and invoices concerning debts and other obligations incurred by Project Director in performing the Development Work, as such become due and payable;

1.1.7 Informing Executive Committee of all notices received regarding violations of laws, roles, regulations and contractual obligations pertaining to the Project or relating to employment of persons in connection with the Project, including particular laws relating to workman's compensation and safety requirements;

1.1.8 Notifying Executive Committee of all claims asserted or likely to be asserted by any third-party against the Project and/or Company;

1.1.9 Establishing on behalf of Company one or more homeowners' associations for the Real Property;

1.1.10 Preparing and presenting to the Executive Committee a schedule of development of the Project and monthly updates;

1.1.11 Informing the Executive Committee of all meetings respecting the Project with government officials (excluding, however, inspectors), developers or neighboring real property owners in advance of such meetings and provide the Company an opportunity to attend;

1.1.12 Hiring the Project Manager who is to have direct responsibility for the day-to-day management of the Project, subject to Executive Committee prior written approval, which approval shall not be unreasonably withheld;

1.1.13 Assisting Company to apply for and obtain any and all necessary consents, approvals, permits, variances, and the like in connection with any of the Development Work;

1.1.14 Preparing, for approval by the Executive Committee, in form and substance acceptable to the Executive Committee, (a) a projection of the Company income in connection with a pending sale of all or a portion of the Real Property and quarterly project marketing and status reports (other than for the portion of the Real Property to be distributed to a Member, or its affiliate); and (b) a projection of the Company development costs in connection with pending Development Work to be performed by the Company;

1.1.15 Overseeing land entitlements and permits and construction contracts, including, without limitation, tracking of contractor insurance certificates and lien releases;

1.1.16 Participating with the Administrative Member in the determination and preparation of the Annual Business Plan pursuant to the Agreement;

1.1.17 Reporting annually to the Executive Committee on the costs incurred, in connection with the Development Services and Development Work, for the current fiscal year, actual costs incurred, as well as any variations for the current fiscal year's Annual Business Plan;

1.1.18 Managing the Real Property, including taking responsibility for, without limitation, posting and security, and for keeping the Project and surrounding area free from accumulation of waste materials, rubbish, tools, construction equipment, machinery and surplus materials;

1.1.19 Inspecting all Development Work as necessary to ensure compliance with plans and specifications, required quality of workmanship and environmental controls necessary to complete the work in a safe and lawful manner;

1.1.20 Perform all duties and obligations with respect to land development activities as are identified as the owner's responsibility under the Finished Lot Contract (Exhibit E to the Agreement);

1.1.21 Perform such additional duties and obligations relating to the Project as are agreed to between the Executive Committee and Project Director;

1.1.22 Notwithstanding the foregoing, the Project Director shall not be responsible for providing services that are customarily performed by architects, engineers, attorneys, general contractors or subcontractors in connection with real estate development, or of a broker for the marketing and sale of the Real Property;

1.1.23 As a condition to and in conjunction with the performance of the Development Services, Company shall pay or make available to or for the benefit of Project Director funds sufficient for the development of the Project and the performance of the obligations of Project Director hereunder, and any funds expended by Project Director in connection therewith shall be reimbursed by Company pursuant to the terms in Section 4.4 of the Agreement.

1.2 The Executive Committee shall provide to Project Director all files and records respecting the Project necessary or desirable, as reasonably determined by Project Director to permit Project Director to perform its obligations hereunder.

1.3 Unless otherwise agreed by the Executive Committee, the Project Director shall obtain bids for the performance of each major element of the Development Work (i.e., for any contracts exceeding $10,000.00 for any single item or more than $50,000.00 in the aggregate for any given Development Phase) from not less than three (3) reputable, experienced, and bondable contractors who have been approved by the Executive Committee.

1.4 For any contracts exceeding $10,000.00 for any single item or more than $50,000.00 in the aggregate for any given Development Phase, the Project Director shall send true and complete copies of all bids received to the Executive Committee, and the Project Director and the Executive Committee shall together select the contractors to perform the Development Work (the "Contractors") on the basis of the bids submitted, as may have been negotiated by the Company. Promptly following the selection of each Contractor, the Company shall enter into an agreement with the Contractor for the performance of the Contractor's portion of the Development Work (the "Construction Contract"). The form of Construction Contract to be used with the Contractors shall be agreed upon by the Executive Committee. If the Executive

Committee deems it appropriate, any Contractor may be required to furnish payment and/or performance bonds in connection with its work.

1.5 The Executive Committee, in conjunction with the Project Engineer, shall establish, and from time to time re-evaluate, a schedule of the Development Work (the “Development Schedule”) which is in accordance with sound development, engineering, and marketing practices and takes account of the time required to prepare and process the Plans and obtain all necessary permits.

1.6 The Construction Contracts shall require the Contractors to perform the Development Work in a good and workmanlike manner, in accordance with good construction practices, in substantial conformance with the Plans and Approvals, and in compliance with all applicable laws, regulations, orders, and other requirements of the governmental authorities.

1.7 The Project Director shall consult with the Executive Committee regarding any necessary actions to enforce the terms of the Construction Contracts. In the event that any Contractor defaults in the performance of the Development Work, the Project Director, with the approval of the Executive Committee, may terminate the Construction. Contract of that Contractor and discharge the Contractor, in that event, the Project Director, again with the approval of the Executive Committee, shall promptly secure a substitute Contractor and the Company shall enter into a new Construction Contract for the completion of that element of the Development Work.

FIRST AMENDMENT TO
LIMITED LIABILITY COMPANY AGREEMENT OF
DOVE BARRINGTON DEVELOPMENT LLC

This First Amendment to Limited Liability Company Agreement (this "**Amendment**") of Dove Barrington Development LLC, a Delaware limited liability company (the "**Company**") is entered into as of March 27, 2008 (the "**Effective Date**") by and among (i) Beazer Homes Corp., a Tennessee corporation (the "**Remaining Member**"); and (ii) Centex Homes, a Nevada general partnership (the "**Withdrawing Member**" and, together with Remaining Member, the "**Members**", and each a "**Member**").

Recitals:

R-1. The Company was formed pursuant to a Certificate of Formation filed with the Secretary of State of the State of Delaware effective as of September 22, 2004. The affairs of the Company are governed by that certain Limited liability Company Agreement of the Company dated October 4, 2004 (the "**Operating Agreement**").

R-2. Effective as of the Effective Date, the Withdrawing Member assigned its membership interests in the Company (collectively, the "**Transferred Membership Interests**") to the Remaining Member pursuant to a separate Assignment and Assumption of Membership Interests (the "**Assignment**") between the Withdrawing Member, as assignor, and the Remaining Member, as assignee.

R-3. Prior to the Effective Date, the Withdrawing Member and the Remaining Member constituted all of the Members of the Company.

R-4. The Withdrawing Member and the Remaining Member desire to amend the Operating Agreement of the Company as set forth herein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The foregoing Recitals, including all terms defined therein, are hereby incorporated herein to the same extent as if set forth herein in full.

2. Effective as of the Effective Date, the Transferred Membership Interests in the Company formerly held by the Withdrawing Member have been assigned by the Withdrawing Member to the Remaining Member with the result that Remaining Member holds, as of the Effective Date, all of the membership interests in the Company.

3. Effective as of the Effective Date, the Withdrawing Member withdraws from the Company and is no longer a Member thereof.

4. Remaining Member agrees to be bound by all the terms and conditions of the Operating Agreement, as amended hereby.

5. Solely for purposes of this Amendment and for no other purpose, the Members hereby waive the provisions of Section 4.1(b)(15) of the Operating Agreement, which provisions require approval of the Executive Committee for amendments to the Operating Agreement.

6. Solely for purposes of this Amendment and for purposes of the Assignment and for no other purpose, the Members hereby waive the provisions of Section 6.2 of the Operating Agreement, which provisions prohibit a Member from withdrawing from the Company.

7. Solely for purposes of this Amendment and for purposes of the Assignment and for no other purpose, the Members hereby waive the provisions of Section 6.3 of the Operating Agreement, which provisions prohibit or limit transfers of membership interests by a Member.

8. Except as amended in conformity with the terms of this Amendment, the Operating Agreement shall remain in full force and effect and unmodified, and each of the parties hereto hereby ratifies and confirms the Operating Agreement, as amended by this Amendment. In the event that any of the terms of the Operating Agreement shall be inconsistent with the terms of this Amendment, the terms of this Amendment shall govern and control.

9. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

10. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

{Signature Page Follows}

IN WITNESS WHEREOF, the parties hereto have signed this Amendment under seal as of the date first written above.

WITHDRAWING MEMBER:

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation, a Nevada corporation, its managing general partner

By: /s/ Robert K. Davis (seal)
Robert K. Davis
Executive Vice President

REMAINING MEMBER:

BEAZER HOMES CORP., a Tennessee corporation

By: /s/ Robert L. Salomon (SEAL)
Name: Robert L. Salomon
Title: Senior Vice President

SECOND AMENDMENT TO
OPERATING AGREEMENT
OF
DOVE BARRINGTON DEVELOPMENT, LLC

THIS SECOND AMENDMENT (this "Amendment") to Limited Liability Company Operating Agreement of Dove Barrington Development LLC, a Delaware limited liability company (the "Company"), as amended by that certain First Amendment (the "First Amendment") to Limited Liability Company Agreement of Dove Barrington Development LLC dated March 27, 2008 (as amended, the "Operating Agreement"), effective as of August 5, 2009, is entered into by Beazer Homes Corp., a Tennessee corporation ("Beazer"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Operating Agreement.

WHEREAS, pursuant to the First Amendment Beazer became the sole member of the Company;

WHEREAS, Beazer wishes to enter into this Amendment to remove the concept of an Executive Committee of the Company, and to clarify that Beazer, acting as the sole member, shall have the sole power and authority to control and manage the Company; and

WHEREAS, Section 13.11 of the Operating Agreement provides that the Operating Agreement may be amended by the Members.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, and for other consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Beazer, intending to be legally bound, hereby amend the Operating Agreement as follows:

11. **Management; Governance.** Notwithstanding anything contained herein or in the Operating Agreement (including, without limitation, Section 4) to the contrary:

(a) All voting power, and power to manage the operations and affairs of the Company shall be vested solely in and controlled by Beazer as the sole member of the Company.

(b) Effective as of the date hereof (i) the Executive Committee (including each previously designated member of the Executive Committee) shall no longer have authority to manage, act on behalf of, or bind the Company in any manner; and (ii) all references to the Executive Committee in the Operating Agreement shall refer instead, as applicable, to Beazer or shall otherwise be deemed null and void.

12. **Conflicting Terms; Limitation of Amendment.** In the event of any conflict or inconsistency between the terms of this Amendment (including the Exhibits hereto) and the Operating Agreement, the terms of this Amendment shall control. Except as otherwise set forth herein, all terms and provisions of the Operating Agreement shall remain in full force and effect.

13. **Governing Law.** This Amendment shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to its principles of conflicts of law.

IN WITNESS WHEREOF, Beazer has executed this Amendment as of the date first above written.

"BEAZER"

BEAZER HOMES CORP., a Tennessee Corporation

By: /s/ Jeffrey Hoza
Name: Jeffrey Hoza
Title: Vice President

OPERATING AGREEMENT OF
BEAZER HOMES MICHIGAN, LLC

This Operating Agreement (this "Operating Agreement") of BEAZER HOMES MICHIGAN, LLC (the "Company"), a Delaware limited liability company is entered into as of July 27, 2006 by Beazer Homes Corp., its sole member.

ARTICLE I.
DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Affiliate" means (a) any person which, directly or indirectly, controls, is controlled by or is under common control with the specified person, (b) any person of which the specified person serves as an officer, partner or trustee or with respect to which the specified person served in a similar capacity, (c) any person of which a specified person is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities of the person, (d) any person that, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of the specified person, and (e) any relative or spouse of the specified person who makes his or her home with the specified person.

"Approval of Members" or "Approved by the Members" means the unanimous consent of all of the Members. An Assignee shall not be a Member for purposes of this definition, and, except as expressly provided in the Agreement, the Approval of Members shall not require the consent of any Assignee.

"Articles" means the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Indiana Secretary of State pursuant to the Act.

"Assignee" means an assignee of Units who has not been admitted as a Substituted Member.

"Bankrupt Member" means a Member who: (i) has become the subject of a decree or order for relief under any bankruptcy, insolvency or similar law affecting creditors' rights now existing or hereafter in effect; or (ii) has initiated, either in an original proceeding or by way of answer in any state insolvency or receivership proceeding, an action for liquidation, arrangement, composition, readjustment, dissolution, or similar relief.

"Capital Account" shall mean a financial account to be established and maintained by the Company for each Member, as computed from time to time in accordance with the capital account maintenance rules set forth in Regulations Section 1.704-1(b)(2), as such Regulations may be amended from time to time.

"Capital Contribution" means any contribution of property, services or the obligation to contribute property or services to the Company made by or on behalf of a Member or Assignee.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Company" means Trinity Homes, LLC, an Indiana limited liability company, and any successor limited liability company.

“Distribution” means a transfer of property to a Member on account of Units as described in Article VI.

“Dissociation” means any action which causes a Person to cease being a Member as described in Article IX hereof.

“Dissolution Event” means an event, the occurrence of which will result in the dissolution of the Company under Article XI unless the Members agree to continue the business of the Company as provided therein.

“Majority-In-Interest” means, at any given time, Members that both (i) hold in the aggregate more than fifty percent (50%) of the outstanding Units held by all Members and (ii) own a majority of the outstanding capital interests held by the Members as determined on the basis of the Capital Account balances of the Members.

“Member” means any Person (i) who has signed this Operating Agreement as a Member or who is hereafter admitted as a Member of the Company pursuant to this Operating Agreement and (ii) who holds Units in the Company.

“Profits” and “Losses” for any fiscal year means the net income or net loss of the Company for such fiscal year or fraction thereof, as determined for federal income tax purposes in accordance with the accounting method used by the Company for federal income tax purposes. Profits shall also include all income received by the Company that is exempt from federal income tax, and the difference between the fair market value and adjusted basis for book purposes of any asset distributed to a Member determined at the time of distribution. Losses shall include expenditures of the Company described in Section 705(a)(2)(B) of the Code including items treated under Section 1.704-1(b)(2)(iv)(i) of the Regulations as items described in Section 705(a)(2)(B) of the Code.

“Person” means a natural person, trust, estate, partnership, limited liability company or any incorporated or unincorporated organization.

“Regulations” mean, except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of Department of the Treasury under the Code as such regulations may be changed from time to time.

“Substituted Member” means an Assignee who has been admitted as a Member.

“Taxable Year” means the taxable year of the Company as determined pursuant to §706 of the Code.

“Transfer” means any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security or encumbrance (including dispositions by operation of law).

“Unit” means an interest of a Member or Assignee in the Profits, Losses and Distributions of the Company as determined in accordance with this Agreement. The number of Units issued to each Member set forth on Exhibit A, which shall be amended in the event that the Company issues additional Units or acquires any outstanding Units.

ARTICLE II.
FORMATION

2.1 Organization. The Company was formed upon the filing of Articles of Organization (the "Articles") on September 1, 2005. The rights and obligations of the Members shall be as provided under applicable law and these Articles. The Members agree to each of the provisions of the Articles.

2.2 Registered Agent and Office. The Company's registered office shall be 2711 Centerville Road, Suite 400, Wilmington, DE 19801, County of New Castle, and the name of its registered agent at such address shall be Corporation Services Company. The Company may designate another registered office or agent at any time by following the procedures set forth in the Act.

2.3 Principal office. The principal office of the Company shall be located at 1000 Abernathy Road, Suite 1200, Atlanta, GA 30328

2.4 Business. The business of the Company shall be:

(a) To pursue any lawful business whatsoever, or which shall at any time appear conducive to or expedient for the benefit of the Company or the protection of its assets.

(b) To exercise all powers which may be legally exercised under applicable law.

(c) To engage in any activities reasonably necessary or convenient to the foregoing.

2.5 Duration. The existence of the Company shall continue in perpetuity unless the Company is dissolved pursuant Delaware law.

ARTICLE III.
ACCOUNTING AND RECORDS

3.1 Records to be Maintained. The Company shall maintain records in accordance with Article XII or applicable law.

3.2 Accounts. The Company shall maintain appropriate books and records, kept in accordance with generally accepted accounting principles and a record of the Capital Account for each Member and Assignee. Each Member shall have the right to inspect and copy any books and records of the Company during normal business hours.

ARTICLE IV.
MEMBERS AND MANAGEMENT

4.1 Management. Each member shall be an agent of the Company for the purpose of the Company's business or affairs, and the act of any member, including the execution in the name of the Company of an instrument for carrying on in the usual way the business or affairs of the Company shall bind the Company. Furthermore, except as expressly set forth in this Operating Agreement, any action which is taken on behalf of the Company by any member shall be deemed to have been approved by all members, and the member taking such action shall be deemed to have been fully authorized to take such action on behalf of the Company; however, the provisions of this sentence shall become null and void if any party other than Beazer Homes USA, Inc. ("Beazer"), or any subsidiary of Beazer as to which Beazer maintains voting control, either directly or indirectly (collectively with Beazer, the "Beazer Entities"), shall become a Member.

4.2 Distributions. Distributions shall be made in accordance with Section 6.3 in such amounts and at such times as determined by a Majority-In-Interest.

4.3 Liability of Members. No Member shall be liable as such for the liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Operating Agreement or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

4.4 Officers. Any member may appoint such officers of the Company as it may deem necessary to assist in the operations of the Company, with such duties and powers as are conferred on such officers by such Member; however, if a party other than a Beazer Entity shall become a Member, the officers must be appointed by a Majority-In-Interest. The officers of the Company shall be those individuals whose names and titles appear on Exhibit B to this Agreement.

ARTICLE V.
CONTRIBUTIONS

5.1 Contributions. The Members shall not be required to make additional Capital Contributions.

5.2 Member Loans. Any Member may, with the approval of a Majority-In-Interest, loan funds to the Company. The repayment terms and interest rate for such loans shall be approved by a Majority-In-Interest; provided, however, that in no event shall the interest rate on such loans be less than the applicable federal rate as announced by the Internal Revenue Service and in effect on the date the loan is made.

5.3 Return of Capital Contributions. Except as otherwise provided in this Agreement, a Member shall be entitled to a return of his or its Capital Contribution only upon the dissolution and winding up of the Company as provided in Article XI.

ARTICLE VI.
ALLOCATIONS AND DISTRIBUTIONS

6.1 Allocations of Profits and Losses. Subject to the provisions of Section 6.2, Profits, Losses and any other items of income, gain, deduction, and credit shall be allocated among the Members in proportion to their Units.

6.2 The provisions of Section 6.2, Profits, Losses and other items of income, gain, deduction and credit shall be allocated among the Members in proportion to their Units.

6.3 Contributed Property. If property which has an adjusted basis that is different from its fair market value is contributed to the Company, gain or loss and depreciation with respect to such property shall be allocated in accordance with Section 704(c) of the Code and the Regulations thereunder as in effect on the date that the property is contributed.

6.4 Distributions. Distributions in anticipation of a Dissolution Event or subsequent to a Dissolution Event shall be made as provided in Section 11.3. All other Distributions shall be made to the Members in proportion to their Units.

ARTICLE VII.
TAX MATTERS

7.1 Method of Accounting. The records of the Company shall be maintained on the cash method of accounting for tax purposes, unless otherwise provided by the Code or by the Regulations.

7.2 Tax Matters Partner. BHIC shall be designated as the "Tax Matters Partner" of the Company pursuant to Section 6231(a)(7) of the Code. The Tax Matters Partner shall take such actions as are necessary to cause each other Member and Assignee to become a "Notice Partner" within the meaning of Section 6223 of the Code. The Tax Matters Partner shall not take any action contemplated by Section 6223 through 6229 of the Code without the prior written consent of all other Members.

ARTICLE VIII.
TRANSFER OF UNITS

8.1 Transfer. No Member or Assignee may Transfer all or a portion of the Member's or Assignee's Units, except to a Beazer Entity, without the unanimous consent of the Members (excluding Assignees).

8.2 Transfers not in Compliance with this Article Void. Any attempted Transfer of Units, or any part thereof, not in compliance with this Article is null and void ab initio.

ARTICLE IX.
DISSOCIATION OF A MEMBER

9.1 Dissociation. A Person shall cease to be a Member upon the happening of any of the following events:

(a) the withdrawal of a Member with the unanimous consent of the remaining Members;

(b) a Member becoming a Bankrupt Member;

(c) in the case of a Member who is a natural person, the death of the Member;

(d) in the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(e) in the case of a Member that is an organization other than a corporation, the dissolution and commencement of winding up of the separate organization;

(f) in the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(g) in the case of a Member that is an estate, the distribution by the fiduciary of the estate's Units. Assignees shall not be deemed to be Members for purposes of this Section 9.1.

9.2 Rights of Dissociating Member. In the event any Member dissociates prior to the dissolution and winding up of the Company:

(a) if the Dissociation causes a dissolution and winding up of the Company under Article XI, the Member shall be entitled to participate in the winding up of the Company to the same extent as any other Member except that any Distributions to which the Member would have been entitled shall be reduced by the damages sustained by the Company as a result of the Dissolution and winding up;

(b) if the Dissociation does not cause a dissolution and winding up of the Company under Article XI, the Member shall thereafter hold his or its Units as an Assignee.

ARTICLE X.
ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

10.1 Rights of Assignees. The Assignee of Units has no right to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive Distributions and return of capital, and to be allocated the Profits and Losses attributable to the Units.

10.2 Admission of Substitute Members. An Assignee of Units shall be admitted as a Substitute Member and admitted to all the rights of the Member who initially assigned the Units only with the unanimous approval of the remaining Members. The Members may grant or withhold the approval of such admission for any Assignee in their sole and absolute discretion. If so admitted, the Substitute Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Units. The admission of a Substitute Member, without more, shall not release the Member originally assigning the Units from any liability to the Company that may have existed prior to the admission.

10.3 Admission of Additional Members. Additional Members may be admitted only with a written Approval of the Members and only upon the terms and conditions set forth in such Approval. The Additional Members shall be required to execute either (i) an Admission Agreement evidencing their acceptance of the terms and conditions of the Articles, the written Approval, this Agreement and the terms of their Capital Contributions and their Units or (ii) an amended or an amended and restated Operating Agreement.

ARTICLE XI.
DISSOLUTION AND WINDING UP

11.1 Dissolution. The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events (which, unless the Members agree to continue the business, shall constitute Dissolution Events):

(a) the expiration of the term, if any, set forth in the Articles, unless the business of the Company is continued with the consent of all of the Members;

(b) the unanimous written consent of all of the Members;

(c) the Dissociation of any Member, unless the business of the Company is continued with the unanimous written consent of the remaining Members within 60 days after such Dissociation.

11.2 Effect of Dissolution. Upon dissolution, the existence of the Company shall continue, but the Members shall wind up all of the Company's affairs and proceed to liquidate all of the Company's assets as promptly as is consistent with obtaining their fair value.

11.3 Distribution of Assets on Dissolution. Upon the winding up of the Company, the assets of the Company shall be distributed:

(a) to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of the Company's liabilities;

(b) to Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation

occurs. Liquidation proceeds shall be paid within 60 days of the end of the Company's taxable year or, if later, within 90 days after the date of liquidation. Such distributions shall be in cash or property (which need not be distributed proportionately) or partly in both, as determined by Approval of the Members.

11.4 Winding Up, and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, articles of dissolution shall be delivered to the Secretary of State for filing. The articles of dissolution shall set forth the information required by the Act.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

12.1 Entire Agreement. This Operating Agreement and the Articles represent the entire agreement among the Members.

12.2 Amendment or Modification of this Operating Agreement. This Operating Agreement may be amended or modified from time to time only by a written instrument executed by all of the Members.

12.3 No Partnership Intended for Non-tax Purposes. The Members have formed the Company under the Act, and expressly do not intend to form a partnership or a limited partnership. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

12.4 Rights of Creditors and Third Parties under this Operating Agreement. This Operating Agreement is entered into among the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Operating Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

12.5 Notice. Notice to the Company shall be considered as given when mailed by first class mail, postage prepaid, to its principal office. Notice to a Member shall be considered as given when mailed by first class mail, postage prepaid, to the Member at the address reflected in the Company's records unless such Member has notified the Company in writing of a different address.

12.6 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of any provision of this Agreement.

12.7 Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all such parties executed the same document. All such counterparts shall constitute one agreement.

12.8 Delaware Law Controlling. The laws of the State of Delaware shall govern the validity of this Operating Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

12.9 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

12.10 Number and Gender. All provisions and references to gender shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

12.11 Binding Effect. Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors and assigns.

12.12 No Partition. Notwithstanding any other provision hereof or of any governing law, no Member shall have the right of partition with respect to any property of the Company during the term hereof; nor shall any Member make application to any court or authority having jurisdiction in the matter, or otherwise commence or prosecute any action or proceeding for partition of Company property or the sale thereof. Upon any breach of the provision of this paragraph, the Company and each other Member, in addition to any other rights or remedies which they have at law or in equity, shall be entitled to a decree or other order restraining and enjoining any such application, action or proceeding.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned Members as of the date first above written.

MEMBER:
BEAZER HOMES CORP.

By: /s/ Ian J. McCarthy
Ian J. McCarthy, President

EXHIBIT A

Sole Member	Address
Beazer Homes Corp.	1000 Abernathy Road, Suite 1200 Atlanta, GA 30328

EXHIBIT B
Officers

Name	Title

Exhibit 3.2(ah)

AMENDED AND RESTATED OPERATING AGREEMENT
FOR ARTERY POTOMIA, LLC

TABLE OF CONTENTS

AMENDED AND RESTATED OPERATING AGREEMENT
FOR ARTERY POTOMIA, LLC

This Amended and Restated Operating Agreement is made this 3rd day of December, 2004, by and between **THE ARTERY GROUP, LLC**, a Maryland limited liability company ("**Artery**") and **BEAZER HOMES CORP**., a Tennessee corporation ("**Beazer**").

RECITALS:

A. A limited liability company known as Artery Potomia, LLC (the "**Company**") was formed by Artery as its sole member pursuant to the provisions of the Virginia Limited Liability Company Act.

B. The Company is the owner of a parcel of land, containing approximately 159.9 acres, located in Loudoun County, Virginia, as more particularly described on **Schedule 1** attached to and made a part of this Agreement (the "**Property**"). The Company intends to subdivide the Property and perform all necessary on-site and off-site work to develop the Property into approximately 312 building lots for single family detached homes and townhomes (the "Lots") and certain parcels for commercial use (the "**Commercial Parcels**"). The development of the Property into the Lots and Commercials Parcels is referred to as the "Project". The Project will be developed in two (2) phases. Phase 1 of the Property contains one hundred forty-eight (148) Lots (the "**Phase 1 Lots**") and the Commercial Parcels. Phase 2 of the Property is not yet subdivided but is anticipated to contain approximately one hundred sixty-four (164) Lots (the "**Phase 2 Lots**").

C. Immediately prior to the execution of this Agreement, Artery has sold and assigned to Beazer a forty-nine percent (49%) membership interest in the Company.

D. The original Operating Agreement for the Company was dated January 1, 2004. The parties desire to amend and restate the terms and provisions that will govern the operation of the Company, to admit Beazer as a new member of the Company, and to set forth certain other agreements between them.

Now, therefore, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficient of which are acknowledged by each of the parties, Artery and Beazer agree as follows:

1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth for them below:

1.1. "**Act**" means the Virginia Limited Liability Company Act, Code of Virginia, Section 13-1-1000 et seq., as it may be amended from time to time.

1.2. "**Adjusted Capital Contributions Account**" means an account maintained for internal bookkeeping purposes by the Company for each Member, which, as of any date, shall equal the sum of such Member's total Capital Contribution to the Company;

reduced (but not below zero) by all amounts actually distributed to such Member pursuant to Section.4.1(ii).

1.3. "**Administrative Manager**" means the Development Manager.

1.4. "**Affiliate**" means, with respect to any Member, any Person: (i) which, directly or indirectly, owns more than fifty percent (50%) of the voting interests in the Member, or (ii) in which the Member, directly or indirectly, owns more than fifty percent (50%) of the voting interests; or (iii) in which more than fifty percent (50%) of the voting interests are owned by the same Person or Persons as own more than fifty percent (50%) of the voting interests in the Member.

1.5. "**Agreement**" means this Agreement, as amended from time to time.

1.6. "**Available Proceeds**" means, for any relevant period, all Capital Contributions and loans made to or obtained by the Company and all cash funds derived by the Company from all sources (including interest received on reserves and the net amount received from the sale of any Lots and Commercial Parcels designated for sale by the Company), without reduction for any non-cash charges, but less cash funds used to (1) acquire additional Company assets, (ii) pay operating expenses, (iii) make loan payments, including, without limitation, payments under the Wachovia Loan, (iv) pay for land improvements and fees, including, without limitation, the Development Fee, (v) discharge the Company's obligations under the WVTD Agreements, (vi) pay any other Company expenditures, and (vii) establish reserves for working capital requirements, future payments, and liabilities and contingencies of the Company. Available Proceeds shall be increased by the reduction of any reserve previously established.

1.7. "**Budget and Development Plan**" means the budget and development plan adopted by the Company in accordance with Section 6.12, as amended from time to time.

1.8. "**Capital Account**" means, for each Member, the account that the Company at all times maintains during the term of the Company in accordance with Section 3.7 of this Agreement and the capital accounting rules set forth in Regulation Section 1.704- 1(b)(2)(iv).

1.9. "**Capital Contribution**" means the total amount of cash and the fair market value of any other assets contributed [or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(0] to the capital of the Company by a Member, net of liabilities assumed or to which the assets are subject.

1.10. "**Code**" means the Internal Revenue Code of 1986, as amended.

1.11. "**Company**" means the limited liability company governed by this Agreement.

1.12. "**Development Fee**" means the fee payable to the Development Manager pursuant to Section 12.3 of this Agreement.

1.13. "**Development Manager**" means Artery Development Company, LLC, a Maryland limited liability company and an Affiliate of Artery.

1.14. "**Exhibit A**" means and refers to the original Exhibit A to this Agreement, as amended and in effect from time to time, relating to the identities of the Members.

1.15. "**IRS**" means the Internal Revenue Service.

1.16. "**Lot Sale Agreements**" means all Purchase Agreements entered into by the Company, as seller, and Beazer, as purchaser, for the sale of Lots to Beazer, as amended from time to time.

1.17. "**Management Committee**" means the group of persons appointed pursuant to Section 6.1 of this Agreement.

1.18. "**Manager**" means the person appointed by the Management Committee pursuant to Section 6.1.6 of this Agreement.

1.19. "**Member**" means each of the Persons set forth in Exhibit A to this Agreement and any Person who subsequently is admitted as a member of the Company and "Members" means all of such Persons collectively.

1.20. "**Notice**" means a notification which is sent in accordance with the provisions of Article 12 of this Agreement.

1.21. "**Percentage Interest**" means, as to a Member, the percentage set forth after the Member's name on Exhibit A to this Agreement, which includes, without limitation, each Member's share of the Profits and Losses of and the right to receive distributions from the Company.

1.22. "**Person**" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

1.23. "**Prime Rate**" means the prime rate of interest as published in the "Money Rates" section of the Wall Street Journal. If the Wall Street Journal ceases to publish the prime rate, then the Prime Rate, for the purposes of this Agreement, shall be determined by reference to another reputable financial authority which publishes the prime rate of interest, as selected by the Management Committee.

1.24. "**Profit**" and "**Loss**" means, for each taxable year of the Company or other period, an amount equal to the Company's taxable income or loss for the year or period in question, determined in accordance with Code Section 703(a), with such adjustments, if any, as are required under relevant Sections of the Regulations.

1.25. "**Regulations**" means the Regulations, including Temporary Regulations, from time to time adopted under the Code.

1.26. "**Tax Matters Partner**", as that term is defined by Code Section 6231, means and refers to the Manager. Any reasonable costs incurred by the Tax Matters Partner for retaining accountants, attorneys, experts and/or other professionals on behalf of the Company in connection with any IRS audit of the Company shall be expenses of the Company.

1.27. "**Wachovia Loan**" means the acquisition and revolving development loan made by Wachovia Bank, National Association, to the Company, on or about March 26, 2004, in the maximum principal amount of Twenty-One Million Dollars ($21,000,000) outstanding at any one time, and all renewals, extensions, modifications, and consolidations of this loan.

1.28. "**WVTD**" means Washington-Virginia Traditional Development Sites, Inc., a Virginia corporation and a prior owner of the Property.

1.29. "**WVTD Agreements**" means, collectively, (i) the Agreement of Purchase and Sale, dated March 27, 2000, between WVTD, as seller, and Elysian Land, LLC ("**Elysian Land**"), as buyer, as amended by letter agreements dated May 1, 2000, May ___, 2000, and October 11, 2002, providing for the sale of the Property by WVTD to Elysian Land (the seller of the Property to the Company), and (ii) the Assignment and Assumption Agreement, dated January 16, 2003, among WVTD, Elysian Land, Elysian Infrastructure, Inc., and the Company, as Modified by a First Amendment dated March 26, 2004, by which certain rights and unperformed obligations under the Agreement referred to in clause (i) were assigned by Elysian Land to the Company.

Other terms are defined in the text of this Agreement and those terms shall have the meanings respectively ascribed to them.

2. ORGANIZATION.

2.1. Organization; Filing of Articles of Organization; Admission of New Member. The Company was formed upon acceptance of the Articles of Organization by the Virginia State Corporation Commission (the "**Corporation Commission**") on October 18, 2002. From the date of formation until the date of this Agreement, Artery was the sole Member of the Company. By this Agreement, Beazer is admitted as a Member of the Company. Each of the Members named in this Agreement, by signing this Agreement, accepts its respective interest in the Company and agrees to be bound by the terms of this Agreement. The Manager shall do all other things requisite for the due formation and organization of the Company pursuant to the laws of the Commonwealth of Virginia.

2.2. Name; Assumed Names. The undersigned parties elect to conduct business as a limited liability company under the name "Artery Potomia, LLC" pursuant to and subject to the Act and other relevant laws of the Commonwealth of Virginia. The business of the Company shall be conducted under its name designated above or under such variations of this name as the Manager deems appropriate to comply with the laws of any state in which the Company does business. The Manager shall execute and file in the proper offices such certificates as may be required by an assumed or fictitious name act or similar law in effect in the counties and other governmental jurisdictions in which the Company may elect to conduct its business.

2.3. Purpose. The purposes for which the Company is formed are (i) to develop the Project and sell "finished" Lots to Members, to Affiliates of Members, or to third parties, (ii) to have and exercise all powers now or hereafter conferred by the laws of the Commonwealth of Virginia on limited liability companies formed pursuant to the Act, and (iii) to do any and all things necessary, convenient or incidental to the achievement of the foregoing.

2.4. Term. The term of the Company began upon the acceptance of the Articles of Organization by the Corporation Commission and the Company shall continue in existence until terminated or dissolved pursuant to the provisions of this Agreement.

2.5. Principal Office and Registered Agent. The principal office of the Company shall be located at 7200 Wisconsin Avenue, Suite 1000, Bethesda, Maryland 20814. The Company may relocate its place of business and principal office to any other place or places as the Manager may from time to time deem advisable. The name and address of the Company's resident agent in the Commonwealth of Virginia is Douglas W. Macleod, 14901 Bogle Drive, Suite 100, Chantilly, VA 20151. The resident agent is a resident of the Commonwealth of Virginia.

2.6. Ownership of Company Property. All property of the Company, including without limitation, the Property, shall be deemed to be owned by the Company as an entity and no Member, individually or collectively, shall have any ownership interest in such property. Title to all property shall be held in the name of the Company and not in the name of any Member, any Affiliate or any nominee of any of the foregoing. The Property shall be recorded as the property of the Company on its books and records.

3. INTERESTS AND CONTRIBUTIONS OF MEMBERS.

3.1. Names and Percentages. The name, present mailing address and Percentage Interest of each Member are set forth on Exhibit A to this Agreement.

3.2. Initial Capital Contributions. Upon or before the execution of this Agreement, each Member has contributed cash to the Company in the amounts set forth on Exhibit A. The Members shall make such additional Capital Contributions to the Company as required by this Agreement.

3.3. Additional Capital Contributions and Member Loans.

3.3.1. If the Company shall require additional capital for Company purposes over and above that provided by the Initial Capital Contributions and the Wachovia Loan, the Company may borrow the additional money in the name of the Company from third- party lenders (an "**Additional Borrowing**") so long as the Additional Borrowing is permitted by the Wachovia Loan and neither of the Members nor their respective Affiliates shall be liable for the repayment of the money obtained under the Additional Borrowing (i.e., the Additional Borrowing shall be nonrecourse, although either Member or its Affiliate, for itself, may agree, in its sole discretion, to provide a guaranty in order for the Additional Borrowing to be obtained). If the required additional money is not available from an Additional Borrowing, the Members shall provide the required funds as additional working capital to the Company, in accordance with their respective Percentage Interests, within thirty (30) days after the Management Committee determines that the additional capital is required and an Additional Borrowing is not available and

has issued a written notice to that effect to each Member, specifying the amount of capital due from each Member.

3.3.2. If all Members agree, any Member may advance funds to the Company in excess of the amounts required under this Agreement to be contributed by it to the capital of the Company as a loan from such Member to the Company. Such advance shall not be considered a Capital Contribution or result in any increase in the Capital Account of the Member making the loan. However, the amount of such loan shall be an obligation of the Company to the lending Member and shall bear interest at a floating rate (adjusted quarterly) equal to the then prevailing Prime Rate, plus five percent (5%), from the date the amount is advanced until the date the date the amount is repaid in full. In accordance with Section 4.1, all Member loans shall be repaid in full prior to .any distributions being made to the Members on account of their respective Capital Accounts or Percentage Interests. The loans contemplated by this Section 3.3.2 are separate from any advance made on behalf of a Non-Contributing Member as described in Section 3.9 and any advance made on behalf of a Non-Contributing Member shall be governed by Section 3.9 rather than this Section.

3.3.3. No Member shall be liable to any third party for the obligations of the Company solely by virtue of the status of such party as a member of the Company.

3.3.4. The Members acknowledge that the Wachovia Loan will not provide funds for the payment of the Administrative Fee referred to in Section 8.7 or the Development Fee referred to in Section 12.3 and that, to the extent the Company's capital on hand is insufficient to pay these sums as they come due (notwithstanding any reserves for these purposes established as contemplated in Section 4.2), additional Capital Contributions from the Members may be required.

3.4. Interest on Capital Contributions. The Members shall not be paid interest on or in respect of their respective Capital Contributions or Capital Accounts.

3.5. Return of Capital Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to withdraw or receive any return of the Member's Capital Contributions.

3.6. Form of Distribution. If a Member is entitled to receive a return of a Capital Contribution, the Member shall not have the right to receive anything but cash in return of the Member's Capital Contribution or Capital Account.

3.7. Capital Account. A separate Capital Account shall be maintained for each Member on the books of the Company in accordance with the following provisions: (a) a Member's Capital Account shall be credited with (i) the amount of money and the fair market value of any property contributed by the Member to the Company, (ii) the amount of any liabilities assumed by the Member, and (iii) the Member's share of Profit and any item in the nature of income or gain specially allocated to the Member; and (b) a Member's Capital Account shall be debited with (i) the amount of money and the fair market value of any property distributed to the Member, (ii) the amount of any liabilities of the Member assumed by the Company, and (iii) the Member's distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Member. If a Member's interest in the Company is

transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred interest. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with the Regulations.

3.8. Not for Benefit of Creditors. The provisions of this Article 3 are not intended to be for the benefit of any creditor or other Person (other than a Member in its capacity as a Member) to whom any debts, liabilities or obligations are owed by, or who otherwise has any claim against, the Company or any of the Members. No such creditor or other Person shall obtain any right under any such provisions or shall by reason of any such provisions make any claim in respect of any debt, liability, obligation, or claim against the Company or any of the Members.

3.9. Failure of a Member to Make Capital Contributions.

3.9.1. If a Member fails to make a Capital Contribution as required by the terms of this Agreement and fails to cure such failure within fifteen (15) days after receipt of written notice of such failure (a "**Non-Contributing Member**"), the other Member (the "**Contributing Member**") shall have the right, but not the obligation, at any time during the thirty (30) day period commencing with the day of the expiration of such fifteen (15) day cure period, to loan to the Non-Contributing Member all or part of the funds due from the Non- Contributing Member. Such funds shall be disbursed by the Contributing Member directly to the Company and the Non-Contributing Member shall be deemed to have made a Capital Contribution to the Company in the principal amount of the loan. The loan shall bear interest at the rate of twenty percent (20%) per annum and shall be fully repaid by the Non-Contributing Member within three (3) months after the date such loan is made. Until the loan is fully repaid, the Contributing Member shall be entitled to all distributions (whether regular distributions or upon dissolution of the Company) to which the Non-Contributing Member would have been entitled and such distributions will be credited to the amount owed, first to interest and then to principal. In addition, if the Contributing Member is Artery, then, during the period that any amount of the loan remains unpaid, no portion of the Sales Deposits (defined in Section 12.1) shall be credited against the purchase price for the Lots being acquired by Beazer.

3.9.2. If a loan made pursuant to Section 3.9.1 is not fully repaid within three (3) months after the loan is made, the Contributing Member, at any time thereafter before the loan is fully paid and upon ten (10) days' prior written notice to the Non-Contributing Member, may convert the outstanding amount of any such loan into a Capital Contribution. If the Contributing Member converts any such loan to a Capital Contribution, then (i) the principal amount and all unpaid accrued interest due on the loan shall be deducted from the Non-Contributing Member's Capital Account (so that the Non-Contributing Member shall no longer be deemed to have made the applicable Capital Contribution) and shall be credited to the Contributing Member's Capital Account as a Capital Contribution and in full satisfaction of the loan, and (ii) immediately thereafter, the 'Percentage Interests of each Member shall be recalculated based upon the total Capital Contributions made by such Member [taking into account the deduction and credit provided for in clause (1)], expressed as a percentage of the

total Capital Contributions made by all Members. Such recalculated Percentage Interests shall become the new Percentage Interests of the Members and shall be set forth on a revised **Exhibit "A"** which shall be attached to this Agreement,

3.10. Project Bonding. It is the intent that each Member be responsible for a substantially equivalent amount of the bonding obligations with respect to the development of the Project. Prior to the date of this Agreement, Artery posted with the governmental authorities surety bonds, letters of credit or escrows (collectively, "**Bonds**") relating to Phase 1 of the Project. After the date of this Agreement, Beazer shall post such additional Bonds as may be required by the governmental authorities in connection with the Project until the penalty amount of the Bonds posted by Artery and the Bonds posted by Beazer are substantially equal. Thereafter, the Members shall take turns posting each further Bond required by the governmental authorities (with Artery taking the next turn) so that the penalty amount of the Bonds posted by each Member remain approximately equal. The costs of each Bond shall be borne by the Member posting the Bond and shall be reimbursable from the Wachovia Loan to the extent that loan proceeds are available and payable from the Wachovia Loan for such costs. Notwithstanding that a Member posted any particular Bond, all work secured by the Bond and the costs of such work shall be the responsibility of the Company and not the Member posting the Bond, including, without limitation, any work required to obtain the release of the Bond.

4. DISTRIBUTION.

4.1. Distributions of Available Proceeds. Distributions of Available Proceeds shall be in the following order of priorities, to the extent available:

(i) First, to Members to repay loans by Members to the Company (if any) and all accrued interest thereon, in proportion to the outstanding balances of such loans, until such loans are paid in full.

(ii) Second, to the Members having Adjusted Capital Contribution Accounts, pro rata, in accordance with the balances of such Adjusted Capital Contribution Accounts determined immediately prior to such distribution, until such Adjusted Capital Contribution Accounts arc reduced to zero.

(iii) Third, to all Members, pro rata in accordance with their respective Percentage Interests.

4.2. Timing and Amount of Distributions. The timing and amount of all distributions shall be determined by the Management Committee. The Management Committee shall have the right to establish from time to time such reserves as it determines are appropriate for the smooth and proper operation of the Company, including, without limitation, reserves to pay the Development Fee and Administrative Fee as they come due.

4.3. Special Distribution to Artery. Notwithstanding Section 4.1(iii), after the 250th Lot has been sold, the Company shall hold back all of the pm rata distributions otherwise payable to Beazer under Section 4.1(iii), up to a total of Seven Hundred Fifty Thousand Dollars ($750,000) or such lesser amount as may constitute the distributions otherwise payable to Beazer

under Section 4.1(iii) (the "**Beazer Holdback**"). If the Beazer Holdback totals Seven Hundred Fifty Thousand Dollars ($750,000) before the final Lot offered for sale by the Company has been sold (the "**Final Sale**"), the Members shall thereafter resume receiving their distributable shares under Section 4.1(iii) in accordance with their respective Percentage Interests. The Beazer Holdback shall be distributed by the Company as follows. Within thirty (30) days after the Final Sale, the Company shall prepare an accounting showing the Net Profit realized by each Member from the operations of the Company since the formation of the Company. The "**Net Profit**" realized by each Member shall mean the total amount of the Available Proceeds distributed or distributable to such Member less the total amount of the Capital Contribution made by such Member to the Company. For the purposes of determining Net Profit, the Beazer Holdback shall be credited to Beazer as if actually distributed to Beazer. If the accounting shows that Beazer's Net Profit as of that time is One Million Four Hundred Seventy Thousand Dollars ($1,470,000) or greater, the sum of Seven Hundred Fifty Thousand Dollars ($750,000) from the Beazer Holdback (constituting the full amount of the Beazer Holdback) shall be paid over to Artery. If the accounting shows that Beazer's Net Profit as of that time is less than One Million Four Hundred Seventy Thousand Dollars ($1,470,000), the Company shall continue to hold the Beazer Holdback until all Bonds posted by or on behalf of the Company have been released. At that time a final accounting shall be prepared. If the final accounting shows that Beazer has realized a Net Profit from the operations of the Company, the Beazer Holdback shall be paid over to Artery to the extent of Beazer's Net Profit [not to exceed Seven Hundred Fifty Thousand Dollars ($750,000)]. If the amount of the Beazer Holdback is greater than the amount of Beazer's Net Profit as shown by the final accounting, the balance of the Beazer Holdback, after payment to Artery as called for in the preceding sentence, shall be paid over to Beazer.

5. ALLOCATION OF PROFITS AND LOSSES.

5.1. Manner of Allocation. Profits shall be allocated among and Losses shall be charged to the Members in proportion to their respective Percentage Interests. However, if the Company has any income or gain by reason of Beazer forfeiting any of the Sales Deposits under the Lot Sale Agreements or the First Purchase Fee under the First Purchase Agreement (as such terms are defined in Section 12.1.2 and 12.1.3), the first Ten Dollars ($10.00) of such income or gain shall be allocated to the Members in accordance with their respective Percentage Interests and the balance of such income or gain shall be specially allocated to. Artery and shall be paid over to Artery as provided in Sections 12.1 and 12.2 and shall not be considered a payment of capital to Artery under Section.4.1(11).

5.2. Division of Profits and Losses in Event of Assignment. If all or part of a Member's interest in the Company is assigned pursuant to the terms of this Agreement at any time other than at the end of the Company's accounting year, Profits, gains, Losses, deductions, and credits of the Company allocable to the interest assigned will be divided between the assignor and assignee by taking into account their varying interests during the period in question in accordance with Section 706(d) of the Code and the applicable Regulations and using any conventions permitted by law and selected by the remaining Members.

6. MANAGEMENT: RIGHTS, POWERS, AND DUTIES.

6.1. Management and Management Committee.

6.1.1 The business and affairs of the Company shall be managed under the direction and control of a Management Committee which shall consist of five (5) individuals who need not be Members. The Management Committee shall consist of three (3) representatives appointed by Artery (the "**Artery Representatives**") and two (2) representatives appointed by Beazer (the "**Beazer Representatives**"). The initial Artery Representatives shall be B. Hayes McCarty, Scott H. Price, and Alan IL Stackman. The initial Beazer Representatives shall be Douglas W. Macleod and Brian Buchanan. Such individuals shall continue as members of the Management Committee until they resign or are replaced as provided below, In the event any of the Artery Representatives resign from the Management Committee or Artery desires at any time to replace any of the Artery Representatives, Artery shall have the sole and absolute power to appoint a successor or replacement for such individual. In the event any of the Beazer Representatives resign from the Management Committee or Beazer desires at any time to replace any of the Beazer Representatives, Beazer shall have the sole and absolute Power to appoint a successor or replacement for such individual.

6.1.2. Subject to Section 6.3, all powers of the Company shall be exercised by or under the authority of the Management Committee. Decisions of the Management Committee within its scope of authority shall be binding upon the Company and each Member.

6.1.3. Meetings of the Management Committee shall be held at the principal place of business of the Company or at any other place that a majority of the members of the Management Committee determine. In the alternative, meetings may be held by conference telephone, provided that each member of the Management Committee can hear the others. The presence of at least three (3) of the Members of the Management shall constitute a quorum for the transaction of business. Meetings shall be held once each month or otherwise in accordance with a schedule established by the Management Committee. In addition, any. member of the Management Committee may convene a meeting with at least five (5) business days' prior written notice to the other members. The Management Committee also may make decisions, without holding a meeting, by written consent of a majority of the members of the Management Committee, provided that one or members of the Management Committee comprising such majority make a good faith effort to consult with the members of the Management Committee not comprising part of the majority before the decision is finalized. Minutes of each meeting and a record of each decision shall be kept by the designee of the Management Committee and shall be given to the Members promptly after the meeting.

6.1.4. Decisions of the Management Committee shall require the approval of at least three (3) members of the Management Committee.

6.1.5. Except as otherwise agreed by the Members, the members of the Management Committee shall serve without compensation by the Company.

6.1.6. The Management Committee shall, as soon as practicable, appoint an individual as the Manager to supervise personally the day-to-day operations of the Company.

The Manager may be a member of the Management Committee. The Manager shall be subject to the general supervision and control of the Management Committee and shall carry out the policy decisions made by the members of the Management Committee. At each regular meeting of the Management Committee (and, when requested by any member of the Management Committee, at any special meeting of the Management Committee), the Manager shall be present and shall report to the Management Committee on the operations of the Company or any other matters as any member of the Management Committee may request.

6.1.7. At the direction of the Management Committee (except as otherwise required by Section 6.3), the Manager shall have the full power to execute, for and on behalf of the Company, any and all documents and instruments which may be necessary to carry on the business of the Company, including, without limitation, any and all deeds, contracts, leases, mortgages, deeds of trust, promissory notes, security agreements, and financing statements pertaining to the Company's assets or obligations. No person dealing with the Manager need inquire into the validity or propriety of any document or instrument executed in the name of the Company by the Manager or as to the authority of the Manager in executing the same. Unless authorized by the Management Committee, (i) no attorney-in-fact, employee or other agent of the Company, other than the Manager, shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for pecuniary obligations for any purpose and (ii) no Member shall have any agency authority to contract on behalf of or otherwise bind the Company solely by virtue of being a Member.

6.1.8. The provisions contained in this Section 6.1 supersede any authority granted to the Members pursuant to the Act. Any Member who takes any action or binds the Company in violation of this Section 6.1 shall be solely responsible for any loss and expense incurred as a result of the unauthorized action and shall indemnify and hold harmless the Company with respect to the loss or expense.

6.2. Certain Powers of Management Committee. Without limiting the generality of Section.6.1, but subject to Section.6.3, the Management Committee shall have full and complete power and authority, on behalf of the Company:

6.2.1. To take all actions necessary to comply with the terms of the Wachovia Loan and otherwise to deal with all matters related to the Wachovia Loan, including, without limitation, obtaining such modifications of the Wachovia Loan as the Management Committee deems appropriate, other than Major Loan Modifications, and obtaining the release or modification of any guaranties or indemnities given by Artery or its Affiliates in connection with the Wachovia Loan. "**Major Loan Modifications**" are modifications that increase the principal amount or interest rate under the Wachovia Loan.

6.2.2. To purchase liability and other insurance to protect the Company's property and business.

6.2.3. To invest any Company, funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments.

6.2.4. To execute and deliver on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, contracts, agreements, assignments, bills of sale, leases, and any other instruments or documents necessary, in the opinion of the Management Committee, to carry out the business of the Company.

6.2.5. To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds.

6.2.6. To open bank accounts in the name of the Company, with the Manager or one or more members of the Management Committee (as designated by the Management Committee) being the signatory on the accounts.

6.2.7. To carry out the development of the Project in substantial accordance with the Budget and Development Plan, including, without limitation, (i) approving the bid package and plans to be submitted to contractors, subcontractors, suppliers, architects, engineers and other design professionals with respect to the infrastructure improvements to be developed by the Company within the Project; (ii) selecting successful bidders and awarding contracts with respect to the infrastructure improvements to be developed by the Company within the Project; (iii) entering into any change orders with respect to work to be performed or services to be provided by any contractor, subcontractor, supplier or other design professional; and (iv) expending the Company's Capital Contributions and revenues in furtherance of the Project.

6.2.8. To oversee the Company's performance of all of its obligations under the Lot Sale Agreements and to exercise all of the Company's rights and remedies under the Lot Sale Agreements.

6.2.9. To sell or otherwise dispose of all or any of the Commercial Parcels or, if Beazer defaults under any Lot Sale Agreement and such Lot Sale Agreement terminates, to sell or otherwise dispose of all or any of the Lots that were formerly subject of the terminated Lot Sale Agreement, all upon such terms as the Management Committee deems appropriate.

6.2.10. To establish the terms of sale for the Phase 2 Lots, including, without limitation, pricing, provided that all such terms shall be consistent with the First Purchase Agreement (defined in Section 12.1.2), and to sell or otherwise dispose of all Phase 2 Lots that Beazer declines or forfeits the right to purchase under the First Purchase Agreement.

6.2.11. To maintain all books and records of account, prepare and deliver financial statements to the Members for review, comment and approval and prepare or cause to be prepared all federal, state and local income and other tax returns.

6.2.12. To receive funds due the Company and to make distributions to the Members in accordance with Article 4 of this Agreement.

6.2.13. To withhold from distribution, as reserves, such proceeds from the sale of any portion of the Project (including Sales Deposits paid under the Lot Sale Agreements and the fee paid under the First Purchase Agreement) as the Management Committee deems appropriate for contingencies or otherwise to meet the Company's obligations, including, without limitation, its obligation to pay the Development Fee and Administrative Fee.

6.2.14. To perform all development obligations and other obligations of the Company under the WVTD Agreements, including, without limitation, conveyance of the "Retained Lots" under the WVTD Agreements to WVTD or its designee for no consideration, and otherwise to deal with the WVTD Agreements or WVTD as the Management Committee deems necessary or appropriate.

6.2.15. To adopt amendments to any then current Budget and Development Plan other than a Major Amendment. A "**Major Amendment**" is any amendment to the Budget and Development Plan that, when taken together with all such prior amendments previously adopted in any fiscal year of the Company, results in an aggregate increase of more than five percent (5%) in the expenses of the Project or an aggregate delay of more than ninety (90) days in the development schedule of the Project over that shown in the Budget and Development Plan as of the beginning of such fiscal year.

6.2.16. To refinance the Wachovia Loan, and in connection with such refinancing, to hypothecate, encumber or grant security interests in the assets of the Company to secure repayment of the borrowed sums.

6.2.17. To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business, subject to the limitations set forth in Section 6.3.

6.3. Decisions Requiring Consent of Members. Notwithstanding the provisions of Section 6.2, the following matters must be approved by the written consent of all Members prior to implementation by the Company:

6.3.1. The acquisition of any real property other than the Property by the Company.

6.3.2. Except as otherwise provided in this Agreement, any amendment of this Agreement.

6.3.3. Reorganization of the Company or merger with or into another limited liability company, corporation or other entity, regardless of whether the Company is the surviving entity of such merger.

6.3.4. Any decision to make an assignment for the benefit of creditors of the Company or file a voluntary petition under the federal Bankruptcy Code or any state insolvency law on behalf of the Company.

6.3.5. The taking of any action or the entering into any transaction outside the ordinary course of the Company's business or in contravention of this Agreement or the Company's Articles of Organization.

6.3.6. Adoption of a Budget and Development Plan for Phase 2 of the Project.

6.3.7. Adoption of any Major Amendment to any Budget and Development Plan.

6.3.8. In addition to (rather than in replacement of) the Wachovia Loan, the borrowing of money for the Company from banks or other lending institutions, Members, their Affiliates, or other Persons, and in connection with such borrowing, the hypothecating, encumbering or granting of security interests in the assets of the Company to secure repayment of the borrowed sums.

6.3.9. The making of Major Loan Modifications to the Wachovia Loan.

6.4. Liability for Certain Acts. The members of the Management Committee and the Manager shall perform their duties in good faith and in a manner they reasonably believe to be in the best interests of the Company. A member of the Management Committee or a Manager who so performs his or her duties shall not have any liability to the Company or the Members by reason of being or having been a member of the Management Committee or the Manager. No member of the Management Committee and no Manager shall be liable to the Company or any Member for any loss or damage sustained by the Company or any Member from any cause, except that each Management Committee member and the Manager shall be liable for any loss or damage suffered by the Company or a Member as the result of such individual's own fraud, deceit, gross negligence, willful misconduct, or misappropriation of Company assets.

6.5. Managers Have No Exclusive Duty to Company. The members of the Management Committee and the Manager shall not be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities or in the income or proceeds derived from the same. No member of the Management Committee or the Manager shall incur any liability to the Company or any Member as a result of engaging in any other business or venture.

6.6. Indemnity of the Members of the Management Committee, Managers, Employees and Other Agents. Subject to the last sentence of Section 6.4, the Company shall indemnify each member of the Management Committee and the Manager to the maximum extent permitted under the Act, the Company shall indemnify its employees and other agents to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by the Manager. The Company shall indemnify and hold harmless the members of the Management Committee and the Manager from and against any liability, whether civil or criminal, and any claim, loss, damage, or expense, including reasonable attorneys' fees and litigation costs, incurred in connection with the ordinary and proper conduct of the Company's

business and the preservation of its business and property or by reason of the fact that such individual is or was a member of the Management Committee or a Manager. The obligation of the Company to indemnify the members of the Management Committee, the Manager, and any employees or agents of the Company shall be satisfied out of Company assets only, and if the assets of the Company are insufficient to satisfy its obligation to indemnify under this Section, such member of the Management Committee, the Manager or Company employees or agents shall not be entitled to contribution from any Member.

6.7. Removal. At a meeting called expressly for that purpose, the Manager may be removed at any time, with or without cause, by the vote of the Management Committee. The removal of a Manager who is also a Member shall not affect the Manager's tights as a Member and shall not constitute a withdrawal of a Member.

6.8. Vacancies. Any vacancy occurring for any reason in the position of Manager shall be filled by the vote of the Management Committee.

6.9. Resignation of Manager. The Manager may resign at any time by giving written notice to the Management Committee. The resignation of the Manager shall take effect upon receipt of notice of resignation or at such later time as shall be specified in such notice. Unless otherwise specified in this Agreement, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

6.10. Compensation and Reimbursement for Expenses. Neither members of the Management Committee nor the Manager shall be entitled to compensation from the Company for services rendered to the Company as such. No Member shall be entitled to compensation from the Company for services rendered to the Company as such. Upon the submission of appropriate documentation, each Member, member of the Management Committee, and Manager shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred by such Member or individual on behalf of the Company or at the Company's request. Despite the foregoing, the Administrative Fee shall be payable to the Administrative Manager and the Development Fee shall be payable to the Development Manager as provided in this Agreement.

6.11. Right to Rely on the Manager. Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Manager as to:

6.11.1. The identity of the Manager or Member.

6.11.2. The existence or nonexistence of any fact or facts which constitute a condition precedent to acts on behalf of the Company by the Manager or which are in any other manner germane to the affairs of the Company.

6.11.3. The Persons who are authorized to execute and deliver any instrument or document of the Company.

6.11.4. Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

6.12. Budget and Development Plan. The Members have agreed upon a Budget and Development Plan for Phase 1 of the Project, a copy of which has been initialed by the Members for identification purposes and is on file with each of the Members. Before commencing land development for Phase 2 of the Project, the Members shall adopt a Budget and Development Plan setting forth, in reasonable detail, the following for Phase-2: projected revenues and expenses, contingent expenses, debt incurrence and payment, capital needs, and the elements and timing of required development work. Prior to the end of each fiscal year of the Company, the Management Committee shall review each then current Budget and Development Plan and approve any amendments to the same as may be necessary for the next fiscal year, subject to Sections 6.2.15 and 6.3.7. The Administrative Manager shall prepare and submit to the Members and Management Committee, at least fifteen (15) days before approval is to be sought, the Budget and Development Plan for Phase 2 and any annual amendments to the then current Budget and Development Plan for either Phase. Any Member may also propose interim (mid-year) amendments to the then current Budget and Development Plan for either Phase and such amendments shall be accepted or rejected by the Management Committee or the Members, as the case may be, in accordance with Sections 6.2.15 and 6.3.7, within fifteen (15) days after submission to them.

7. RIGHTS AND OBLIGATIONS OF MEMBERS.

7.1. No Restrictions on Other Business. Nothing in this Agreement shall be deemed to restrict in any way the rights of any Member or any Affiliate of any Member to conduct any other business or activity whatsoever and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation from the same. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

7.2. Indemnification of Members. The Company shall indemnify and hold harmless the Members and their respective members, directors, officers, employees and agents from and against any cost, expense, claim, liability or damage incurred by reason of such Person's relationship to the Company or any act performed or omitted to be performed by them in connection with the business of the Company, including, without limitation, reasonable attorney's fees and costs incurred by such Person in connection with the defense of any action based on any such act or omission. However, the Company shall have no indemnification obligation with respect to any act or omission of any Person that constitutes willful misconduct or gross negligence or was in breach of this Agreement. All judgments with respect to which any Person is entitled to indemnification may only be satisfied from the Company's assets. Any Person entitled to be indemnified under this Section shall also be entitled to recover its attorney's fees and costs of enforcing this indemnity only from the Company's assets.

8. BOOKS AND RECORDS, ACCOUNTING, TAX ELECTIONS, ADMINISTRATIVE MANAGER.

8.1. Books and Records. The Administrative Manager shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with GAAP, consistently applied, and the requirements of the Act and shall be available at the principal office of the Company for examination by any Member, or the Member's duly authorized representatives, at any and all reasonable times during normal business hours upon not less than three (3) business days' prior written notice to the Administrative Manager.

8.2. Bank Accounts. The bank accounts of the Company shall be maintained in those banking institutions selected by the Management Committee and withdrawals shall be made only in the regular course of business upon the signature of the Manager or other signatories designated by the Management Committee.

8.3. Accountants. The accountants for the Company shall be the firm of public accountants engaged by the Administrative Manager for this purpose, subject to the approval of each Member. Such approval shall not be unreasonably withheld. Each Member confirms that Grossberg Company LLP shall be acceptable to serve as the accountants for the Company. The accountants shall prepare all tax returns of the Company.

8.4. Reports to Members. Within twenty (20) days after the end of each calendar month, the Administrative Manager shall furnish to each of the Members internally prepared unaudited statements for the Company showing revenues and expenses, current cash position, and resources and uses through the end of the previous month. Within thirty (30) days after the end of each accounting year of the Company, the Administrative Manager shall furnish to each of the Members an internally prepared unaudited statement showing such matters for the full preceding accounting year. Within one hundred twenty (120) days after the end of each accounting year of the Company, the Administrative Manager shall furnish to each of the Members (i) an audited statement for the Company prepared by the accountants for the Company covering the full preceding accounting year, including a balance sheet and profit and loss statement, and (ii) all information necessary to prepare applicable local, state and federal tax returns.

8.5. Tax Matters Partner. The Administrative Manager shall be the Company's tax matters partner (the "**Tax Matters Partner**"), with all the powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Partner shall keep the Members Wormed of all notices from governmental taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay all reasonable third-party costs and expenses incurred by the Tax Matters Partner in performing these duties. The Tax Matters Partner shall not be obligated to cause the Company to file an election causing the basis of the Company's assets to be adjusted pursuant to the provisions of Code Sections 734, 743 and 754, or any successor provisions or amendments. However, the Tax Matters Partner reserves the right to cause the Company to file such election(s) if it determines that there are good and substantial reasons to do so. The Tax Matters Partner may condition the Company's filing of such election on the

agreement of the Members for whom a special adjustment to the basis of Company assets will be made to pay all costs of preparing and filing such election and all additional accounting or similar costs thereafter incurred by the Company by reason of such election.

8.6. Accounting Year. The accounting year of the Company shall be the calendar year.

8.7. Other Duties of Administrative Manager. The Administrative Manager shall be responsible for paying all invoices to third party suppliers, vendors and contractors on behalf of the Company, paying the fees and expenses of Artery Development Company, LLC under the Development Management Agreement and generally handling the finances of the Company, including administering draw requests under the Wachovia Loan.

8.8. Administrative Fee. In consideration for performing its administrative duties, the Administrative Manager shall be entitled to receive an Administrative Fee from the Company in the annual amount of Forty Thousand Dollars ($40,000). The Administrative Fee shall be payable in equal monthly installments commencing as of November 1, 2004 and continuing until the date that all of the Property has been sold and conveyed by the Company.

9. WITHDRAWAL. A Member may not voluntarily withdraw from the Company without the unanimous consent of the remaining Members.

10. ASSIGNMENT OF INTEREST.

10.1. General Restriction. A Member shall not assign or permit the assignment of the Member's interest without the prior consent of all other Members. Any attempt by a Member to assign its interest without full compliance with this Agreement shall be null, void, and of no force or effect. The Company shall not transfer on its records ownership of any interest unless it is assigned in a manner permitted by this Agreement, and no attempted assignment shall be effective unless and until the Company transfers the interest on its records. All interests shall at all times remain subject to this Agreement, whether or not they are assigned in a manner permitted by this Agreement. As used herein, the term "assign" means, voluntarily or involuntarily, to transfer, sell, bequeath, pledge, hypothecate or otherwise dispose of a Member's interest.

10.2. Requirement of Notice. If a Member (a "**Selling Member**"), desires to assign the Member's interest in the Company, the Selling Member shall give notice of that desire to the Company.

10.3 Admission of Substitute Members.

10.3.1. No Person, including the assignee of a Member's interest, may be admitted as a substitute Member or additional Member unless: (i) all Members consent; (ii) counsel for the Company is of the opinion the admission will not cause the Company to be classified otherwise than as a partnership or to terminate for federal income tax purposes and will not require registration of the interest of the substitute Member or additional Member with the Securities and Exchange Commission or any state securities agency; (iii) the substitute Member or additional Member has agreed to be bound by the provisions of this Agreement and all other

applicable agreements, all in that form which the Members require; and (iv) the Company is reimbursed by the substitute Member or additional Member for the expense of admission. The Manager may waive the requirement of an opinion of counsel. The admission of a Person as a substitute Member or additional Member shall be effective only upon the satisfaction of the foregoing conditions, the amendment of this Agreement to reflect the admission of the substitute Member or additional Member, and the filing of any documents or certificate which are required to be filed by law.

10.3.2. Any permitted assignee of a Member's interest who does not become a substitute Member and desires to make further assignments of the interest shall be subject to all of the restrictions on the transferability of the interest contained in this Agreement. Unless an assignee becomes a substitute Member pursuant to Section 10.3.1, the assignee shall not be entitled to any of the rights granted to a Member under this Agreement or the Act.

10.3.3. Notwithstanding the provisions of this Section 10, in the event of the death of a Member, the personal representative of the deceased Member, and/or the Person to whom. the deceased Member's interest has passed either pursuant to the deceased Member's last will and testament or the laws of intestacy governing his estate, may become a Member if the transferee delivers to the Company a written instrument agreeing to be bound by the provisions of this Agreement and all other applicable agreements.

10.4. No Liability for Allocation or Distributions. Notwithstanding anything in this Agreement to the contrary, the Company shall be entitled to treat the assignor of an interest as the absolute owner of the interest in all respects, whether or not the assignee is admitted as a substitute Member, and shall incur no liability for allocation of Profits, Losses or distributions which are made in. good faith to the assignor until a duly executed written assignment has been received by the Company and the Company has either consented to the assignment in writing or is otherwise bound by such assignment by operation of law.

11. DISSOLUTION.

11.1. Events of Dissolution. The Company shall be dissolved upon the occurrence of any of the following events:

(i) The written agreement of the Members holding seventy-five (75%) percent (75%) of the Percentage Interests in the Company.

(ii) The entry of a decree of judicial dissolution with respect to the Company.

11.2. No Dissolution on Termination of Membership. Notwithstanding any provision of the Act to the contrary, the Company shall continue and shall not dissolve as a result of the death, withdrawal, resignation, expulsion, bankruptcy or dissolution of any Member or any other event that terminates the continued membership of the Member.

11.3. Liquidating Trustee. Upon the dissolution of the Company, the Manager shall act as Liquidating Trustee and shall liquidate and reduce to cash the assets of the Company as promptly as is consistent with obtaining a fair value for the assets and, unless otherwise

required by the Act, shall apply and distribute the proceeds of liquidation, as well as any other Company assets, first, to the payment of debts of the Company, other than debts to Members; and then, in accordance with Section 4.1 of this Agreement. The Manager shall promptly file Articles of Cancellation with the Corporation Commission, and comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

11.4. No Liability for Return of Contribution. No Member shall be personally liable for the return or repayment of all or any portion of the contributions of any other Member. Any return or repayment shall be made solely from the assets of the Company.

12. SALE OF LOTS.

12.1. Lot Sale Agreements.

12.1.1. Beazer has entered into Lot Sale Agreements for the purchase of all of the Phase 1 Lots from the Company. In accordance with the Lot Sale Agreements, Beazer has delivered or is delivering simultaneously with the execution of this Agreement to the Company total sales deposits in the amount of Two Million Three Hundred Ten Thousand Eight Hundred Seventy-Four Dollars ($2,310,874) (the "**Phase 1 Sales Deposits**"). Upon receipt in full of the Phase 1 Sales Deposits, the Company shall release 100% of the Phase 1 Sales Deposits to Artery, less such amounts as the Management Committee may determine to be appropriate to withhold as reserves. The amount released to Artery shall be a non-interest bearing loan by the Company to Artery (the "**Deposit Loan**"). The Deposit Loan shall be repaid by Artery to the Company in four (4) equal quarterly installments, with the first such installment being due and payable on the first day of the first month following the date on which Artery has received the return in full of its equity investment in the Project from distributions by the Company and with subsequent installments being due and payable every three (3) months thereafter until the Deposit Loan is repaid in full. As of the date of this Agreement, Artery's outstanding equity investment in the Project is approximately $3,448,606.00. All sales deposits received under the Lot Sale Agreements for the Phase 2 Lots (the "**Phase 2 Sales Deposits**"), less such amounts as the Management Committee may determine to be appropriate to withhold as reserves, shall, when received, be released by the Company to Artery and Beazer according to their Percentage Interests.

12.1.2. Simultaneously with the execution of this Agreement, the Company and Beazer are entering into a First Right of Purchase Agreement (the "**First Purchase Agreement**") providing certain rights to Beazer for the purchase of the Phase 2 Lots, except for twenty-three (23) Phase 2 Lots committed to WVTD. The First Purchase Fee of Five Hundred Thousand Dollars ($500,000) paid by Beazer to the Company under the First Purchase Agreement shall be held by the Company as reserves and may be used to meet Company obligations. If all or any part of the First Purchase Fee is forfeited to the Company as provided in the First Purchase Agreement, such amount shall be distributed by the Company to Artery as a special allocation of Available Proceeds as provided in Section 5.1.

12.1.3. The Phase I Sales Deposits and any Phase 2 Sales Deposits paid to the Company are collectively referred to in this Agreement as the "**Sales Deposits**". In the event

that Beazer becomes entitled to a refund of any of the Sales Deposits under the terms of the Lot Sale Agreements, then, to the extent that such Sales Deposits have been released to Artery and have not previously been repaid by Artery to the Company, Artery shall return to the Company, for release to Beazer, such Sales Deposits. Artery's delivery of this sum to the Company shall be credited as a payment on the outstanding balance, if any, of the Deposit Loan. If any Sales Deposits have been distributed to Beazer in its capacity as a Member of the Company and the Company subsequently becomes obligated to refund the Sales Deposits to Beazer in its capacity as "Purchaser" under the Lot Sale Agreements, the Sales Deposits previously distributed to Beazer shall be credited against the Company's refund obligation. Beazer agrees that, if the Company is unable to perform or is delayed in performing its obligations under any of the Lot Sale Agreements because of any failure by Beazer to perform its obligations under this Agreement, including, without limitation, Beazer's failure to provide any Capital Contribution when required, the Company shall not be deemed to be in default under the Lot Sale Agreements and Beazer shall not be entitled to terminate any of the Lot Sale Agreements or receive a refund of any of the Sales Deposits. Instead, the time for performance of the Company's obligations under the Lot Sale Agreements shall be extended for a period of time equal to the period of delay caused to the Company by Beazer's failure to perform its obligations under this Agreement.

12.2. Default Under Lot Sale Agreements.

12.2.1. In the event that Beazer defaults under any of the Lot Sale Agreements beyond the applicable cure period specified in the Lot Sale Agreements: (i) Beazer, within ten (10) days after written demand by Artery, shall deliver to the Company, for release to Artery, any of the Sales Deposits previously distributed to Beazer, less any amounts of Beazer's share of the Sales Deposits that have been credited towards the purchase price for Lots in accordance with the Lot Sale Agreements, and, upon receipt, the Company shall immediately distribute such sum to Artery pursuant to Artery's special allocation under Section 5.1, (ii) the Company shall immediately distribute to Artery any Sales Deposits then being held by the Company and Artery shall be entitled to retain for its own account any of the Sales Deposits previously distributed to Artery pursuant to Artery's special allocation under Section 5.1, (iii) Beazer shall have no further right to participate in the management of the Company and Artery shall have the unilateral right to make all decisions and exercise all rights required to be exercised by the Members unanimously, and (iv) Artery shall be entitled to exercise the purchase right provided for in Section 12.2.2.

12.2.2. In the event that Beazer defaults under any of the Lot Sale Agreements as provided in Section 12.2.1, then, in addition to any other available remedies, Artery shall have a right (but not the obligation) to purchase Beazer's membership interest in the Company for an amount equal to the full amount of Beazer's Capital Contributions that have not previously been repaid to Beazer (reduced in an amount equal to the outstanding balance of any loans made by Artery as a Contributing Member to Beazer as a Non-Contributing Member pursuant to Section 3.9 above) as of the date of the closing of the purchase of Beazer's membership interest. This purchase option may be exercised by Artery giving written notice to Beazer at any time within ninety (90) days after the termination of any of the Lot Sale Agreements for Beazer's default and the closing shall be held within thirty (30) days after Beazer's receipt of the written notice. The actual closing date shall be set by Artery.

12.3. Development Management Agreement. Simultaneously with the execution of this Agreement, the Company and the Development Manager are entering into a Development Management Agreement providing for the Development Manager's management and supervision of the development work required for the Property and the payment of the Development Fee and certain additional overhead costs to the Development Manager for performing these responsibilities.

13. NOTICES.

13.1. How Given. Any notice, demand, consent, election, offer, approval, request or other communication ("notice") required or permitted under this Agreement must be in writing and either (i) delivered personally, with signed receipt, (ii) sent by reputable overnight courier service, with signed receipt, (iii) sent by certified mail, postage prepaid, return receipt requested, or (iv) sent by fax, with written evidence of transmission and provided that the notice is sent the same day by one of the preceding methods of delivery. Any notice to be given under this Agreement by the Company may be given by the Manager or any Member.

13.2. Where Given. A notice to the Company must be addressed to the Company's principal office. A notice to a Member must be addressed as follows:

If to Artery:

The Artery Group, LLC
Artery Plaza
7200 Wisconsin Avenue, Suite 1000
Bethesda, Maryland 20814
Attn: Mr. B. Hayes McCarty, Executive Vice President
Facsimile: 301.961.8001

with a copy to:

The Artery Group, LLC
Artery Plaza
7200 Wisconsin Avenue, Suite 1000
Bethesda, Maryland 20814
Attn: Laurie G. Ballenger, Senior Vice President & General
Counsel Facsimile: 301.961.8036

If to Beazer:

Beazer Homes Corp.
14901 Bogle Drive
Suite 100
Chantilly, Virginia 20151
Attn: Douglas W. Macleod
Fax No. 703.961.9740

with a copy to:

Thomas Colucci, Esq.
Walsh, Colucci, Lubeley, Emrich & Terpak, P.C. 2200
Clarendon Blvd., 13th Floor
Arlington, Virginia 22201
Fax No. 703.528.6050

13.3. When Given. A notice delivered personally or by overnight courier service will be deemed to have been delivered only when receipt of the same is acknowledged in writing by the Person to whom it is sent. A notice sent by mail will be presumed to have been delivered three (3) business days after it is mailed. A notice sent by fax will be deemed to have been delivered on the date and at the time shown on the written evidence of transmission, provided that (i) such date is not a Saturday, Sunday, or legal holiday and such time is earlier than 6:00 pin, and (ii) the notice was sent the same day by one of the other methods prescribed in Section 12.1. If the written evidence of transmission displays a date of transmission which is a Saturday, Sunday, or legal holiday or a time of transmission which is later than 6 pm, the notice will be deemed to have been delivered on the next business day. If a notice sent by fax was not sent the same day by one of the other methods prescribed in Section 13.1, the notice will be deemed to have been delivered on the day of presumed for notices given by such other method, as set forth in the preceding provisions of this Section 13.3.

13.4. Substitute Addresses. Any party may designate, by notice to all of the others, substitute addresses or addresses for notices and thereafter notices are to be directed to those substitute addresses or addressers.

14. SPECIFIC PERFORMANCE. Irreparable injury will result from a breach of any provision of this Agreement, and money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent injunctions (i) restraining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

15. AMENDMENT. Neither this Agreement nor the Articles of Organization for the Company may be amended without the unanimous consent of the Members.

16. ARBITRATION. The parties shall submit all controversies, claims, or questions arising under or with respect to this Agreement to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**") then in effect, as modified by this Section. The arbitration proceedings shall be held in Montgomery County, Maryland and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The award rendered by the arbitrator shall be final and binding on the parties and not subject to further appeal. Such arbitration shall be initiated by written notice by either party (the "**Claimant**") to the other party, which notice shall request the appointment of one (1) neutral arbitrator by the American Arbitration Association. The hearing shall commence within twenty (20) days of the appointment of the arbitrator. At least ten (10) days before the hearing,

each party shall submit to the other and to the arbitrators a written statement of its case, copies of all documents upon which it intends to rely at the hearing, and a list of the witnesses it intends to call to testify at the hearing (a "**Case Summary**"). Each party may take such depositions in connection with the matter as it deems appropriate, with the other party and its counsel being afforded reasonable advance notice and opportunity to attend the depositions, but no such depositions shall postpone the time for the hearing set forth above. There shall be no more than five (5) days of hearing on the disputed matter and the arbitrator shall not be bound by the formal rules of evidence or civil procedure but shall consider all documents and oral testimony in the manner of a reasonable businessperson in the conduct of his or her ordinary affairs. The arbitrator shall issue a final award within seven (7) days after completion of the hearing. The arbitrator shall have the authority to award any remedy or relief that a court in Maryland could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of injunctive or other provisional relief, or the imposition of sanctions for abuse or frustration of the arbitration process. The arbitration award will be in writing and specify the factual and legal basis for the award. The arbitrator must apply Maryland law. The arbitrator shall instruct the non-prevailing party to pay all costs of the proceedings, including the fees and expenses of the arbitrators and the reasonable attorneys' fees and expenses of the prevailing party. If the arbitrator determine that there is not a prevailing party, each party shall be instructed to bear its own costs and to pay one-half of the fees and expenses of the arbitrator. The arbitrator shall limit discovery to written interrogatories and demands in the production of documents.

17. MISCELLANEOUS.

17.1. Counterparts. This Agreement may be executed in counterparts and as so executed shall constitute one agreement binding on all parties, notwithstanding the fact that all parties have not signed the original or the same counterpart.

17.2. Entire Understandings. This Agreement contains the entire understanding of the parties relating to the Company. It may not be changed orally, but only by a writing signed by all of the parties.

17.3. No Waiver. The waiver of any breach of any term of this Agreement shall not be construed as a waiver of any subsequent breach of that term, but such term shall continue in full force and effect.

17.4. Investment Intent. Each Member represents and warrants that it is making' this investment and purchasing its interest in the Company for its own account, for investment purposes and not with a view towards resale or distribution.

17.5. Successors. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and permitted assigns.

17.6. Further Assurances. The parties shall execute any further instruments and shall perform any acts which are, or may become, necessary to effectuate and carry on the Company in accordance with this Agreement and the requirements of law.

17.7. Captions. The captions used in this Agreement are for convenience and reference only and shall not be deemed to modify or construe any of the terms' or provisions this Agreement.

17.8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, excluding choice of laws principles.

17.9. Tenses. In this Agreement, the singular shall include the plural and the masculine gender shall include the feminine and neuter and vice versa, unless the context otherwise requires.

17.10. Waiver of Partition. The Members waive any right of partition or any right to take any other action that otherwise might be available to them for the purpose of severing their relationship with the Company or their interest in the assets held by the Company from the interest of other Members.

17.11. Jurisdiction and Venue. Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the District of Maryland or any Maryland state court having jurisdiction over the subject matter of the dispute or matter. All Members consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

17.12. Separability of Provisions. Each provision of this Agreement shall be considered separable and if, for any reason, any provision or provisions in this Agreement arc determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS OF THIS AGREEMENT, the parties have affixed their hands and seals as of the date first written above.

WITNESS:

THE ARTERY GROUP, LLC,
a Maryland limited liability company

/s/ Melissa Balendent

By: /s/ B. Hayes McCarty
B. Hayes McCarty
Executive Vice President

BEAZER HOMES CORP.,
a Tennessee corporation

/s/ Laurie S. Uhthoff

By: /s/ Brian S. Buchanan
Brian S. Buchanan
Senior Vice President,
Virginia Division

Parcel One:

Townhouse Lots TH-1 through and including TH-33; Single Family Home Lots One (1) through and including Eighty (80), One Hundred One (101) through and including One Hundred Five (105) and One Hundred Twelve (112) through and including One Hundred Forty-One (141); and Parcel FCS (consisting of 3.62544 acres), Parcel CLVG1 (consisting of 2.49357 acres), Parcel CL1 (consisting of 1.52538 acres) and Parcel CL2 (consisting of 0.27462 acres); in a subdivision known as "ELYSIAN HEIGHTS, Phase I" as the same appears duly platted by Deed of Subdivision, Dedication, Easement and Conveyance recorded as Instrument No. 200403120022354 and by plat entitled Record Plat of Elysian Heights, Phase I, recorded as Instrument No. 200403120022355.

Parcel Two:

SEE EXHIBIT "A" (consisting of 5 parts)

TOGETHER WITH the right to use Parcel B (hereafter defined) for wastewater treatment and water services, as more particularly set forth in a Declaration of Easement and Restrictive Covenant recorded in Deed Book 1819 at Page 1787, said Parcel B being more particularly described in said Declaration of Easement and Restrictive Covenant and in a Deed recorded in Deed Book 1819, Page 1784.

TOGETHER WITH an easement for ingress and egress and for the construction and maintenance of utilities in the "Private Area Easement" areas consisting of Parcels C through and including Parcel N, all as more particularly described and set forth in a Deed of Subdivision, Dedication, Easement and Conveyance recorded as Instrument No. 200403120022354 and by plat entitled Record Plat of Elysian Heights, Phase I, recorded as Instrument No. 200403120022355.

BOUNDARY DESCRIPTION OF A PORTION OF THE LANDS
OF ELYSIAN LAND, LLC, PARCEL 2, CONSISTING OF
FIVE SEPARATE TRACTS
DEED BOOK 1776, PAGE 1736
CATOCTIN MAGISTERIAL DISTRICT
LOUDOUN COUNTY, VIRGINIA

Tract 2A

"Beginning at a point in the westerly right of way line of Arcadian Drive, a corner to the lands of Washington-VA Traditional Development Sites, Inc.; thence with the lands of Washington-VA Traditional Development Sites, Inc. for the following 16 courses: N 71° 44' 49" W — 133.70 feet to a point; thence N. 63° 56' 31" W — 78.82 feet to a point; thence 69° 08' 44" W — 67.62 feet to a point; thence S 85° 43' 13" W — 221.95 feet to a point; thence N 23° 58' 49" W — 204.36 feet to a point; thence N 78° 53' 35" E — 222.08 feet to a point; thence with the Arc of a curve to the right 25.43 feet (Radius — 40.00 feet; Chord Bearing — N 11° 06' 25" W; Chord — 25.00 feet) to a point; thence S 78° 53' 35" W — 217.41 feet to a point; thence N 13° 57' 49" E — 219.21 feet to a point; thence N 37° 41' 13" E — 184.51 feet to a point; thence N 59° 50' 31" E — 121.69 feet to a point; thence N 33° 28' 26" W — 141.16 feet to a point; thence N 56° 31' 34" E — 146.33 feet to a point; thence S 77° 42' 54" E — 219.55 feet to a point; thence S 46° 12' 08" E — 178.27 feet to a point; thence S 01° 44' 18" E — 130.52 feet to a point in the northerly right of way line of Little Angel Court; thence with the right of way line of Little Angel Court for the five following courses: N 61° 50' 48" W — 32.25 feet to a point; thence with the Arc of a curve to the left 31.53 feet (Radius — 420.00 feet; Chord Bearing — N 63° 59' 51" W; Chord — 31.52 feet) to a point; thence S 23° 51' 07" W — 40.00 feet to a point; thence with the Arc of a curve to the right 28.53 feet (Radius — 380.00 feet; Chord Bearing — S 63° 59' 51" E; Chord — 28.52 feet)

to a point; thence S 61° 50’ 48” E — 147.00 feet to a point at the intersection with the westerly right of way line with Arcadian Drive; thence with the westerly right of way line of Arcadian Drive for the three following courses with the Arc of a curve to the right 48.69 feet (Radius — 31.00 feet; Chord Bearing — S 16° 50’ 48” E; Chord — 43.84 feet) to a point; thence S 28° 09’ 12” W — 266.19 feet to a point; thence with the Arc of a curve to the right 47.56 feet (Radius — 31.00 feet; Chord Bearing — S 72° 06’ 20” W; Chord — 43.03 feet) to a point at the intersection with the right of way of Peter’s Court; thence with the right of way of Peter’s Court for the five following courses: N 63° 56’ 31” W — 131.46 feet to a point; thence with the Arc of a curve to the left 31.01 feet (Radius — 620.00 feet; Chord Bearing — N 65° 22’ 30” W; Chord — 31.01 feet) to a point; thence S 23° 11’ 31” W — 40.00 feet to a point; thence with the Arc of a curve to the right 29.01 feet (Radius — 580.00 feet; Chord Bearing — S 65° 22’ 30” E; Chord — 29.01 feet) to a point; thence S 63° 56’ 31” E — 132.78 feet to a point at the intersection with the westerly right of way line of Arcadian Drive; thence with the westerly right of way line of Arcadian Drive for the three following courses, with the Arc of a curve to the right 45.20 feet (Radius — 31.00 feet; Chord Bearing — S 22° 10’ 27” E; Chord — 41.30 feet) to a point; thence with the Arc of a curve to the left 146.87 feet (Radius — 422.00 feet; Chord Bearing — S 09° 37’ 25” W; Chord 146.13 feet) to a point; thence S 00° 20’ 48” E — 15.83 feet to the point of beginning.”

Containing ..... 9.9479 Acres

BOUNDARY DESCRIPTION OF A PORTION OF THE LANDS
OF ELYSIAN LAND, LLC, PARCEL 2, CONSISTING OF
FIVE SEPARATE TRACTS
DEED BOOK 1776, PAGE 1736
CATOCTIN MAGISTERIAL DISTRICT
LOUDOUN COUNTY, VIRGINIA

Tract 2B

"Beginning at a point in the northerly right of way line of Little Angel Court, a corner to the lands of Washington-VA Traditional Development Sites, Inc.; thence with the Washington-VA Traditional Development Sites, Inc. land for the 19 following courses: N 01° 44' 18" W — 124.76 feet to a point; thence N 38° 34' 29" W — 328.15 feet to a point; thence N 20° 14' 06" W — 60.78 feet to a point; thence N 12° 54' 22" W — 107.00 feet to a point; thence N 05° 34' 37" W — 107.00 feet to a point; thence N 01° 45' 07" E — 107.00 feet to a point; thence N 09° 04' 52" E — 107.08 feet to a point; thence N 17° 02' 58" E — 125.2 feet to a point; thence N 23° 20' 26" E — 85.82 feet to a point; thence S 66° 39' 34" E — 166.50 feet to a point; thence S 42° 57' 01" E — 53.93 feet to a point; thence with the Arc of a curve to the right 20.11 feet (Radius — 65.00 feet; Chord Bearing — N 44° 01' 22" E; Chord — 20.03 feet) to a point; thence N 42° 57' 01" W — 57.07 feet to a point; thence N 66° 39' 34" W — 170.97 feet to a point; thence N 34° 05' 19" E — 155.38 feet to a point; thence N 77° 55' 33" E — 124.84 feet to a point; thence S 66° 39' 34" E — 851.47 feet to a point; thence S 47° 09' 06" E — 422.47 feet to a point; thence S 56° 26' 24" W — 167.69 feet to a point in the northerly right of way line of Arcadian Drive; thence with the northerly right of way of Arcadian Drive for the five following courses: N 33° 33' 36" W — 15.00 feet to a point; thence with the Arc of a curve to the left 31.92 feet (Radius — 372.00 feet; Chord Bearing — N 36° 01' 07" W; Chord — 31.92 feet) to a point; thence S 51° 31' 22" W —

44.00 feet to a point; thence with the Arc of a curve to the right 28.15 feet (Radius — 328.00 feet; Chord Bearing — the Arc of a curve to the right 40.10 feet (Radius — 31.00 feet; Chord Bearing — N 42° 53’ 37” W; Chord — 37.36 feet) to a point; thence with the Arc of a curve to the left 24.71 feet (Radius — 322.00 feet; Chord Bearing — N 08° 01’ 57” W; Chord — 24.71 feet) to a point; thence S 79° 46’ 09” W — 44.00 feet to a point; thence with the Arc of a curve to the right 186.24 feet (Radius — 278.00 feet; Chord Bearing — S 08° 57’ 40” W; Chord — 182.78 feet) to a point; thence S 28° 09’ 12” W — 2.68 feet to a point; thence with the Arc of a curve to the right 48.69 feet (Radius — 31.00 feet; Chord Bearing — S 73° 09’ 12” W; Chord — 43.84 feet) to a point in the northerly right of way line of Little Angel Court; thence with the northerly right of way of Little Angel Court N 61° 50’ 48” W — 48.70 feet to the point of beginning.”

Containing ..... 27.2915 Acres

BOUNDARY DESCRIPTION OF A PORTION OF THE LANDS
OF ELYSIAN LAND, LLC, PARCEL 2, CONSISTING OF
FIVE SEPARATE TRACTS
DEED BOOK 1776, PAGE 1736
CATOCTIN MAGISTERIAL DISTRICT
LOUDOUN COUNTY, VIRGINIA

Tract 2C

"Beginning at a point in the easterly right of way line of Eagles Rest Drive, a corner to the Washington-VA Traditional Development Sites, Inc. land; thence with the Washington-VA Traditional Development Sites, Inc. land for the six following courses: S 55° 17' 38" E — 77.59 feet to a point; thence S 08° 05' 56" E — 115.91 feet to a point; thence S 16° 31' 02" W — 295.76 feet to a point; thence S 26° 48' 50" W — 246.20 feet to a point; thence S 64° 42' 12" W — 269.00 feet to a point; thence N 41° 20' 48" W — 151.25 feet to a point in the easterly right of way line of Eagles Rest Drive; thence with the easterly right of way line of Eagles Rest Drive for the four following courses: N 48° 39' 12" E — 127.61 feet to a point; thence with the Arc of a curve to the left 347.95 feet (Radius — 523.00 feet; Chord Bearing — N 32° 39' 12" E; Chord — 343.44 feet) to a point; thence N 16° 39' 12" E — 107.18 feet to a point; thence with the Arc of a curve to the right 243.39 feet (Radius — 327.00 feet; Chord Bearing — N 37° 58' 34" E; Chord — 237.81 feet) to the point of beginning."

Containing ..... 3.8443 Acres

BOUNDARY DESCRIPTION OF A PORTION OF THE LANDS
OF ELYSIAN LAND, LLC, PARCEL 2, CONSISTING OF
FIVE SEPARATE TRACTS
DEED BOOK 1776, PAGE 1736
CATOCTIN MAGISTERIAL DISTRICT
LOUDOUN COUNTY, VIRGINIA

Tract 2D

"Beginning at a point in the northwesterly right of way line of Eagles Rest Drive, a corner to the land of Washington-VA Traditional Development Sites, Inc.; thence with the lands of Washington-VA Traditional Development Sites, Inc. for the three following courses: N 04° 53' 27" W — 364.91 feet to a point; thence S 80° 49' 37" E — 208.80 feet to a point; thence S 56° 02' 02" E — 20.00 feet to a point in the westerly right of way line of Heavenly Circle; thence with the westerly right of way line of Heavenly Circle for the three following courses, with the Arc of a curve to the left 120.65 feet (Radius — 140.00 feet; Chord Bearing — S 09° 16' 42" W; Chord — 116.95 feet) to a point; thence with the Arc of a curve to the right 129.09 feet (Radius — 480.00 feet; Chord Bearing — S 07° 42' 17" E; Chord — 128.71 feet) to a point; thence S 00° 00' 00" E — 50.49 feet to a point at the intersection with the northwesterly right of way line of Eagles Rest Drive; thence with the northwesterly right of way line of Eagles Rest Drive for the three following courses, with the Arc of a curve to the right 39.26 feet (Radius — 25.00 feet; Chord Bearing — S 44° 59' 29" W; Chord — 35.35 feet) to a point; thence S 89° 58' 57" W — 143.54 feet to a point; thence with the Arc of a curve to the left 21.48 feet (Radius — 373.00 feet; Chord Bearing — S 88° 19' 59" W; Chord — 21.47 feet) to the point of beginning."

Containing ..... 1.5574 Acres

BOUNDARY DESCRIPTION OF A PORTION OF THE LANDS
OF ELYSIAN LAND, LLC, PARCEL 2, CONSISTING OF
FIVE SEPARATE TRACTS
DEED BOOK 1776, PAGE 1736
CATOCTIN MAGISTERIAL DISTRICT
LOUDOUN COUNTY, VIRGINIA

Tract 2E

"Beginning at a point in the westerly right of way line of Heavenly Circle, a corner to the Washington-VA Traditional Development Sites, Inc. land; thence with the Washington-VA Traditional Development Sites, Inc. land for the two following courses: N 44° 25' 33 W — 24.49 feet to a point; thence N 80° 49' 37" W — 130.31 feet to a point; a corner to the Elysian Infrastructure, Inc. land; thence with the Elysian Infrastructure, Inc. land N 09° 10' 23" E — 52.30 feet to a point; thence with the Elysian Infrastructure, Inc. land and the Washington-VA Traditional Development Sites, Inc. land N 26° 37' 40" E — 449.36 feet to a point; thence with the Washington-VA Traditional Development Sites, Inc. land for the 26 following courses: N 75° 47' 59" E — 238.96 feet to a point; thence S 63° 22' 20" E — 439.73 feet to a point; thence S 77° 48' 35" E — 340.77 feet to a point; thence S 63° 22' 20" E — 356.90 feet to a point; thence S 26° 37' 40" W — 550.60 feet to a point; thence N 63° 22' 20" W — 143.73 feet to a point; thence S 31° 33' 58" W — 399.24 feet to a point; thence with the Arc of a curve to the right 160.90 feet (Radius — 320.00 feet; Chord Bearing — S 45° 58' 15" W; Chord — 159.21 feet) to a point; thence with the Arc of a curve to the left 38.34 feet (Radius — 25.00 feet; Chord Bearing — S 16° 26' 42" W; Chord — 34.69 feet) to a point; thence S 27° 29' 07" E — 458.24 feet to a point; thence with the Arc of a curve to the right 397.13 feet (Radius — 200.00 feet; Chord Bearing — S 29° 23' 59" W; Chord — 335.03 feet) to a point; thence with the Arc of a curve to the left 161.09 feet (Radius — 230.00 feet; Chord Bearing — S 66° 13' 12" W; Chord — 157.82 feet) to a point; thence with the

Arc of a curve to the right 126.14 feet (Radius — 220.00 feet; Chord Bearing — S 62° 34’ 48” W; Chord — 124.42 feet) to a point; thence S 10° 28’ 05” W — 231.97 feet to a point; thence N 73° 04’ 08” W — 224.69 feet to a point; thence N 44° 28’ 17” W — 192.73 feet to a point; thence N 28° 24’ 02” W — 148.45 feet to a point; thence N 13° 16’ 29” W — 161.58 feet to a point; thence N 11° 32’ 39” E — 368.71 feet to a point; thence 83° 04’ 57” E — 213.65 feet to a point; thence with the Arc of a curve to the left 53.63 feet (Radius — 230.00 feet; Chord Bearing — N 20° 48’ 17” W; Chord — 53.51 feet) to a point; thence N 27° 29’ 07” W — 63.93 feet to a point; thence N 88° 36’ 56” W — 162.58 feet to a point; thence N 60° 10’ 09” W — 86.81 feet to a point; thence N 40° 08’ 05” W — 207.67 feet to a point; thence N 00° 00’ 00” E — 429.41 feet to a point in the southerly right of way line of Eagles Rest Drive; thence with the southerly right of way line of Eagles Rest Drive for the six following courses, with the Arc of a curve to the right 21.49 feet (Radius — 327.00 feet; Chord Bearing — N 88° 05’ 59” E; Chord 21.49 feet) to a point; thence N 89° 58’ 57” E — 143.52 feet to a point; thence with the Arc of a curve to the right 39.03 feet (Radius — 25.00 feet; Chord Bearing — S 45° 17’ 33” E; Chord — 35.19 feet) to a point; thence N 90° 00’ 00” E — 40.00 feet to a point; thence with the Arc of a curve to the right 41.89 feet (Radius — 25.00 feet; Chord Bearing — N 47° 59’ 55” E; Chord — 37.16 feet) to a point; thence with the Arc of a curve to the right 112.22 feet (Radius — 530.00 feet; Chord Bearing — S 77° 56’ 13” E; Chord 112.01 feet) to a point; thence with the westerly and northerly right of way line of Eagles Rest Drive for the three following courses: N 18° 07’ 44” E — 40.00 feet to a point; thence with the Arc of a curve to the left 129.74 feet (Radius — 570.00 feet; Chord Bearing — N 78° 23’ 31” W; Chord — 129.46 feet) to a point; thence with the Arc of a curve to the right 37.05 feet (Radius — 25.00 feet; Chord Bearing — N 42° 27’ 23” W; Chord — 33.75 feet) to a point at the

intersection with the easterly right of way of Heavenly Circle; thence with the easterly right of way of Heavenly Circle for the four following courses: N 00° 00’ 00” E — 55.83 feet to a point; thence with the Arc of a curve to the left 139.85 feet (Radius — 520.00 feet; Chord Bearing — N 07° 42’ 17” W; Chord — 139.43 feet) to a point; thence with the Arc of a curve to the right 173.01 feet (Radius — 100.00 feet; Chord Bearing — N 34° 09’ 10” E; Chord — 152.22 feet) to a point; thence N 06° 17’ 05” W — 40.00 feet to a point in the westerly right of way line of Heavenly Circle; thence with the westerly right of way line of Heavenly Circle, with the Arc of a curve to the left 93.20 feet (Radius — 140.00 feet; Chord Bearing — S 64° 38’ 41” W; Chord — 91.48 feet) to the point of beginning.”

Containing ..... 47.7700 Acres

EXHIBIT A

Members, Percentage Interests and Capital Contributions

Name and Address	Percentage Interest	Initial Cash Contribution
The Artery Group, LLC 7200 Wisconsin Avenue Suite 1000 Bethesda, Maryland 20814 Attn: B. Hayes McCarty, Executive Vice President	51.00%	$100.00
Beazer Homes Corp. 14901 Bogle Drive Suite 100 Chantilly, Virginia 20151 Attn: Douglas W. Macleod	49.00%	$100.00
TOTALS:	100.00%	$200.00

FIRST AMENDMENT TO
AMENDED AND RESTATED OPERATING AGREEMENT

(Artery Potomia, LLC)

This Amendment, made this 30th day of October, 2007, by and between **THE ARTERY GROUP, LLC**, a Maryland limited liability company ("**Artery**"), and **BEAZER HOMES CORP.**, a Tennessee corporation ("**Beazer**").

RECITALS

A. Artery and Beazer are the sole members of Artery Potomia, LLC, a Virginia limited liability company (the "**Company**"), pursuant to the Amended and Restated Operating Agreement for Artery Potomia, LLC, dated December 3, 2004 (the "**Operating Agreement**").

B. Artery and Beazer desire to modify the Operating Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties, Artery and Beazer agree as follows:

1. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the meanings set forth for them in the Operating Agreement.

2. Clause (ii) of Section 12.2.1 is deleted and replaced by the following: "(ii) the Company shall immediately distribute to Artery any Sales Deposits then being held by the Company, Artery shall automatically be released from any obligation to repay the Deposit Loan. to the Company or otherwise to return any Sales Deposits to the Company or Beazer, and Artery shall be entitled to retain for its own account all of the Sales Deposits previously delivered to Artery, all in accordance with Artery's special allocation under Section 5.1. The foregoing remedy shall apply only to those Sales Deposits relating to Lots Sales Agreements between the Company and Beazer."

3. In the event of any inconsistency between the Operating Agreement and this Amendment, this Amendment shall govern. The terms of this Amendment shall be binding upon and inure to the benefit of Artery, Beazer, and their respective successors and assigns. The Operating Agreement remains in full force and effect and, except as expressly provided in this Amendment, is unmodified. The Recitals set forth above are incorporated in and made a part of this Amendment. This Amendment may be executed in counterparts, all of which together shall constitute a single instrument Fax and electronic signatures to this Amendment shall be as effective and enforceable as original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed and sealed this Amendment as of the date first written above.

WITNESS:

THE ARTERY GROUP, LLC,
a Maryland limited liability company

By: /s/ B. Hayes McCarty
B. Hayes McCarty
Executive Vice President

BEAZER HOMES CORP.
a Tennessee corporation

By: /s/ Darren DuPree
Name: Darren DuPree
Title: Market Manager

SECOND AMENDMENT TO
AMENDED AND RESTATED OPERATING AGREEMENT

(Elysian Heights Potomia, LLC, f/k/a Artery Potomia, LLC)

This Second Amendment to Amended and Restated Operating Agreement (this "**Amendment**"), is made as of this 30th day of June, 2009, by and between **THE ARTERY GROUP, LLC**, a Maryland limited liability company ("**Artery**"), and **BEAZER HOMES CORP.**, a Tennessee corporation ("**Beazer**").

R E C I T A L S

A. Artery and Beazer are the sole members of Elysian Heights Potomia, LLC, formerly known as Artery Potomia, LLC, a Virginia limited liability company (the "**Company**"), pursuant to the Amended and Restated Operating Agreement for Artery Potomia, LLC, dated December 3, 2004 (as amended by that certain First Amendment dated October 30, 2007, the "**Operating Agreement**").

B. Artery and Beazer, among others, are parties to that certain Settlement Agreement of even date herewith, pursuant to which Beazer is agreeing to purchase all of Artery's right, title and interest in the Company upon the terms and conditions set forth therein, which include, *inter alia*, the parties' execution of this Amendment immediately prior to the consummation of such transaction.

C. Accordingly, Artery and Beazer desire to modify the Operating Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties, Artery and Beazer agree as follows:

1. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the meanings set forth for them in the Operating Agreement.

2. The first sentence of Section 2.2 is hereby deleted and replaced with the following;

The undersigned parties elect to conduct business as a limited liability company under the name "Elysian Heights Potomia, LLC" pursuant to and subject to the Act and other relevant laws of the Commonwealth of Virginia.

3. The last two (2) sentences in Section 2.5 are hereby deleted and replaced with the following:

The name and address of the Company's registered agent in the Commonwealth of Virginia is CT Corporation System, 4701 Cox Road, Suite 301, Glen Allen, VA 23060, which is located in Henrico County. The registered agent is a Virginia corporation.

4. Section 4.3 (“Special Distribution to Artery”) is hereby deleted in its entirety.

5. Section 5.1 (“Allocation of Profits and Losses”) is hereby deleted in its entirety and replaced with the following:

Profits shall be allocated among and Losses shall be charged to the Members in proportion to their respective Percentage Interests.

6. All references in the Operating Agreement to the “Administrative Manager” and/or the “Development Manager” are hereby deleted. All rights, responsibilities, and obligations formerly belonging to the Administrative Manager and/or the Development Manager, to the extent not entirely abrogated by this Amendment, are hereby assigned to the Manager. Section 8.8 (“Administrative Fee”) is hereby deleted in its entirety.

7. Section 32 (“Sale of Lots”) is hereby deleted in its entirety.

8. In the event of any inconsistency between the Operating Agreement and this Amendment, this Amendment shall govern. The terms of this Amendment shall be binding upon and inure to the benefit of Artery, Beazer, and their respective successors and assigns. The Operating Agreement remains in full force and effect and, except as expressly provided in this Amendment, is unmodified. The Recitals set forth above are incorporated in and made a part of this Amendment. This Amendment may be executed in counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have signed and sealed this Amendment as of the date first written above.

WITNESS:

/s/ Robert F. W.

THE ARTERY GROUP, LLC,
a Maryland limited liability company

By: /s/ B. Hayes McCarty
B. Hayes McCarty
Executive Vice President

/s/ Robert F. W.

BEAZER HOMES CORP.
a Tennessee corporation

By: /s/ Donald W. Knutson
Name: Donald W. Knutson
Title: Senior Regional President

ARTERY-BEAZER CLARKSBURG, LLC

a Maryland Limited Liability Company

OPERATING AGREEMENT

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

ARTERY-BEAZER CLARKSBURG, LLC

A Maryland Limited Liability Company

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT ("Operating Agreement" or "Agreement") is made effective as of ___, 2001 (the "Effective Date"), by and between Artery Clarksburg, LLC, a Maryland limited liability company ("Artery") and Beazer Clarksburg, LLC, a Maryland limited liability company ("Beazer").

EXPLANATORY STATEMENT:

A. The Members (as hereinafter defined), desiring to form a Maryland limited liability company under the Maryland Limited Liability Company Act, Title 4A of the Corporations and Associations Article of the Annotated Code of Maryland, as amended from time to time, (the "Act") have entered into this Agreement. The Members have caused the formation of a limited liability company under the name Artery-Beazer Clarksburg, LLC (the "Company") and have caused Articles of Organization in the form attached hereto as Exhibit "B" (the "Articles") to be executed and filed by John R. Orrick, Jr., as Authorized Party with the Maryland State Department of Assessments and Taxation ("SDAT") on May 14, 2001.

B. This Operating Agreement is subject to, and governed by, the Act and the Articles. The Members hereby ratify the execution and filing of the Articles and approve the Articles as the Articles of Organization of the Company. In the event of a direct conflict between the provisions of this Agreement and either the mandatory provisions of the Act or the Articles, such provisions of the Act or the Articles, as the case may be, will be controlling.

C. Pursuant to a Term Sheet entered into on April 30, 2001, by and between The Artery Group, LLC and Beazer Homes Corp., the parties had agreed to acquire through the acquisition of membership interests of a newly formed limited liability company, Clarksburg Skylark, LLC, which in turn owns a 374-acre site located in Clarksburg, Maryland (the "Property"), as more particularly described in Exhibit "C" attached hereto, which Property has recently been rezoned to PD-4 and which would permit approximately 1,330 residential units and 89,000 square feet of retail use. The acquisition of membership interests in the Skylark Clarksburg, LLC is being made pursuant to (i) that Agreement of Purchase and Sale entered into on March 13, 2000, by and among the DiMaio Joint Venture as the "Seller" and Rocky Gorge Home, LLC as the Purchaser, as such Underlying Purchase Agreement is further amended by that Amendment to Agreement of Purchase and Sale as entered into as of May 15, 2001, by and among the Seller, Assignor and Assignee, providing for the transfer prior to Closing by the Seller of the Property to Clarksburg Skylark, LLC in. exchange for 100% of the membership interests in Clarksburg Skylark, LLC and the acquisition of 100% of the membership interests in Clarksburg Skylark, LLC in lieu of the direct purchase of the Property (the "Underlying Purchase Agreement"), and (ii) as assigned to Beazer Homes Corp. by that Assignment Agreement entered into as of March 29, 2001, by and between Rocky Gorge Homes, LLC as Assignor and Beazer Homes Corp. as Assignee (the "Assignment Agreement"), with each of the

Underlying Purchase Agreement and the Assignment Agreement having been assigned by Assignee to Company.

D. The Members desire to enter into this Operating Agreement to memorialize the terms and conditions set forth in the Term Sheet with respect to the acquisition of interests in the Skylark Clarksburg, LLC and the payment of the Purchase Price (as defined herein) to Seller and Assignor, and to further set forth the agreement of the Members with respect to obtaining entitlements for the Property, including the potential creation of a special taxing district to finance certain public infrastructure requirements for the Property, the subdivision of the Property into single family detached, townhouse, and multi-family residential and commercial building lots, and the Development Management, marketing and sale of such building lots to home builders and other property owners on behalf of the Company.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises herein contained the Members agree as follows:

ARTICLE 1. DEFINITIONS

The defined terms used in this Operating Agreement shall, unless the context otherwise requires, have the meanings specified in this Section 1. Any term not defined in this Operating Agreement shall have the meaning ascribed to it in the Act, and other relevant laws of the State of Maryland. As used herein, the term:

1.1. Additional Capital Contribution(s) shall have the meaning set forth in Section 4.2 hereof.

1.2. Administrative Manager shall mean Beazer.

1.3. Affiliate shall mean any entity or other Person owned and controlled by, or owning and controlling any Member in whole or in part, or that is under common ownership and control with any Member.

1.4. Artery Sale Lots shall mean those residential building lots to be sold to home builders at the direction of Artery, as provided in Article 13.

1.5. Assignment Agreement shall mean that Assignment Agreement entered into as of March 29, 2001, by and between Rocky Gorge Homes, LLC as Assignor and Beazer Homes Corp, as Assignee.

1.6. Assignor shall mean Rocky Gorge Homes, L.L.C.

1.7. Available Cash shall have the meaning set forth in Section 6.1(b).

1.8. Articles shall mean the Articles of Organization of the Company filed with and accepted by SDAT on May 14, 2001, in the form attached hereto as Exhibit “B”.

1.9. Bankruptcy means with respect to any Person or entity:

(i) having an order entered for relief with respect to it or him under the Federal Bankruptcy Code,

(ii) not paying or admitting in writing his or its inability to pay his or its debts generally as they become due,

(iii) making an assignment for the benefit of creditors,

(iv) applying for, seeking, consenting to, acquiescing in the appointment of a receiver, custodian, trustee, examiner, liquidator, or similar official for it or him or any substantial part of its or his property or failing to cause the discharge of the same within sixty (60) days of such appointment,

(v) instituting any proceeding seeking the entry of any order for relief under the Federal Bankruptcy Code to adjudicate it or him a bankrupt or insolvent, or failing to cause dismissal of such proceeding within sixty (60) days of the institution thereof, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or him or its or his debts, under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors, or failing to file an answer or other pleading denying the material allegations of any such proceeding filed against it or him, or

(vi) taking any action to authorize or effect any of the foregoing actions or failing to contest in good faith the appointment of a receiver, trustee, examiner, liquidator or similar official for him or it or any substantial part of his or its property.

1.10. Beazer Sale Lots shall mean those residential building lots to be sold to home builders at the direction of Beazer, as provided in Article 13.

1.11. Business Plan and Development Budget shall have the meaning set forth in Section 11 hereof.

1.12. Closing shall mean the closing of the sale of 100% of the membership interests in Clarksburg Skylark, LLC to the Company.

1.13. Code means the Internal Revenue Code of 1986, as amended.

1.14. Company shall mean Artery-Beazer Clarksburg, LLC, the Maryland limited liability company created pursuant to this Operating Agreement and the Articles filed pursuant thereto.

1.15. Company Financing shall have the meaning set forth in Section 7.1(d)(i)(a) hereof.

1.16. Deferred Purchase Money Notes shall mean the deferred purchase money notes evidencing the obligation of the Company to pay the deferred portions of the Purchase Price to Seller and Assignor in the forms set forth in Exhibit “F” and Exhibit “G”, respectively, attached hereto and made apart hereof.

1.17. Development Management Agreement shall have the meaning set forth in Section 12 hereof.

1.18. Development Costs shall mean all costs and expenses (i) which the Company shall be responsible to pay and those (ii) actually incurred by the Company in connection with the development of the Property, including but not limited to the Development Fees.

1.19. Development Fees shall mean the fees paid to Artery Development Company, LLC by the Company for its development of the Property pursuant to the Development Management Agreement.

1.20. Development Work shall mean the development of the Property pursuant to the Development Management Agreement, the Business Plan and Development Budget and this Operating Agreement.

1.21. Initial Capital Contribution(s) shall have the meaning set forth in Section 4.1 hereof.

1.22. Interest or Membership Interest shall mean a Member's respective percentage interest in the Net Profits and Net Losses of the Company and distributions by the Company, as set forth on Exhibit "A", as the same may be amended pursuant to this Operating Agreement. Allocations of Net Profits or Net Losses, and distributions shall be made as set forth in this Operating Agreement and not on the basis of value of Members' contributions.

1.23. Involuntary Withdrawal shall mean, with respect to any Member, the occurrence of any of the following events:

(i) the Member makes an assignment for the benefit of creditors;

(ii) the Member files a voluntary petition of Bankruptcy;

(iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any Bankruptcy or insolvency proceeding;

(iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for or liquidation of the Member or of all or any substantial part of the Member's properties;

(vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);

(vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any

statute, law, or regulation, continues for sixty (60) days after the commencement thereof, or the appointment of a trustee; receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for sixty (60) days or, if the appointment is stayed, for sixty (60) days after the expiration of the stay during which period the appointment is not vacated;

(viii) if the Member is an individual, the Member's death or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(x) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;

(xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(xii) if the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company; or

(xiii) if any of the foregoing events shall occur with respect to an Affiliate of a Member which, in the reasonable judgment of the other Member, may be reasonably expected to interfere with the Affiliated Member's performance of its responsibilities to the Company under this Operating Agreement.

1.24. Liquidating Proceeds shall have the meaning set forth in Section 6.1(b).

1.25. Lot Sale Agreement shall mean the firm of agreement between the Company and home builders regarding the purchase and sale of the finished residential building lots from the Company in the form agreed to by the Members.

1.26. Managers shall mean the Persons so designated in Article 7.

1.27. Members (and individually a Member) shall mean those Persons identified on Exhibit "A" and such other Persons who have been duty admitted as Members pursuant hereto.

1.28. Membership Interest or Interest shall mean a Member's respective percentage interest in the Net Profits and Net Losses of the Company and distributions by the Company, as set forth on Exhibit "A", as the same may be amended pursuant to this Operating Agreement. Allocations of Net Profits or Net Losses, and distributions shall be made as set forth in this Operating Agreement and not on the basis of value of Members' contributions.

1.29. Net Losses shall have the meaning set forth in Section 5.1 hereof.

1.30. Net Profits shall have the meaning set forth in Section 5.1 hereof.

1.31. Operating Agreement (or Agreement) shall mean this Operating Agreement, as amended, modified or supplemented from time to time.

1.32. Persons(s) shall mean and include any individual corporation, partnership, association, limited liability trust, estate or other entity.

1.33. Phase shall mean the phase of development of the Property, as it shall be incrementally developed in accordance with the terms of the Business Plan and Development Budget.

1.34. Prime Rate shall mean the rate so designated in *The Wall Street Journal*, as adjusted from time to time. In the event that *The Wall Street Journal* is no longer published, then the Prime Rate shall be that rate so designated in a comparable substitute financial publication, as selected by the Managers.

1.35. Property shall mean that certain real property, containing approximately 374 acres of unimproved land located in Clarksburg, Maryland, as more particularly described in Exhibit "C" attached hereto and made apart of this Operating Agreement which is owned by Clarksburg Skylark, LLC.

1.36. Purchase Price shall mean the total amount to be paid by the Company to the Seller and the Assignor in connection with the acquisition of 100% of the membership interests in Clarksburg Skylark LLC, as set forth in the Underlying Purchase Agreement and Assignment Agreement which shall consist of the sum of $24,500,000.00 payable as follows: (i) $8,000,000.00 to be paid in cash at Closing ($6,500,000.00 payable to Seller and $1,500,000.00 payable to Assignor); (ii) $13,500,000.00 payable to Seller under a Deferred Purchase Money Note in the form attached as Exhibit "F" in four (4) equal annual installments beginning one year following the date of Closing, with simple interest paid quarterly at 8% per annum; and (iii) $3,000,000.00 payable to Assignor in three (3) equal annual installments beginning on March 25, 2002, and each year thereafter, being interest at 10% per annum, payable quarterly in arrears under a Deferred Purchase Money Note in the form attached as Exhibit "G", each of the Members being responsible for contributing one-half of the Purchase Price.

1.37. Resident Agent means the Person identified in Section 2.5 hereof.

1.38. SDAT means the Maryland State Department of Assessments and Taxation.

1.39. Seller shall mean the DiMaio Joint Venture, consisting of the following partners: Estelle DiMaio (12.5 percent interest); DiMaio Family, LLC (25 percent interest); Richard DiMaio (12.5 percent interest); Teresa DiMaio Stone, also known of record as Teresa Lee DiMaio (12.5 percent interest); and Barbara Markwood (37.5 percent interest).

1.40. Transfer means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment or other transfer, and, when used as a verb, voluntarily sell, hypothecate, pledge, assign or otherwise transfer.

1.41. Treasury Regulations shall have the meaning set forth in Section 5.1 hereof.

1.42. Voluntary Withdrawal shall mean a Member's dissociation with the Company by means other than by a Transfer or an Involuntary Withdrawal.

1.43. Underlying Purchase Agreement shall mean that Agreement of Purchase and Sale entered into between Seller and Assignor as of March 13, 2000 with respect to the sale of the Property, as further amended by that Amendment to Agreement of Purchase and Sale as entered into as of May 15, 2001, by and among the Seller, Assignor, and Assignee.

ARTICLE 2. ORGANIZATION

2.1. Name. The name of the Company shall be "Artery-Beazer Clarksburg, LLC." The Company may do business under that name and under any other name or names which the Managers select. If the Company does business under a name other than that set forth in the Articles, then the Company shall file a trade name certificate as required by law.

2.2. Purpose. Subject to the terms hereof, the Company is organized to (a) acquire, buy, own, invest in, manage, develop, construct, improve, refinance, exchange, dispose, market, promote, sell and otherwise deal with the Property, directly or through acquisition and ownership of 100% of the interests of an entity which owns the Property; (b) obtain all preliminary plans, site plans, subdivision, engineering, land use and zoning and related approvals from the applicable governmental authorities required to develop and sell the Property pursuant to the Development Management Agreement and this Operating Agreement; (c) petition Montgomery County to create a special taxing district for the Property and to enter into any and all agreements required to effectuate the creation and implementation of such a special taxing district for the Property; (d) oversee the subdivision of the Property into single family detached, townhouse and multi-family residential and commercial building lots and the development and sale of such building lots pursuant to the Development Management Agreement and this Operating Agreement; (e) have and to exercise all powers now or hereafter conferred by the laws of the State of Maryland on limited liability companies formed pursuant to the Act; and (f) do any and all things necessary, convenient, or incidental to the foregoing.

2.3. Company Property. Title to all assets of the Company shall be taken and held only in the name of the Company.

2.4. Principal Office and Resident Agent. The principal office of the Company in the State of Maryland shall be located at 300 East Lombard Street, Suite 1400, Baltimore, Maryland 21202, and the Company shall maintain its administrative offices at 8965 Guilford Road, Suite 290, Columbia, Maryland 21046. The Managers may change the principal office of the Company and/or establish additional offices of the Company within the State of Maryland, as the Managers may deem advisable. The Resident Agent of the Company in the State of Maryland for service of process shall be The Corporation Trust Incorporated. The post office address of the Resident Agent of the Company is 300 But Lombard Street, Suite 1400, Baltimore, Maryland 21202. The Managers may, in their sole and absolute discretion, change the Resident Agent of the Company to a Person who or which qualifies as a Resident Agent under the Act.

2.5. Authority to Act with Respect to Wholly-Owned Entities. The Members intend that any authority provided herein to any Manager or any Member and any agreement provided

herein between the Members shall apply with respect to any entity, including Clarksburg Skylark, LLC, which owns the Property, as if such authority or agreement was contained in the organizational documents of that wholly-owned entity.

ARTICLE 3. ADMISSION AND SUBSTITUTION OF MEMBERS

3.1. Admission of New or Substituted Members. The Company may admit new or substituted Members with the consent of and under such terms as are required by all Members, which consent may be withheld in the Members' absolute discretion. Unless named in Exhibit "A" of this Operating Agreement, or unless admitted to the Company as a substituted or new Member as provided herein, no Person shall be considered a Member; and the Company need deal only with the Members so named and so admitted. The Company shall not be required to deal with any other Person by reason of a Transfer by a Member, except as otherwise provided in this Operating Agreement. Upon admission of new or substituted Members, the Manager shall cause Exhibit "A" of the Operating Agreement to be amended to reflect the current Membership of the Company.

ARTICLE 4. CAPITAL CONTRIBUTIONS

4.1. Initial Capital Contributions. Effective upon the date when this Operating Agreement is duly executed and delivered by each Member listed on Exhibit "A" hereto on the date hereof, the Members shall make the following "Initial Capital Contributions" to the Company:

(a) The Members shall each contribute funds to the Company on the following bases, which funds shall include: (i) one-half of the cash portion of the Purchase Price required to be paid to the Seller and the Assignor at the Closing of the sale of the interests in Skylark Clarksburg. LLC, which shall consist of $4 million for each Member, $3,250,000 of which shall be payable to Seller and $750,000 of which payable to Assignor (it being agreed that any deposits made to Seller or Assignor by a Member shall be credited against the amounts required to be contributed hereunder); (ii) one-half of the Company's initial working capital requirements, which shall consist of $150,000; and (iii) one-half of the Company's additional working capital requirements, which shall be provided pursuant to the Business Plan and Development Budget as agreed to by the Members pursuant to Article 11 hereto.

(b) The parties acknowledge that the relative values of their respective Initial Capital Contributions to the Company under this Section 4.1 are in the same proportion as their respective Membership Interests.

(c) Except as provided herein, no Member shall be entitled to the return of its Capital Contribution, and no interest shall be paid by the Company on any Capital Contribution or the balance in any Member's Capital Account.

4.2. Additional Capital Contributions. The Business Plan and Development Budget shall specify when and if Additional Capital Contributions are required to be made to the Company. If the Managers at any time or from time to time shall determine, based on the Business Plan and Development Budget, that the Company requires Additional Capital Contributions to pay any costs associated with the Property, including but not limited to (i) real

estate taxes assessed against the Property; (ii) premiums on the insurance identified in Section 13 hereof; (iii) deposits to be made in connection with paying the costs of the consultants of Montgomery County in connection with the establishment of a development district with respect to the Property or (iv) development costs, on or before such costs are required to be paid by the Company, then the Managers shall notify the Members of the total amount of additional funds required ("Capital Call"). The Members shall provide such required funds as working capital to the Company, in accordance with thaw respective Membership Interests, within thirty (30) days after the notice of Capital Call has been duly given.

4.3. Member Loans.

If the Managers and all of Members agree, any Member may, but shall not be required to, loan or advance funds to the Company. If any Member shall loan any money to the Company pursuant to this Section 4.3 (a "Member Loan"), the amount of any such loan shall not be an increase in such Member's share of the distributions or Net Profits and Net Losses of the Company under this Operating Agreement; but the amount of any such loan shall be an obligation of the Company to such Member, and shall be repaid with interest at a floating rate equal to the Prime Rate as published on the day that the funds are advanced, plus 5%, provided that any amounts advanced as Member Loans to the Company to repay the Deferred Purchase Money Notes shall be at such rate agreed to by the Members, which may be a fixed rate. Any amounts advanced as a Member Loan shall be identified by the Member as a Member Loan and shall not constitute a Capital Contribution on the books and records of the Company.

4.4. Failure of a Member to Timely Contribute the Share of Additional Capital; Remedies.

(a) If a Member fails to pay when due all or any portion of (i) any Initial Capital Contribution required by Section 4.1 hereof or (ii) any Additional Capital Contribution which is the subject of a duly given Capital Call required by Section 4.2 (the "Defaulting Member"), the other Member (the "Non-Defaulting Member") may pay the unpaid amount of the Defaulting Member's Capital Contribution (the "Unpaid Contribution"). To the extent the Unpaid Contribution is paid by the Non-Defaulting Member, following the delivery of written notice to the Defaulting Member, and the failure to make such Capital Contribution within a period of fifteen (15) days following receipt of such notice, the Membership Interest of the Non-Defaulting Member making such Unpaid Contribution to the Company shall be increased by an amount determined as if the Non-Defaulting Member had made an additional Capital Contribution equal to three times the amount of the Unpaid Contribution, so that the Membership Interest of the Non-Defaulting Member would be determined by the percentage that is derived from dividing the aggregate Capital Contributions made by the Non-Defaulting Member (including the deemed additional Capital Contribution) to the aggregate Capital Contributions made to the Company, and the Defaulting Member's Membership Interest shall be decreased to the remaining percentage interest of Membership Interests in the Company. For example, by way of illustration only, in the case where the aggregate Capital Contributions made to the Company prior to the Capital Call were $8,500,000, split equally between Member A and Member B; an Additional Capital Contribution was required of each of the Members of $200,000; Member A failed to make the Additional Capital Contribution following receipt of the written notice and the cure period required above; and Member B made such Capital Contribution in addition to

making the $200,000 Capital Contribution required to be made by it, the Membership Interest of Member B would be determined by dividing the aggregate Capital Contributions made by Member B, (3 x $200,000) + $200;000 + $4,250,000 = $5,050,000), divided by the aggregate Capital Contributions made to the Company by both Members, $8,900,000, or 56.74%, and the Membership Interest of Member A would be decreased to 43.26% (100% — 56.74%).

4.5. Responsibility for Deferred Purchase Money Notes. Each of the Members shall be responsible for contributing the necessary funds to the Company, and any required guaranties of payment, with respect to one-half of the amount of the Deferred Purchase Money Notes payable to Seller and Assignor with respect to the acquisition of the membership interests of Clarksburg; Skylark, LLC, provided that except as expressly stated in the Deferred Purchase Money Notes, the obligations of the Members to the Seller and the Assignor shall be nonrecourse to the Members. Any amounts advanced to the Company by either Member with respect to the repayment of the Deferred Purchase Money Notes shall be treated as an additional Capital Contribution under Section 4.02 unless otherwise agreed by the Members. Any decision to borrow funds by the Company to repay all or any portion of the Deferred Purchase Money Notes shall constitute a Major Decision pursuant to Section 7.1(d) hereunder.

ARTICLE 5. PROFITS AND LOSSES

5.1. Definitions. In addition to those terms defined elsewhere in this Operating Agreement, and unless the context otherwise requires, for the purposes of this Operating Agreement the following terms shall have the meanings set forth below.

(a) “Capital Account” means a capital account created and maintained according to Treasury Regulation Section 1.704-1(b).

(b) “Gain” means the income and gain of the Company for federal income tax purposes arising from a sale or other disposition of all or any portion of the Property made in connection with the overall liquidation of the Company.

(c) “Loss” means the loss of the Company for federal income tax purposes arising from a sale of the Property made in connection with the overall liquidation of the Company.

(d) “Net Losses” means the net loss of the Company for federal income tax purposes for each taxable year, calculated to include Gain or Loss but without regard to those items that are specially allocated in accordance with Regulatory Allocations; provided, however, that in determining net loss (i) any tax-exempt income received by the Company shall be included as an item of gross income, and (ii) any expenditure of the Company, including all Development Costs, described (or treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(i) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense.

(e) “Net Profits” means the taxable income of the Company for federal income tax purposes for each taxable year, calculated to include Gain or Loss but without regard to those items which are specially allocated in accordance with the Regulatory Allocations; provided, however, that in determining taxable income (i) any tax-exempt income received by the Company shall be included as an item of gross income, and (ii) any expenditure of the

Company, including all Development Costs, described (or treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(i) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense.

(f) "Regulatory Allocations" means the allocations set forth in Section 5.4 below. Such allocations are intended to comply with certain requirements of the Treasury Regulations promulgated under Section 704(b) of the Code.

(g) "Treasury Regulations" means temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

5.2. Tax Characterization. The Company shall, for federal and state income tax purposes, be classified as a partnership rather than an association taxable as a corporation. Each Member, by execution or acceptance of this Operating Agreement, covenants and agrees that it will file its own federal and state income and other tax returns in a manner that is consistent with the tax classification of the Company as a partnership and will not take any action which in inconsistent with such classification.

5.3. Determination of Net Profits and Net Losses. The Net Profits and Net Losses of the Company shall be determined in accordance with the accounting methods followed for federal income tax purposes and otherwise in accordance with sound accounting principles and procedures applied in a consistent manner. An accounting shall be made for each fiscal year by the accountants employed by the Company as soon as possible after the close of each such fiscal year to determine the Members' respective shares of Net Profits or Net Losses of the Company, which shall be credited or debited, as the case may be, to the Members' respective Capital Accounts.

5.4. General Allocation of Net Profits and Net Losses. Subject, first, to the provisions of Section 5.5 below, Net Profits and Net Losses of the Company for any year shall be allocated among the Members pro rata, in accordance with the Members' respective Membership Interests.

5.5. Special Allocations and Limitation.

(a) Unless otherwise agreed to by the Members, any Net Profit or Loss of the Company with respect to the sale of the Artery Sale Lots shall be allocated to Artery while any Net Profit or Loss with respect to the sale of the Beazer Sale Lots shall he allocated to Beazer.

(b) The Company shall comply with Treasury Regulation Section 1.704-2 with respect to the allocation of deductions and the chargeback of minimum gain on nonrecourse debts of the Company, and with Treasury Regulation Section 1.704-1(b) with respect to the establishment and maintenance of Capital Accounts for the Members.

(c) No Member shall be allocated any Net Losses or Loss which would cause or increase a deficit balance in such Member's Capital Account in excess of any obligation of such Member to restore deficits (as defined in Treas. Reg. Section 1.704-1(b)(2)(ii)(c), as amended). All Net Losses in excess of the limitation set forth in the preceding sentence shall be allocated to the remaining Members in accordance with their respective Membership Interests. If

any Member shall receive with respect to the Company an adjustment, allocation or distribution in the nature described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)-(6), as amended, which causes or increases a deficit in such Member's Capital Account, such Member shall be allocated items of income and gain in an amount and manner as will eliminate such deficit balance as quickly as possible. It is intended that this Section 5.5(b) shall constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(3), as amended.

(d) The Regulatory Allocations set forth in Section 5.5(b) above shall be taken into account in allocating Net Profits, Gain, Net Losses and Loss pursuant to Section 5.4 above, so that, to the extent possible, the next amount of such allocations of Net Profits, Gains, Net Losses and Loss shall be equal to the net amount that would have been allocated to each Member if the Regulatory Allocations had not occurred.

(e) The respective interests of the Members in the Net Profits, Net Losses, Gain, and Loss or items thereof shall remain as set forth above unless changed by amendment to this Operating Agreement or by an assignment of a Membership Interest authorized by the terms of this Operating Agreement. Except as otherwise provided herein, for tax purposes, all items of income, gain, loss, deduction, or credit shall be allocated to the Members in the same manner as are Net Profits and Net Losses from operations; provided, however, that with respect to property contributed to the Company by a Member, such items shall be shared among the Members so as to take into account the variation between the basis of such property and its fair market value at the time of contribution in accordance with Section 704(c) of the Code.

(f) If any fees, interest, or other amounts paid to a Member or an Affiliate pursuant to this Operating Agreement, or any other agreement between the Company and such Member or Affiliate providing for the payment of such amounts, and deducted by the Company, whether in reliance upon Section 162, 163, 707(a) or 707(c) of the Code or otherwise, are disallowed as deductions to the Company on its federal income tax return for the taxable year in or with respect to which such amounts are paid and are treated instead as Company distributions, then:

(i) there shall be allocated to the Member who received (or whose Affiliate received) such payments an amount of gross income for the taxable year in or with respect to which such fees, interest or other amounts were paid equal to the amount of such fees, interest or other amounts that are so disallowed and treated as Company distributions; and

(ii) the Net Profits or Net Losses, as the case may be, for the taxable year in or with respect to which such fees, interest, or other amounts were paid shall be (A) increased or decreased, as the case may be, by the amount of such fees, interest, or other amounts that are disallowed and treated as Company distributions, and (B) determined without regard to any gross income of the Company which is specially allocated in accordance with the foregoing Section 5.S(e)(i).

(g) The Company shall allocate Net Profit to the Members in an amount equal to the excess of any interest accrued on such Member's Development Capital Contributions, over prior cumulative allocations to such Member under this Section 5.5(f).

5.6. Allocation on Admission of New Members or Transfers. In the event of the admission of a New Member or in the event of a valid transfer of all or part of a Member's Membership Interest in the Company pursuant to Article 8 hereof, all recurring items of Net Profits and Net Losses of the Company and all ordinary distributions by the Company shall be allocated to the transferee in the same proportion that the number of days in the Company fiscal year after the transfer bears to the total number of days in the Company fiscal year provided, however, that any extraordinary or nonrecurring items of Net Profits, Net Losses, Gain or Loss shall be specifically allocated to the transferee if such item was realized or incurred on or after the date of his admission to the Company.

ARTICLE 6. DISTRIBUTIONS

6.1. Distributions.

(a) Distributions to Members shall be made only from Available Cash or Liquidating Proceeds (as defined in subsection (b) below). No Member shall have the right to demand a distribution in kind from the Company.

(b) Distributions of Available Cash shall be made among the Members in such amounts and at such times as shall be determined by the Managers (but not less frequently than quarterly) in the following order of priority: first, to reimburse the Members for any Member Loans; second, to the Members in accordance with their positive Capital Account balances until such Capital Account balances shall have been reduced to zero (the intent being that distributions of cash shall be made with respect to any Gain attributable to the Artery Sale lots being paid to Artery and that distributions of cash made with respect to any Gain attributable to the Beazer Sale lots being paid to Beazer); and third, to the Members in accordance with their respective Membership Interests.

For purposes hereof, "Available Cash" shall mean the excess of cash received from all activities of the Company, including the net cash realized by the Company from the sale, refinancing (as approved in accordance with Section 7.1(d)(i)(a) hereof) or other disposition of assets after retirement of any Company Financing and the payment of all expenses related to the transaction, less cash disbursements (including within the phrase "cash disbursements", without limitation, debt service payments on Company Financing) and a reasonable allowance for reserves, contingencies, working capital and anticipated obligations (which allowance for reserves, contingencies, working capital and anticipated obligations shall not be required after the Property or the final portion of the Property, has been sold). Notwithstanding the foregoing, "Available Cash" shall not include the net proceeds from any sale or other disposition of all or any portion of the Property or other Company assets made in connection with the overall liquidation of the Company (the "Liquidating Proceeds"). The determination of what constitutes Available Cash as opposed to Liquidating Proceeds shall be made by the Manager. Liquidating Proceeds shall be distributed as provided in Section 9.3.

(c) Notwithstanding provision to the contrary contained in this Operating Agreement, no payment or distribution pursuant to Section 6.1(b) hereof shall be made if after giving effect to such distribution the Company would not be able to pay its debts as they become

due in the usual course of business or the Company's total assets would be less than its total liabilities.

ARTICLE 7. MANAGEMENT: RIGHT'S, POWERS AND DUTIES

7.1. Management.

(a) *Managers*. The Company shall be managed by a representative of Artery and a representative of Beazer (individually. a "Manager", and collectively, the "Managers"). The initial Manager for Artery shall consist of B. Hayes McCarty (the "Artery Manager"). The initial Manager for Beazer shall consist of David L Carney (the "Beazer Manager"). At any time, upon prior written notice delivered to the other Manager specifying the scope and extent of the delegation, each of the Artery Manager and the Beazer Manager shall have the authority to delegate any specific task or responsibility each possesses as Manager hereunder to one or more designated agents.

(b) *General Powers*. The Managers shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Operating Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs.

(c) *Duties of Managers*. The Managers shall devote such time to the Company and its business as is appropriate to conduct the business of the Company in an effective manner and to carry out their responsibilities herein; provided, however, that the Managers shall no be obligated to devote their full time and attention or that of their officers, directors, and employees, to the business and affairs of the Company. Without limiting the generality of the foregoing, the Managers shall have the right, power, and duty to do, accomplish, and complete, in accordance with the Business Plan and Development Budget and this Operating Agreement, for, on behalf of and at the expense of the Company, and do hereby covenant to do all of the following:

(i) To conduct all activities and perform all actions deemed necessary to execute, implement, and effectuate the goals and intent of the Business Plan and Development Budget;

(ii) Employ, coordinate, and supervise the contractors and agents necessary to carry out the Company's business;

(iii) Protect and preserve the title and interests of the Company in the Property;

(iv) In cooperating with the Administrative Manager, to keep, or cause to be kept, all books and records of the Company and deliver any reports required by this Operating Agreement, all in accordance with the provisions hereof;

(v) Maintain all funds of the Company in accordance with the provisions hereof

(vi) Cause to be paid as they become due all bills and expenses and other expenditures of the Company, including, but not limited to, taxes and insurance, all within the limits set forth in the Business Plan and Development Budget;

(vii) Hire legal counsel, accountants and other professionals as may be appropriate to carry out the business of the Company;

(viii) Take any actions reasonably deemed to be ancillary to carry out any of the Managers' duties to the Company, and

(ix) Enter into the Development Management Agreement with Artery Development Company, LLC and delegate certain duties and obligations related to the development and sale of the Property pursuant to the terms of the Development Management Agreement, the Underlying Purchase Agreement, as amended, the Assignment Agreement, as amended, and this Operating Agreement.

(d) *Major Decisions*.

(i) Notwithstanding any provision of this Operating Agreement to the contrary, the following "Major Decisions" shall be made on behalf of the Company only upon the prior written approval of both Artery and Bearer, without which mutual approval, the Managers, either individually or collectively, shall not act;

(a) Financing or refinancing the Company or the Property including, without limitation, identifying lenders for the Development Work, obtaining lines of credit or lender guaranties for the Development Work or other uses in connection with the Property, and granting or modifying any mortgages, pledges, or other encumbrances of Company assets in connection therewith, including, but not limited to, the refinancing of the Deferred Purchase Money Notes ("Company Financing");

(b) Except as provided in Section 7.1(c) hereof, selling, exchanging, leasing, conveying, or otherwise disposing of the Property, or any portion thereof;

(c) Acquiring additional real or personal property other than the Property;

(d) Making any payment or disbursement (or incurring any liability to make same) other than for real estate taxes and insurance with respect to the Property or costs to develop the Property the incurrence of which is required by applicable governmental authority;

(e) Seeking or allowing the Company to seek Bankruptcy protection from creditors under any date or federal law, code, or statute;

(f) Prosecuting; defending, or settling any litigation matters, federal, state or local tax matters; or similar claims;

(g) Taking any other action described in this Operating Agreement as requiring the approval or consent of all Members;

(h) Sale of the Property or any portion thereof outside the ordinary course of business of the Company, including but not limited to the sale of lots of the Property in bulk;

(i) Determining the institution(s) at which accounts for the deposit and investment of funds of the Company will be opened and maintained, the types of accounts, procedures for depositing and transferring funds in or between such accounts, and the persons who will have authority with respect to the accounts and funds therein;

(j) Establishing and making modifications to the Business Plan and Development Budget or to the Development Management Agreement;

(k) Seeking preliminary plan and site plan approvals for the Property;

(l) Filing a petition with Montgomery County, Maryland for the creation of a special taxing district with respect to the Property and entering into any agreements related thereto; and

(m) Admitting new Members or substituting Members into the Company.

(e) *Unanimous Consent*. All decisions made by the Managers shall require the unanimous consent of all of the Managers; provided that while the Managers will consult with each other with respect to the selection of home builders for the building lots, only the Artery Manager shall be required for the Company to enter into Lot Sale Agreements with respect to the Artery Sale Lots and only the Beazer Manager shall be required for the Company to enter into Lot Sale Agreements with respect to the Beazer Sale Lots.

(f) *Limitation on Authority of Members*.

(i) No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

(ii) This Section 7.1(f) supersedes any authority granted to the Members pursuant to the Act. Any Member who takes any action or binds the Company in violation of this Section 7.1 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense (including reasonable attorneys' fees).

7.2. Personal Service. No Member, including the Managers, shall receive any salary, fee or draw for services rendered to or on behalf of the Company or otherwise in its capacity as a Member and/or Manager, provided that, subject to the provisions of Section 11 hereof, each Member or Manager shall be reimbursed for any expenses incurred by such Member on behalf of

the Company or otherwise in its capacity as a Member or Manager, including such expenses as provided in Section 7.5(c) hereof. For purposes of this Section 7.2, reference to "Member" shall include the principals and Affiliates of a Member.

7.3. Duties of Parties.

(a) Except as otherwise expressly provided in Section 7.3(b), nothing in this Operating Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and the Member shall not be accountable to the Company or to any Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to their respective rights (or the rights of their respective Affiliates) to maintain, expand or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate is such other interests or activities of any other Member or the Member's Affiliates.

(b) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

7.4. Indemnification.

(a) The Company shall defend, indemnify and save harmless the tax matters partner (as defined in Section 7.5 below), the Managers and any member, employee, director, officer, agent and representative thereof (collectively an Indemnified Person") for all loss, liability, damage, cost, or expense (including reasonable attorneys' fees) incurred by reason of any demands, claims, suits, actions or proceedings arising out of (a) the Indemnified Person's relationship to the Company, or (b) such Indemnified Person's capacity as a Manager, tax matters partner, or member, employee, director, officer, agent and representative thereof, except for such loss, liability, damage, cost, or expense as arises out of the theft, fraud, willful misconduct or gross negligence. Expanses incurred in defending a civil, or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding, and not less often than monthly upon receipt of an undertaking by and on behalf of the Indemnified Person to repay such amount if it shall be ultimately determined that he is not entitled to be indemnified by the Company.

(b) The tax matter partner, the Manager and all members, directors and officers thereof (collectively, an "Indemnifying Person") shall defend the Company for all loss, liability, damage, cost, or expense (including reasonable attorneys' fees) incurred by reason of any demands, claims, suits, actions or proceedings arising out of the Indemnifying Person's theft, fraud, willful misconduct or gross negligence. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Indemnifying Person in advance of the final dispositions of such action, suit or proceeding, and not less often than monthly. Company shall repay such amount if it shall be ultimately determined that it is not entitled to be indemnified hereunder.

7.5. Tax Matters Partner. The Administrative Manager shall serve as the Company's "Tax Matters Partner" solely for purposes of Code Section 6231(a)(7).

(a) The Tax Matters Partner shall have and perform all of the duties required under the Code, including the following duties:

(i) Furnish the name, address, profits interest, and taxpayer identification number of each Member to the Internal Revenue Service; and

(ii) Within five calendar days after the receipt of any correspondence or communication relating to the Company or a Member from the Internal Revenue Service, the Tax Matters Partner shall forward to each Member a photocopy of all such correspondence or communication(s). The Tax Matters Partner shall, within five calendar days thereafter, advise each Member in writing of the substance and form of any conversation or communication held with any representative of the Internal Revenue Service.

(b) The Tax Matters Partner is authorized:

(i) To extend the statute of limitations for assessing or computing any tax liability against the Company (or the amount or character of any Company tax items);

(ii) To settle any audit with the Internal Revenue Service concerning the adjustment or readjustment of any partnership item(s) (within the meaning of Section 6231(a)(3) of the Code);

(iii) To file a request for an administrative adjustment with the Internal Revenue Service at any time or file a petition for judicial review with respect to any such request;

(iv) To initiate or settle any judicial review or action concerning the amount or character of any partnership tax item(s) (within the meaning of Section 6231(a)(3) of the Code);

(v) To intervene in any action brought by any other Member for judicial review of a final adjustment; or

(vi) To take any other action not expressly permitted by this Operating Agreement on behalf of the Members or the Company in connection with any administrative or judicial tax proceeding.

(vii) The Tax Matters Partner shall be reimbursed by the Company for all reasonable third party out-of-pocket costs and expenses (including legal and amounting fees) incurred by the Tax Matters Partner in performing its duties as tax matters partner.

7.6. Substitution of Managers. At any time and from time to time, Artery shall have the right, without prior consent by Beazer, to remove the Artery Manager upon the delivery of notice ("Substitution Notice") by Artery to the Artery Manager, evidencing Artery's election to substitute the Artery Manager. At any time and from time to time, Beazer shall have the right,

without prior consent by Artery, to remove the Beazer Manager upon the delivery of a similar Substitution Notice by Beazer to the Beazer Manager, evidencing Beazer's election to substitute the Beazer Manager. Artery shall have no right to remove the Beazer Manager and Beazer shall have no right to remove the Artery Manager without the consent of the other Member. Immediately following delivery of a Substitution Notice by Artery or Beazer to the Artery Manager or the Beazer Manager, respectively, Artery or Beazer shall select a substitute Artery Manager or Beazer Manager, respectively (each a "Substitute Manager"), succeeding the Manager to be replaced (each a "Removed Manger"); and all rights, responsibilities and restrictions of and applicable to the Managers under the Operating Agreement shall apply to the Substitute Managers; and all references in the Operating Agreement to decisions or actions of the Managers requiring the approval of the Managers shall thereafter be read to require the approval of the Substitute Managers. Nevertheless, the Removed Managers shall execute and deliver any documentation provided by the Substitute Managers either to evidence such substitution or to revise any information on the Articles. In the event any Removed Manager shall refuse to execute and deliver any such documentation the Substitute Manager is hereby constituted and appointed by the Removed Manager as his or her true and lawful attorney-in-fact for the purpose of making, executing, signing, acknowledging and filing any such documents, in the Removed Manager's name, place and stead, it being understood that the foregoing power-of-attorney is irrevocable and is coupled with en interest. This Section 7.6 shall operate independently from Section 3.3 hereof.

7.7. Limitations on Liability. A Member or Manager shall not be liable for any action taken as a Member or Manager, or any failure to take action as a Member or Manager, except to the extent that such Member or Manager's conduct fails to comply with the standards of ordinary care as set forth in the Act.

ARTICLE 8. TRANSFER OF INTERESTS AND WITHDRAWAL OF MEMBERS; DEFAULT BY MANAGER

8.1. Transfers.

(a) Except as hereinafter provided, no Person may Transfer all or any portion of the Person's Membership Interest (which, in the case of the Manager, shall be deemed to have occurred in the event of any Transfer of an interest in the equity ownership of the Manager), unless the following conditions ("Conditions of Transfer") are satisfied:

(i) The Transfer will not require registration of Membership Interests under any federal or state securities laws; and

(ii) The Transferee delivers to the Company (a) a written instrument whereby the Transferee agrees to be bound by the terms of this Operating Agreement; (b) a written instrument signed by the Transferor and the Transferee indicating whether or not it is the intent of such parties that the Transferee is to become a substitute Member in the Company (such intent being presumed, in the absence of a joint statement to the contrary, in the case of a Transfer under the circumstances described in Section 8.1(a) hereof); and (c) the following information: (i) the Transferee's taxpayer identification number; and (ii) the Transferee's initial tag basis in the Transferred Interest.

(iii) The Transfer has been consented to by all of the Members, except that a Transfer to any Affiliate of a Member shall not require the consent of the other Member, provided that any requisite lender consent to such Transfer shall have first been obtained.

(b) If the Conditions of Transfer are satisfied, then a Member may Transfer all or any portion of that Person's Membership Interest and, if it is the intent of the parties to the Transfer that the Transferee shall become a substitute Member in the Company, the Manager-shall take such action as shall be necessary to effect such admission to the Company of the Transferee as substitute Member. Otherwise, the Transferee of the Interest shall have no right to: (i) become a Member; (ii) exercise any Membership rights other than to receive allocations of Net Profit or Net Loss and distributions of Available Cash or Liquidating Proceeds; or (iii) act as an agent of the Company.

(c) Each Member hereby acknowledges the reasonableness of the prohibition contained in this Section 8.1 in view of the purposes of the Company and the relationship of the Members. The Transfer in violation of the prohibition contained in this Section 8.1 shall be deemed invalid, null and void, a default under this Operating Agreement, and of no force or effect. Any Transferee to whom Membership Interest are attempted to be Transferred in violation of this Section 8.1 shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive allocations of Net Profit and Net Loss and distributions from the Company or have any other rights in or with respect to the Membership Interests.

8.2. Voluntary Withdrawal. No Member shall have the right to Voluntarily Withdraw from the Company. Voluntary Withdrawal of a Member shall not cause the dissolution or discontinuation of the business of the Company.

8.3. Involuntary Withdrawal. Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall thereupon have the right to receive allocations of Net Profit and Net Loss and distribution from the Company but shall not become a Member unless admitted in accordance with Section 3.1 hereof. Involuntary Withdrawal of a Member shall not cause the dissolution or discontinuation of the business of the Company.

ARTICLE 9. DISSOLUTION, CONTINUANCE AND WINDING UP; BUY-OUT

9.1. Events of Dissolution. Subject to Section 9.2 below, the Company shall be dissolved and its affairs shall be wound up only upon the happening of the first to occur of the following events of dissolution:

(a) upon the mutual consent of the Members;

(b) within 12 months after the sale or liquidation of the Property including the sale or tender all of the lots comprising the Property, but not before the release of all performance and payment bonds and guaranties posted with respect to the development of the Property;

(c) the entry of a decree of judicial dissolution or otherwise as required under the Act; or

(d) the withdrawal of the last remaining Member from the Company.

9.2. Winding Up. Upon dissolution under Section 9.1, the Managers shall appoint a committee of Persons, who may or may not be Members, to conduct the winding up of the Company and carry out the tasks and responsibilities required by this Article 9. Also upon dissolution under Section 9.1, the Company shall conduct no further business, except for taking such action as shall be necessary for the winding up of the affairs of the Company and the liquidation of its assets and the distribution thereof to the Members or legal representative or successor in interest to a former Member's Membership Interest pursuant to the provisions hereof.

9.3. Distribution Upon Liquidation. Immediately following the Company's liquidation, Liquidating Proceeds shall be distributed, first, to the repayment of any loans or indebtedness of the Company, including the Member Loans, next to the establishment of any reserves which the liquidators deem reasonably necessary for the contingent, unmatured or unforeseen liabilities of the Company, next to the Members (and legal representatives and successors in interest to former Members) in accordance with their respective positive Capital Account balances, as adjusted, and last to she Members in accordance with their Membership Interests. The claims of each priority group specified above shall be satisfied in full before satisfying any claims of a lower priority group. If assets available for disposition are insufficient to dispose of all of the claims in a priority group, the available assets shall be distributed in proportion to the amounts owed to each person in the that respective priority group, and no assets shall be distributed to any claimants in a tower priority group. Nothing in this Section shall be construed to require any Member with a negative capital account balance to contribute funds to the Company upon dissolution to bring the balance of such Capital Account to zero.

ARTICLE 10. BOOKS, RECORDS, ACCOUNTING, AND TAX ELECTIONS; ADMINISTRATIVE MANAGER

10.1. Bank Accounts. All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The Administrative Manager shall be responsible for maintaining the operating bank accounts for the Project, provided that each of the Managers shall be provided access to all bank statements and records.

10.2. Books and Records.

(a) The Administrative Manager shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the Articles and Operating Agreement and all amendments to the Articles and Operating Agreement; a current list of the names and last known business, residence, or mailing addresses of all Members; and the Company's federal, state or local tax returns.

(b) The books and records shall be maintained in accordance with generally accepted accounting principles and shall be available at the Company's principal office for

examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

(c) Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

10.3. Annual Accounting Period. The annual accounting period and taxable year of the Company shall be the calendar year, ending December 31.

10.4. Reports.

(a) Within seventy-five (75) days after the end of each taxable year of the Company, the Administrative Manager shall cause to be sent to each Person who was a Member at any time during the accounting year then ended annual financial statements, including a balance sheet and statement of income and loss, prepared by the accountants of the Administrative Manager in accordance with standards issued by the American Institute of Certified Public accountants, and audited in accordance with such standards if requested by the Non-Managing Members.

(b) Within seventy-five (75) days after the end of each taxable year of the Company, the Administrative Manager shall cause to be sent to each Person who was a Member at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Member's income tax returns for that year.

(c) On a monthly basis, within 15 days following the end of the calendar month to which the report applies, the Administrative Manager shall prepare and provide, at the Company's expense, summaries to all Members which contain at a minimum the following information for the Company: (a) a monthly statement of income and loss for the Company, (b) a balance sheet of the Company at the end of the month, (c) cash position at the end of the month, and (d) summary of cash flow for the prior month, and year-to-year date cash flow of the Company; and any additional reports as may be set forth in the Development Management Agreement.

10.5. Other Duties of Administrative Manager. The Administrative Manager shall be responsible for paying all invoices to third party suppliers, vendors and contractors on behalf of the Company, paying the fees and expenses of Artery Development Company, LLC under the Development Management Agreement and generally handling the finances of the Company, including administering draw requests under any Company Financing.

10.6. Administrative Fee. In consideration for performing the duties of Administrative Manager hereunder, the Administrative Manager shall be entitled to receive an administrative fee ("Administrative Fee") from the Company in the following amount; $200 for each single family and townhouse Lot; $100 for each multifamily dwelling unit; and no fee for any moderately priced dwelling unit Lot or commercial Lot. The Administrative Fee shall be calculated based upon the projected number of Lots which the Property is expected to yield at the time of execution of this Agreement, and will be adjusted upwards or downwards when the actual

number of Lots has been determined, and shall be payable in equal monthly installments commencing on July 1, 2001 and continuing for a period of six years thereafter.

ARTICLE 11. BUSINESS PLAN AND DEVELOPMENT BUDGET

11.1. Procedures for Establishment. Within 60 days after the execution of this Operating Agreement, the Members shall agree to a business plan and development and operating budget for the Company (the "Business Plan and Development Budget"), which shall include a budget for the Development Work and operations of the Company for the remainder of the current fiscal year. The Managers shall, pursuant to the terms of the Development Management Agreement, prepare and submit a proposed budget for the Development Work, which budget shall be apart of the Business Plan and Development Budget.

11.2. Annual Development Budget. Each fiend year, by 60 days prior to the end of the Company's fourth fiscal quarter, Artery shall prepare and submit to Beater its proposed Business Plan and Development Budget for the following fiscal year, and Beazer shall thereafter submit its responses on the proposed Business Plan and Development Budget to Artery. within 15 days after receipt of Artery's submission. The Business Plan and Development Budget shall for the upcoming fiscal year shall contain reasonable detail with respect to revenue, contractual adjustments, income, operating expenses, capital needs. and debt incurrence and payment. All of the Members shall agree to adopt the Business Plan and Development Budget for the following fiscal year by 15 days prior to the beginning of the following fiscal year, or agree to submit to binding arbitration pursuant to Section 15.12. hereof, during which time the preceding fiscal year's Business Plan and Development Budget shall be increased by the Consumer Price Index (Washington, D.C./Baltimore metropolitan area) for the preceding fiscal year and shall continue in effect.

11.3. Interim Amendments to Business Plan and Development Budget. In the event any of the Members wishes to propose amendments to the Business Plan and Development Budget currently in effect for a particular fiscal year, the Member proposing such amendments shall deliver its proposed amendments to the other Member for approval. The Member receiving the proposed amendment to the Business Plan and Development Budget shall deliver its responses on the proposed amendment to the Business Plan and Development Budget to the first Member within 15 days after receipt of such submission. The proposed amendments to the Business Plan and Development Budget shall be effective upon 15 days after unanimous approval by the Members of the proposed amendments, unless otherwise agreed.

ARTICLE 12. DEVELOPMENT MANAGEMENT AGREEMENT

12.1. Development Management Agreement. Following the valid execution of this Operating Agreement by the Members, the Company shall enter into a development agreement (or shall cause Clarksburg Skylark, LLC- to enter into a development agreement) which shall specify and govern the responsibilities. duties, activities, obligations, rights, and powers of Artery Development Company, LLC in connection with the Development Work (the "Development Management Agreement") in the form attached hereto as Exhibit "D". The Development Management Agreement and the Business Plan and Development Budget shall specify the scope and extent of the Development Work. Artery Development Company, LLC

shall devote such time to the Company and its business as is appropriate to conduct the business of the Company in an effective manner and to carry out its responsibilities as required by the Development Management Agreement and this Operating Agreement; provided, however, that Artery Development Company, LLC shall not be obligated to devote its full time and attention or that of its officers, directors, employees, and Affiliates to the activities required by the Development Management Agreement.

ARTICLE 13. PROCEDURE FOR SALE OF LOTS

13.1. Division of Property into Building Lots.

(a) As soon as practicable, and in any event prior to the recordation of record plats for any Phase of the development of the Property, the Members shall agree on a division of the residential building lots with respect to such Phase into two groups, the "Artery Sale Lots" which shall be sold to builders solely at the direction of Artery, and the "Beazer Sale Lots" which shall be sold to builders solely at the direction of Beazer. The Members will split the residential building lots located on the Property on a 50/50 basis for each Phase, with one Member preparing the division plan for each Phase and the other Member selecting the first lot group; and alternating thereafter between the Members with respect to the preparation of the division plan and the selection of building lots.

(b) The Members agree to divide the lots based upon the following guidelines: (i) all single family and townhouse lots, including MPDU lots, will be divided on as evenly basis as possible based upon (a) type of lot, (b) the size of lot, (c) location of lot within the Phase and (d) value of Lot; (ii) Artery will have the first preference on the purchase of any of the multifamily lots or commercial land bays, which shall be sold on the basis of a fair market value determination pursuant to an agreement approved by the Members, and otherwise the Members will agree on the sale of such lots to a third party developer; and (ii) subject to the provisions of Section 13.2(d), Artery shall assume the obligations set forth in the Assignment Agreement with respect to the sale of 300 residential lots to Rocky Gorge Homes, LLC, and will be entitled to receive the deposit posted by Rocky Gorge Homes, LLC under the Assignment Agreement with respect thereto. The Members agree that any discrepancies in the value of lots provided to either Member in a given Phase will be made up, to the extent practicable, in the next succeeding Phase, and that any discrepancies in value which exist at the end of the final Phase will be settled by a monetary payment.

13.2. General.

(a) All sales of residential building lots will be made pursuant to the terms of the Lot Sales Agreement. To the extent practicable, the terms of the sale of the lots of the Property shall be consistent for builders of the Beazer Sale Lots and the Artery Sale Lots, provided that the purchase price paid by any Affiliate of Beazer for the Beazer Sale Lots may not include the profit attributable to the development of any of the Beazer Sale Lots, and which may be reflected in the profit attributable to the sale of the completed home.

(b) The Members shall cooperate with each other in maintaining a consistent high quality of development and consistent architectural standards within the development,

which will he included in architectural covenants approved by the Members. The parties will cooperate in the selection of any marketing names for the subdivisions, the placement and design of entrance monuments and other identifying elements.

(c) Pursuant to the Development Management Agreement, Artery Development Company, LLC will establish a home owners association for all of the residential building lots, a private utility company for the construction of the on-site water and sewer connections and will seek to establish a special taxing district under the provisions of Montgomery County law. The Company shall be entitled to collect a per house connection fee (or an established connection fee for the commercial parcel) from each builder at the time of settlement of the lot for the on-site water and sewer connections in an amount determined by the Members as part of the Business Plan and Development Budget. Each of the Members shall be entitled to receive the distributions of the private front foot benefit charges imposed on its respective lots by the private utility company, provided further, that Artery shall be entitled to purchase the rights to receive such payments with respect to the Beazer Sale Lots through the payment to Beazer of an upfront payment equivalent to six times the projected annual private water and sewer charges on such lots. The Members will insure that all builders purchasing lots from them receive all necessary disclosures concerning the establishment of the home owners association, the private utility company, and, if and when created, the special taxing district.

(d) Notwithstanding the provisions of this Section 13, the Members shall retain the right to reallocate the sale of the lots of the Property if the Members mutually agree that the Members and the Company will gain a competitive advantage by doing so, and in the event that the obligation of Rocky Gorge Homes, LLC to purchase lots out of the Artery Sale lots results in an allocation of lots to Artery that are not optimal for sale to a home builder, the parties agree to cooperate to work out an alternative arrangement if doing so would not adversely affect the allocation °flats for construction of homes by an Affiliate of Beazer.

(e) The Members shall cooperate with each other in developing plans for suitable recreational facilities and other amenities for the Property and will enter into such further agreements as may be necessary to finance, construct and operate same.

13.3. Option to Purchase Lots from Artery Development Company LLC at Fairland Project. In consideration for entering into this Agreement with Artery, Artery Development Company LLC shall provide to Beazer Homes Corp. the right to purchase approximately fifty percent (50%) of the lots in the Fairland Project located in Montgomery and Prince George's Counties, Maryland, for which Artery Development Company LLC and Ryland Homes have foamed a joint venture. The terms of the purchase right shall be set forth in the Option Agreement attached hereto as Exhibit "H". The parties further agree that in the event that Ryland Homes exercises any option that it may have to purchase up to 50 lots from the Fairland community from those lots which arc the subject of this option to Beazer Homes Corp., Artery shall provide an option for an equivalent number of lots out of the Artery Sale Lots to Beazer Homes Corp. on the same terms and conditions with respect to calculation of purchase price as set forth in the Fairland Option Agreement.

ARTICLE 14. MEETINGS OF MEMBERS AND ACTIONS ON WRITTEN CONSENT

14.1. Meetings. The Members shall meet at least once per calendar month to discuss the status of the Company, including but not limited to issues related to the operations of the Company and the Development Work. In addition, Meetings of the Members, for any purpose or purposes, may be called by the Managers or any Member.

14.2. Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by unanimous written consent of the Members, signed by all of the Members and showing the affirmative vote with respect to such action of all of the Members. Such written consent shall be filed with the minutes or records of the Company.

14.3. Place of Meetings; Telephone Meetings. The Members may designate any place, either in or outside the State of Maryland, as the place of meetings for any meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the Company in the State of Maryland. A meeting may take place by telephone conference call or any other form of electronic communication through which the Members may simultaneously hear each other. Such meeting shall be deemed to be held at the principal office of the Company or at the place properly named in the notice calling the meeting.

14.4. Notice of Meetings. Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than two (2) days (or any shorter period that may hereafter be permitted by the Act) nor more than one (1) months before the date of the meeting, either personally or by mail, by or at the direction of the person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered as provided in Section 15.1 hereof. The business conducted at any meeting need not be limited to the matters referenced in the notice of the meeting. No notice shall be required for action by written consent pursuant to Section 14.2 hereof.

14.5. Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. Attendance by a Member at a meeting is a waiver of notice of such meeting, except if the Member objects at the beginning of the meeting to the transaction of business became the meeting is not lawfully called or convened and does not otherwise participate in the consideration of any matter at the meeting.

ARTICLE 15. MISCELLANEOUS

15.1. Notice. All communications provided for herein shall be made in writing and transmitted by mail, first class postage prepaid, return receipt requested, or by telecopy the receipt of which is confirmed by the receiving party (all Members agreeing that they have an obligation to confirm receipt of a telecopy within 48 hours when requested), to the addresses set forth in Exhibit “A” or such other address as a Member may, from time to time, designate in writing. Any address may be changed by notice given to the Company and all Members by the party whose address or telecopier number for notice is to be changed. Insofar as practicable, any

consent of the Members, required or appropriate under this Operating Agreement, shall be accomplished by notice without the necessity of meetings of the Members.

15.2. Severability. The invalidity or unenforceability of any provision in this Operating Agreement shall not affect the other provisions hereof and this Operating Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

15.3. Interpretation. This Operating Agreement shall be interpreted and construed in accordance with the laws of the State of Maryland. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons referred to may require. Paragraph, article and other section captions of this Operating Agreement have been inserted as a matter of convenience only and shall not control or affect the meaning or construction of any of the terms or provisions thereof.

15.4. Integration. The parties hereto agree that except as set forth in the Articles, all understandings and agreements heretofore made between them regarding operating the Company are merged in this Operating Agreement. There are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among the parties hereto concerning operating the Company, other than as set forth in this Operating Agreement and the Articles. All prior agreements among the parties concerning operating the Company other than the Articles are superseded by this Operating Agreement.

15.5. Counterparts; Effective Date. This Operating Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute an agreement, and the signature of any member to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart, this Operating Agreement is dated and shall be effective among the parties as of the date feat above written.

15.6. Binding Effect. This Operating Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, assigns, heirs, executors, administrators, and legal representatives.

15.7. No Third Party Beneficiaries. The parties hereto intend that there shall be no third party beneficiaries of this Operating Agreement and this Operating Agreement shall be enforceable only by those persons upon whom this Operating Agreement is binding and to whom this Operating Agreement inures. Specifically, but without limitation, creditors and assignees of Members shall have no right to enforce any part of this Operating Agreement.

15.8. Operation as Limited Liability Company. The Company is intended to be organized and operated under the Act.

15.9. Amendments. Amendments otherwise authorized herein, amendments may be made to this Operating Agreement from time to time with the consent of all Members. All such amendments shall be in writing and counter-signed by all Members.

15.10. Member Consent and Approval. For all imposes in the Operating Agreement, whenever there is a reference to a right of a Member or its principals to approve or otherwise consent to a request, act or decision of the other Member or Manager, the parties agree that such

approval or consent is to be subject to a standard of commercial reasonableness and may not be unreasonably conditioned, withheld or delayed.

15.11. Waiver. The failure of any Member to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the affect of an original violation.

15.12. Arbitration. The Members shall submit all controversies pertaining to the Company, this Operating Agreement, and/or the relationship between the various parties hereto to arbitration in accordance with the Commercial Arbitration Rules and practices of the American Arbitration Association ("AAA") then in effect, with the arbitration to be held before a panel, in a location in the Washington D.C. metropolitan area which is mutually agreed upon by the Members. The parties agree to cooperate in pursuing-such arbitration promptly commencing with the date of either party's request therefor. Upon receipt of such notice to pursue arbitration, the Members shall promptly obtain a list of commercial arbiters made available by the AAA with expertise in residential and commercial real estate development matters. Within five (5) days of receipt of such list, each Member shall agree to choose one arbiter, who together shall select a third arbiter from such list. The hearing before the arbitration panel shall be held as soon as practicable thereafter, which shall be within a period of thirty (30) days after selection of the arbitration panel, unless the schedule of the arbiters does not so permit. Unless otherwise agreed by the parties involved in the arbitration, the expenses and costs associated with the arbitration panel and hearing facilities shall be paid by the Company and each party shall be responsible for their own costs and expenses associated with any arbitration proceeding, including attorneys fees. The decision of the arbitration panel shall be in writing and shall be deemed final, binding and conclusive upon the parties, and the appropriate judgment, order or other judicial relief (whether legal or equitable) may be entered in any court of competent jurisdiction to enforce the decision rendered by the arbitration pond. This agreement to arbitrate shall be specifically enforceable and shall survive the termination or expiration of this Operating Agreement.

IN WITNESS WHEREOF, the Members have executed, or caused this Operating Agreement to be executed, as of the date set forth hereinabove.

WITNESS:

/s/

ARTERY CLARKSBURG, LLC, a Maryland limited liability company
By: The Artery Group, LLC, Manager

By: /s/ B. Hayes McCarty
Name: B. Hayes McCarty
Title: Executive Vice President

BEAZER CLARKSBURG, LLC, a Maryland limited liability company
By: Beazer Homes Corporation, Member

/s/

By: /s/ David L. Carney
Name: David L. Carney
Title: Vice President

LIST OF EXHIBITS:

Exhibit A — Members and Membership Interests

Exhibit B — Articles of Organization

Exhibit C — Description of the Property

Exhibit D — Development Management Agreement

Exhibit E — [DELETED]

Exhibit F — Seller Deferred Purchase Money Note

Exhibit G — Assignor Deferred Purchase Money Note

Exhibit H — Fairland Option Agreement

EXHIBIT A

ARTERY-BEAZER CLARKSBURG, LLC

MEMBERS AND MEMBERSHIP INTEREST

Members	Membership Interest
Artery Clarksburg, LLC a Maryland limited liability company 7200 Wisconsin Avenue, Suite 1000 Bethesda, Maryland 20814 Attention: B. Hayes McCarty	50%
Beazer Clarksburg, LLC a Maryland limited liability company 8965 Guilford Road Suite 290 Columbia, Maryland 21046 Attention: David L. Camay	50%

EXHIBIT B

ARTERY-BEAZER CLARKSBURG, LLC

ARTICLES OF INCORPORATION
OF
ARTERY-BEAZER CLARKSBURG, LLC

EXHIBIT C

ARTERY-BEAZER CLARKSBURG, LLC

DESCRIPTION OF THE PROPERTY

EXHIBIT D

ARTERY-BEAZER CLARKSBURG, LLC

DEVELOPMENT MANAGEMENT AGREEMENT

EXHIBIT E

ARTERY-BEAZER CLARKSBURG, LLC

(DELETED)

EXHIBIT F

ARTERY-BEAZER CLARKSBURG, LLC

SELLER DEFERRED PURCHASE MONEY NOTE

EXHIBIT G

ARTERY-BEAZER CLARKSBURG, LLC

ASSIGNOR DEFERRED PURCHASE MONEY NOTE

EXHIBIT H

ARTERY-BEAZER CLARKSBURG, LLC

FAIRLAND OPTION AGREEMENT

Exhibit 3.2(aj)

OPERATING AGREEMENT (Interim)

CLARKSBURG SKYLARK, LLC

THIS OPERATING AGREEMENT ("this Agreement") is made and entered into as of the 30th day of April, 2001, by DiMaio Joint Venture, a Maryland general partnership (the "Member").

EXPLANATORY STATEMENT

The Member, desiring to for a limited liability company pursuant to the provisions of the Maryland Limited Liability Company Act (the "Act"), hereby creates a limited liability company for the purposes and on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is agreed by the Member as follows:

1. Formation and Name. The Member agrees to and does hereby form a limited liability company under the name "CLARKSBURG SKYLARK, LLC" (the "Company"), pursuant to the provisions of the Act and this Agreement. Upon the execution hereof, the Member hereby authorizes Robert L. Brownell, Esquire to execute and file the Articles of Organization attached hereto as Exhibit A, with the State Department of Assessments and Taxation of Maryland ("SDAT").

2. Principal Office and Resident Agent. The principal office of the Company in this State is c/o Wheeler & Korpeck, LLC, 8601 Georgia Avenue, Suite 908, Silver Spring, Maryland 20910. The name of the resident agent for the Company is William T. Wheeler whose address is 8601 Georgia Avenue, Suite 908, Silver Spring, Maryland 20910.

3. Term. The Company shall have a term beginning on the date the Articles of Organization are filed and received for recordation by the SDAT, and shall continue in full force and effect until terminated pursuant to the further terms of this Agreement.

4. Member, Percentage Interests and Contributions to Capital. The undersigned is the sole Member of the Company and owns all of the membership interests in the Company. The partners of the Member are all of the owners of record (as tenants in common) of the approximately 374 acre parcel of land located along Skylark Road in Clarksburg, Montgomery Country, Maryland (the "Property"). As soon as possible, the Member shall cause each such partner to convey his or her ownership interest in the Property to the Company as a contribution of capital. (Esther DiMaio hold title to 25% interest in the Property as nominee for DiMaio Family, LLC, one of the partners of Member).

5. Purpose of the Company. The purpose for which the Company is formed and the business or objects to be carried on and promoted by it are to own, develop, lease and sell property and conduct all activities related thereto.

6. Authority of the Member. Until and unless otherwise agreed in writing by the Member, (or all of the owners of any membership interests of the Company), the Company shall not commence any business nor incur any debts and Member shall not assign, transfer or encumber its membership interest in the Company.

7. Miscellaneous.

7.1 Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Member and each of its partners as parties to this Agreement.

7.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

IN WITNESS WHEREOF, the Member acknowledges that this Agreement is its act, and further acknowledges under penalty of perjury, to the best of its knowledge, information, and belief, that the matters and facts set forth herein are true in all material respects, and that it has executed this Agreement as of the day and year first above written.

MEMBER

DIMAIO JOINT VENTURE

By: /s/ Richard V. DiMaio
Richard V. DiMaio, Partner

By: /s/ Estelle DeMaio
Estelle DiMaio, Partner

By: /s/ Barbara Markwood
Barbara Markwood, Partner

By: /s/ Theresa DiMaio Stone
Theresa DiMaio Stone (also known of record
as Theresa Lee DiMaio), Partner

By: DiMaio Family, LLC, Partner

By: /s/ Richard DiMaio
Richard DiMaio, Member

By: /s/ Theresa DiMaio Stone
Theresa DiMaio Stone, Member

By: DiMaio Family 19999 Irrevocable Trust, Member

By: /s/ Richard DiMaio
Richard DiMaio, Trustee

By: /s/ Theresa DiMaio Stone
Theresa DiMaio Stone, Trustee

PARTNERSHIP AGREEMENT
OF
CROSSMANN COMMUNITIES PARTNERSHIP

THIS AGREEMENT, made as of the 1st day of September, 1993, by and among Deluxe Homes Inc., an Indiana corporation ("DHI), Deluxe Homes of Lafayette, Inc., an Indiana corporation ("DHLI"), TriMark Homes, Inc., an Indiana corporation ("THI"), and TriMark Development, Inc., an Indiana corporation ("TDI") (hereinafter referred to individually as a "Partner" and collectively as the "Partners"),

WITNESSETH THAT:

WHEREAS, the Partners desire to form a general partnership in order to carry on a general business of development, construction and sales of single-family homes.

NOW, THEREFORE, it is agreed as follows:

ARTICLE I

Formation of Partnership

The parties hereto do hereby form a general partnership (hereinafter referred to as the "Partnership") pursuant to the provisions of the Uniform Partnership Act of the State of Indiana.

ARTICLE II

Name of Partnership and Names of Partners

The name of the Partnership is Crossmann Communities Partnership.

The names and addresses of the Partners are:

Deluxe Homes Inc.
2935 East 96th Street
Indianapolis, IN 46240

TriMark Homes, Inc.
2935 East 96th Street
Indianapolis, IN 46240

Deluxe Homes of Lafayette, Inc.
P.O. Box 4375
Lafayette, IN 47903

TriMark Development, Inc.
2935 East 96th Street
Indianapolis, IN 46240

ARTICLE III

Purpose

The purpose of the partnership is to develop, construct and sell single-family homes and to do all other things which are appropriate for the furtherance of the business of the Partnership.

ARTICLE IV

Place of Business

The location of the principal place of business of the Partnership shall be 2935 East 96th Street, Indianapolis, Indiana 46240 or such other place as may be determined from time to time with the consent of all of the Partners.

ARTICLE V

Term

The term of the Partnership shall commence immediately upon the filing of Articles of Share Exchange with the Secretary of State of the State of Indiana for the: (i) share exchange pursuant to which DHI shall become a wholly owned subsidiary of Crossmann Communities, ("CCI"); (ii) share exchange pursuant to which DHLI shall become a wholly owned subsidiary of CCI; (iii) share exchange pursuant to which THI shall become a wholly owned subsidiary of CCI; and (iv) share exchange pursuant to which TDI shall become a wholly owned subsidiary of CCI, and shall continue until terminated by the consent of all of the Partners.

ARTICLE VI

Capital Contributions

The Partners shall determine from time to time, with the consent of all of the Partners, the amount of the capital to be contributed to the Partnership. Each Partner shall initially contribute to the capital of the Partnership all of the currently owned operating assets of such Partner (net of the liabilities of each Partner). The capital contributions of the Partners may not be withdrawn except with the consent of all of the Partners.

ARTICLE VII

Profits and Losses

Each Partner shall share the net profits, net losses, and distributions of the Partnership as follows:

Name	Percentage
DHI	27.5%
DHLI	17.5%
THI	27.5%
TDI	27.5%

ARTICLE VIII

Management of Business

Section 8.1 Designation of Managing Partner. DHI is hereby designated the Managing Partner of the Partnership.

Section 8.2 Powers of Managing Partner. The Managing Partner shall have the full, complete and exclusive power and authority to manage the business of the Partnership and to conduct its affairs including, but not limited to, the power:

(a) to acquire by purchase, lease, or otherwise real estate or other property for cash or upon credit, and upon such other terms and conditions as they determine;

(b) to maintain, operate, and lease the property of the Partnership and improvements thereon;

(c) to sell, exchange, or otherwise dispose of all the assets of the Partnership or any part thereof;

(d) to hire employees, agents and independent contractors;

(e) to borrow money from the Partners or from others and in connection therewith to mortgage, pledge or otherwise encumber the property of the Partnership;

(f) to enter into make, perform and carry out, or cancel and rescind, contracts;

(g) change the names of the Managing Partner;

(h) to delegate to others the management of the business of the Partnership;

(i) to effect any refinancing of the obligations of the Partnership;

(j) to have and exercise all such other powers as are necessary or appropriate to effect the purposes for which the Partnership is formed.

Section 8.3 Exercise of Powers by Managing Partner. In exercising its powers hereunder the Managing Partner may deal with one or more of the Partners or with any firm or corporation in which one or more of the Partners have an interest. The transactions of the Partnership shall be on such terms and

conditions and for such considerations as the Managing Partner deems advisable in its sole discretion; provided, however, that any transactions between the Partnership and an officer or director of any Partner or an officer or director of any entity that owns or controls at least 50% of the equity interest in such Partner (a "Parent Entity") or any transaction between the Partnership and any entity, the equity in which is at least 10% owned or controlled by an officer or director of any Partner or an officer or director of a Parent Entity, must be approved by the Board of Directors of the Parent Entity. The foregoing powers include the power to deal with the assets of the Partnership which might or will involve periods of time after the Partnership has been dissolved or terminated. Instruments to be signed for and on behalf of the Partnership may be signed by the Managing Partner.

Section 8.4 Efforts of Managing Partner. The Managing Partner shall devote so much of its time as is reasonable to ensure the proper conduct of the business of the Partnership. The Managing Partner may also devote time to other business, whether or not similar in nature to the business of the Partnership. The Managing Partner shall be reimbursed for expenses incurred by it on behalf of the Partnership. The Managing Partner shall not receive any fee for the management of the business of the Partnership, however, it may incur management costs for the management of the business of the Partnership by others.

The Managing Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or the other Partner for any of its acts or omissions within the scope of the authority conferred on it by this agreement except in the event of fraud or gross negligence. The Partnership shall indemnify the Managing Partner and hold it harmless against liability to third parties for the acts or omissions within the scope of the authority as Managing Partner hereunder.

Section 8.5 Limitation on Powers of Other Partners. The non-managing Partners shall not participate in or have any control over the management of the business of the Partnership.

ARTICLE IX

Fiscal Regulations

The Partnership books shall be maintained at the principal place of business of the Partnership or at such other place as may be determined from time to time with the consent of all of the Partners. The books shall be kept on a calendar year basis. All funds of, the Partnership shall be deposited in its name in such checking account or accounts as shall be agreed upon by the Partners. Withdrawals therefrom may be made by checks signed by any one Partner.

ARTICLE X

Withdrawal or Assignment

A Partner shall not have the right to withdraw from the Partnership. In the event a Partner does desire to withdraw from the Partnership the other Partner shall have the right to purchase the withdrawing Partner's interest at the then book value of such interest. A Partner shall have the right to assign its interest with the consent of the other Partner.

ARTICLE XI

General

The rights and liabilities created by this agreement shall inure to the benefit of, or be binding upon, the personal representatives, heirs, devisees, assigns and other successors of the Partners.

IN WITNESS WHEREOF, the undersigned have executed this agreement the day and year first above written.

DELUXE HOMES, INC.

By: /s/

Its:

DELUXE HOMES OF LAFAYETTE, INC.

By: /s/

Its:

TRIMARK HOMES, INC.

By: /s/

Its:

TRIMARK DEVELOPMENT, INC.

By: /s/

Its:

AMENDMENT OF PARTNERSHIP AGREEMENT
AND CONSENT TO REGISTRATION
AS A LIMITED LIABILITY PARTNERSHIP

I. Amendments.

The undersigned, being all of the Partners of Crossmann Communities Partnership, an Indiana general partnership (the "Partnership"), hereby agree to amend the Partnership Agreement of the Partnership made as of the 1st day of September, 1993, as previously amended (the "Partnership Agreement"), in the following respects:

A. Article II of the Partnership Agreement, "Name of Partnership and Names of Partners," is hereby amended and restated in its entirety to read as follows:

"The name of the partnership shall be Beazer Homes Indiana LLP."

"The names and addresses of the Partners are:

Deluxe Homes of Lafayette, Inc.
1000 Abernathy Road, Suite 1200
Atlanta, GA 30328

Beazer Homes Investments, LLC
1000 Abernathy Road, Suite 1200
Atlanta, GA 30328

B. Article VII of the Partnership Agreement is hereby amended and restated in its entirety to read as follows:

"Each Partner shall share the net profits, net losses, and distributions of the Partnership as follows:

Name	Percentage
Beazer Homes Investments, LLC	83.111%
Deluxe Homes of Lafayette, Inc.	16.889%"

C. Article VIII, Section 8.1 of the Partnership Agreement, "Designation of Managing Partner," is hereby amended and restated in its entirety to read as follows:

"Section 8.1. Designation of Managing Partner. Beazer Homes Investments, LLC is hereby designated the Managing Partner of the Partnership."

D. The following is hereby added as Article XII to the Partnership Agreement:

"Limited Liability. From and after the registration of the partnership as a limited liability partnership under applicable law, the provisions of this Article shall be applicable. No partner shall be liable, directly or indirectly, including by way of indemnification, contribution, or otherwise, for the debts, obligations, or liabilities of, or chargeable to, the partnership or other partners, whether arising in tort, contract, or otherwise, or the acts or omissions of any other partner, solely by reason of being a partner, acting or failing to act as a partner, or participating as an employee, a consultant, a contractor, or otherwise in the conduct of the business or activities of the partnership while the partnership is a limited liability

partnership. The partnership shall be solely liable out of partnership assets for the debts, obligations, and liabilities of the partnership. A partner's liability for the obligations of the partnership shall be limited to the aggregate amount of such partner's capital account and agreed upon contribution to the partnership."

The amendments contained herein shall be deemed effective on and after the date hereof. In all other respects, the Partnership Agreement remains in full force and effect without any other amendment.

II. Consent.

The undersigned partners hereby consent to, and authorize any partner to execute and file with the Indiana Secretary of State, an appropriate registration form, substantially in the form of Exhibit A attached hereto, to effect the establishment and registration of the partnership as a limited liability partnership under and in accordance with the applicable laws of the State of Indiana.

[Signature page follows]

Executed as of the 27th day of December, 2004.

BEAZER HOMES INVESTMENTS, LLC
By: Beazer Homes Corp., its Managing Member

/s/ Ian J. McCarthy
By: Ian McCarthy, President

DELUXE HOMES OF LAFAYETTE, INC.

/s/ Ian J. McCarthy
By: Ian McCarthy, President

Exhibit 4.4

BEAZER HOMES USA, INC.

and

THE GUARANTORS PARTY HERETO

to

[TRUSTEE]

Trustee

INDENTURE

Dated as of [ ]

SUBORDINATED DEBT SECURITIES

BEAZER HOMES USA, INC.

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

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

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

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

INDENTURE, dated as of [___], among BEAZER HOMES USA, INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "***Company***"), having its principal office at 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30308, the Guarantors (as defined hereinafter), each having its principal office at 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328, and [**Trustee**], as Trustee (herein called the "***Trustee***").

RECITALS OF THE COMPANY

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

Each of the Initial Guarantors has duly authorized the execution and delivery of this Indenture to provide for the guarantee by such Initial Guarantor of such series of Securities as to which such guarantee has been made applicable as provided herein.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"***Company Request***" or "***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 designated office of the Trustee in [___] at which at any particular time its corporate trust business shall be administered and which, at the date hereof, is located at [___, **Attention**: ___], or at such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee.

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

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

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

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

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

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

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

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

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

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

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

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

may include International Financial Reporting Standards), such other standards, in each case which are in effect at such time.

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

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

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

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

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

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

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

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

"***Indebtedness***" means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred,

for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the type referred to in clauses (i) through (vii).

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

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

"***Initial Guarantor***" or "***Initial Guarantors***" means April Corporation, a Colorado corporation, Arden Park Ventures, LLC, a Florida limited liability company, Beazer Allied Companies Holdings, Inc., a Delaware corporation, Beazer Clarksburg, LLC, a Maryland limited liability company, Beazer Commercial Holdings, LLC, a Delaware limited liability company, Beazer General Services, Inc., a Delaware corporation, Beazer Homes Corp., a Tennessee corporation, Beazer Homes Holdings Corp., a Delaware corporation, Beazer Homes Indiana Holdings Corp., a Delaware corporation, Beazer Homes Indiana LLP, a Delaware, limited liability partnership, Beazer Homes Investments, LLC, a Delaware limited liability company, Beazer Homes Sales, Inc., a Delaware corporation, Beazer Homes Texas, L.P., a Delaware limited partnership, Beazer Homes Texas Holdings, Inc., a Delaware corporation, Beazer Realty Corp., a Georgia corporation, Beazer Realty, Inc., a New Jersey corporation, Beazer Realty Los Angeles, Inc., a Delaware corporation, Beazer Realty Sacramento, Inc., a Delaware corporation, Beazer Realty Services, LLC, a Delaware limited liability company, Beazer SPE, LLC, a Georgia limited liability company, Beazer/Squires Realty, Inc., a North Carolina corporation, BH Building Products, LP, a Delaware limited partnership, BH Procurement Services, LLC, a Delaware limited liability company, Homebuilders Title Services of Virginia, Inc., a Virginia corporation, Homebuilders Title Services, Inc., a Delaware corporation, Paragon Title, LLC, an Indiana limited liability company, Texas Lone Star Title, L.P., a Texas limited partnership, Trinity Homes, LLC, an Indiana limited liability company, Beazer Mortgage Corporation, a Delaware corporation, Beazer Homes Michigan, LLC, a Delaware limited liability company, Dove Barrington Development LLC, a Delaware limited liability company, Elysian Heights Potomia, LLC, a Virginia limited liability company, Clarksburg Arora LLC, a Maryland limited liability company, and Clarksburg Skylark, LLC, a Maryland limited liability company.

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

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

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

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

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

"***Original Issue Discount Security***" means any Security which provides for an amount less than the

principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

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

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

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

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

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

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

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

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

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

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

payable as specified as contemplated by Section 3.1.

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

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

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

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

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

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

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

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

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

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

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

"***Senior Notes***" means, collectively, the Company's (1) 8-5/8% Senior Notes due 2011; (ii) 8-3/8% Senior Notes due 2012; (iii) 6½% Senior Notes due 2013; (iv) 6⅞% Senior Notes due 2015; (v) 8⅛% Senior Notes due 2016; (vi) 12% Senior Secured Notes due 2017 and (vii) 4⅝% Convertible Senior Notes due 2024.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Company and any Guarantor may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, provided that neither the Company nor such Guarantor may set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving, making or taking of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to give, make or take the relevant action, whether or not such Holders remain Holders after such record date; provided, however, that no such action shall be effective hereunder unless given, made or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company or any Guarantor from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action given, made or taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is given, made or taken. Promptly after any record date is set pursuant to this paragraph, the Company or such Guarantor, as the case may be, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Sections 1.5 and 1.6.

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

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

deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date to an earlier day as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

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

Section 1.5 Notices, Etc., to Trustee, Company and Guarantors. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, (1) the Trustee by any Holder or by the Company or any Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (which may be by facsimile transmission) to or with the Trustee at its Corporate Trust Office, Attention: [___][, with a copy (which shall not constitute notice) to the Trustee at [___, Attention: ___] or any other address previously furnished in writing to the Company and the Holders by the Trustee] or (2) the Company or a Guarantor by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company or such Guarantor, as the case may be, addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.6 Notice to Holders; Waiver. Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

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

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

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

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

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

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

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

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

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

Section 1.15 No Personal Liability of Directors, Officers, Employees and Stockholders. No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor, respectively, under the Securities or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

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

Section 1.17 Force Majeure. Subject to Section 6.1, in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

ARTICLE II
SECURITY FORMS

Section 2.1 Forms Generally. The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, and, if the Securities of such series are to be guaranteed by the Guarantees of any Guarantor as provided in Section 3.1 and the terms of such Securities provide for the endorsement thereon or attachment thereto of Guarantees by such Guarantor, such Guarantees to be endorsed on or attached to such Securities shall be in substantially such form as shall be established by or pursuant to a Guarantor's Board Resolution of such Guarantor or in one or more indentures supplemented hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be

required to comply with the rules of any securities exchange or Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities or Guarantees, respectively, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities. If the form of any Guarantees by any Guarantor to be endorsed on Securities of any series is established by action taken pursuant to a Guarantor's Board Resolution of such Guarantor, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of such Guarantor and delivered to the Trustee at or prior to the delivery of the Guarantor Order contemplated by Section 3.3 for the authentication and delivery of such Securities with such Guarantee endorsed thereon. For purposes hereof, a Guarantee that is endorsed on, or otherwise attached to, a Security shall be deemed "endorsed" on such Security.

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

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

Section 2.2 Form of Face of Security.

BEAZER HOMES USA, INC.

No. ___$ ___ CUSIP No. ___

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

[If the Security is not to bear interest prior to Maturity, insert — The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of

___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand.]

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

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

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

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

BEAZER HOMES USA, INC.

By: _____
Name: _____
Title _____

Section 2.3 Form of Reverse of Security. This Security is one of a duly authorized issue of subordinated securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an ***Indenture***, dated as of [___] (herein called the "***Indenture***", which term shall have the meaning assigned to it in such instrument), among the Company, the Guarantors and **[Trustee]**, as Trustee (herein called the "***Trustee***," which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Guarantors, the Trustee, the holders of Senior Debt [if applicable, insert — and any Senior Guarantor Debt] and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [if applicable, insert — limited in aggregate principal amount to $___].

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

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

Year	Redemption Price	Year	Redemption Price

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

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

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

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

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

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

Subject to following paragraph, this Indenture or the Securities (including any supplemental indenture or Authorizing Resolutions relating to a Series Securities) may be amended or supplemented with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Securities) of the Holders of at least a majority in principal amount of the Securities then outstanding, and any existing default or Event of Default (other than any continuing default or Event of Default in the payment of interest on or the principal of the Securities) under, or compliance with any provision of, this Indenture may be waived with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Securities) of the Holders of a majority in principal amount of the Securities then outstanding. Without the consent of any Holder, the Company, the Guarantors and the Trustee may amend this Indenture Supplement or the Securities or waive any provision of the

Indenture to cure any ambiguity, defect or inconsistency, to comply with Section 8.1; to provide for uncertificated Securities in addition to certificated Securities; to make any change that does not adversely affect the legal rights under this Indenture of any Holder; to comply with or qualify this Indenture under the Trust Indenture Act; or to reflect a Guarantor ceasing to be liable on the Guarantees because it is no longer a Subsidiary of the Company. After an amendment under this paragraph becomes effective, the Company shall mail notice of such amendment to the affected Holders.

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

The right of any Holder to participate in any consent required or sought pursuant to any provision of the Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any Securities with respect to which such consent is required or sought as of a date identified by the Trustee in a notice furnished to Holders in accordance with the terms of the Indenture.

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

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

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

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

No service charge shall be made for any such registration of transfer or exchange, but the Company may

require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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

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

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

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

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

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

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

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

Dated:

[**TRUSTEE**], AS TRUSTEE

By: _____
Authorized Signatory

ARTICLE III
THE SECURITIES

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

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

(1) the title of the Series;

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

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

(4) the date from which interest will accrue;

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

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

(7) the Security Registrar and Paying Agent;

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

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

(10) the denominations in which Securities are issuable;

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

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

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

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

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

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

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

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

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

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

(21) if the Securities of the series are to be guaranteed by any Guarantors, the names of the Guarantors of the Securities of the series (which may, but need not, include any or all of the Initial Guarantors) and the terms of the Guarantees of the Securities of the series, if such terms differ from those set forth in Section 14.1, and any deletions from, or modifications or additions to, the provisions of Article

XIV or any other provisions of this Indenture in connection with the Guarantees of the Securities of the series; and

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

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

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

The terms of any Security of a series may differ from the terms of other Securities of the same series, if and to the extent provided pursuant to this Section 3.1. The matters referenced in any or all of Clauses (1) through (22) above may be established and set forth or determined as aforesaid with respect to all or any specific Securities of a series (in each case to the extent permitted by the Trust Indenture Act).

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

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

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

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

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

Securities and any Guarantees by any Guarantor endorsed thereon bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company or such Guarantor, as the case

may be, shall bind the Company or such Guarantor, as the case may be, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

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

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

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

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

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

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

Each Security shall be dated the date of its authentication.

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

benefits of this Indenture.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.6 Mutilated, Destroyed, Lost and Wrongfully Taken Securities. If (a) any mutilated Security is surrendered to the Trustee or (b) both (i) there shall be delivered to the Company and the Trustee (A) a claim by a Holder as to the destruction, loss or wrongful taking of any Security of such Holder and a request thereby for a new replacement Security of the same series, and (B) such indemnity bond as may be required by them to save each of them and any agent of either of them harmless and (ii) such other reasonable requirements as may be imposed by the Company as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a "protected purchaser" within the meaning of Section 8-405 of the Uniform Commercial Code, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such mutilated, destroyed, lost or wrongfully taken Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously Outstanding.

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

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

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

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

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

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

(1) The Company may elect to make payment of any Defaulted Interest payable on any Securities of a series to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each of such Securities and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid

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

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

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

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

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

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

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

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

permitted by this Indenture. All canceled Securities held by the Trustee shall be disposed of as directed by a Company Order; provided, however, that the Trustee shall not be required to destroy such canceled Securities.

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

Section 3.11 CUSIP Numbers. The Company in issuing the Securities may use CUSIP numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Securities. Any such redemption shall not be affected by any defect in or omission of such CUSIP numbers.

ARTICLE IV
SATISFACTION AND DISCHARGE

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

(1) either

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

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

(i) have become due and payable, or

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

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

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

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

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

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

Section 4.2 Application of Trust Money. Subject to the provisions of the last paragraph of Section 10.3, all money deposited with the Trustee pursuant to Section 4.1 with respect to Securities of any series shall be held in trust and applied by it, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest for whose payment such money has been deposited with the Trustee. All moneys deposited with the Trustee pursuant to Section 4.1 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon Company Request, to the extent originally deposited by the Company. The Company may direct by a Company Order the investment of any money deposited with the Trustee pursuant to Section 4.1, without distinction between principal and income, in (1) United States Treasury Securities with a maturity of one year or less or (2) a money market fund that invests solely in short term United States Treasury Securities and from time to time the Company may direct the reinvestment of all or a portion of such money in other securities or funds meeting the criteria specified in Clause (1) or (2) of this sentence.

ARTICLE V
DEFAULTS AND REMEDIES

Section 5.1 Events of Default.

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

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

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

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

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

(5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver,

liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days (provided that, if any Person becomes the successor to the Company pursuant to Article VIII and such Person is organized and validly existing under the law of a jurisdiction outside the United States, each reference in this Clause (5) to an applicable Federal or State law of a particular kind shall be deemed to refer to such law or any applicable comparable law of such non-U.S. jurisdiction, for as long as such Person is the successor to the Company hereunder and is so organized and existing); or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept

or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.9 Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

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

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

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

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

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

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

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

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

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

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

Section 5.14 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs, including reasonable attorneys' fees and expenses, against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company, any Guarantor or the Trustee or, if applicable, in any suit for the enforcement of the right to convert any Security in accordance with its terms.

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

ARTICLE VI
THE TRUSTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and

premises of the Company and, if applicable, the Guarantors, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

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

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

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

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

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

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

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

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

Section 6.7 Compensation and Reimbursement.

The Company agrees

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

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

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

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

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

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

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

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

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

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

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

If at any time:

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

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

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

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

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

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

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

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, any Guarantor, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor

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

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

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

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

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

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

accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

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

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

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

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

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

[TRUSTEE], AS TRUSTEE

By: _____
As Authenticating Agent

By: _____
Authorized Signatory

ARTICLE VII
HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

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

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

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

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

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

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

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

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

Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than [ ] 15 and shall be dated as of [ ] 1 in each calendar year, commencing in 20___.

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

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

ARTICLE VIII
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

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

(1) in case the Company shall consolidate with or merge into another Person or sell, convey, transfer or lease all or substantially all its properties and assets to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by sale, conveyance or transfer, or which leases, all or substantially all the properties and assets of the Company shall be a corporation, partnership or trust, shall be organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in

form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and, for each Security that by its terms provides for conversion, shall have provided for the right to convert such Security in accordance with its terms;

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

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

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

ARTICLE IX
SUPPLEMENTAL INDENTURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9.7 Subordination Unimpaired. No supplemental indenture shall adversely affect the interests of any holder of Senior Debt then outstanding under Article XV or of any holder of Senior Guarantor Debt then outstanding under the last paragraph of Section 14.1 in any material respect unless each holder of Senior Debt or Senior Guarantor Debt so affected (or the group or representative thereof authorized or required to consent thereto pursuant to the instrument creating or evidencing, or pursuant to which there is outstanding, such Senior Debt or Senior Guarantor Debt) consents to such supplemental indenture in writing.

ARTICLE X
COVENANTS

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

Section 10.2 Maintenance of Office or Agency. The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or upon the Company or any Guarantor in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company and each Guarantor hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

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

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

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

such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

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

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

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

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

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

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

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

Section 10.6 Waiver of Certain Covenants. Except as otherwise provided pursuant to Section 3.1 for all or any Securities of any series, the Company may, with respect to all or any Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in Section 10.4 or in any covenant provided pursuant to Section 3.1(18), 9.1(2), 9.1(6) or 9.1(7) for the benefit of the Holders of such series or in Article VIII if, before the time for such compliance, the Holders of a majority in principal amount (including waivers obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of all Outstanding Securities affected by such waiver (considered together as one class for this purpose and such affected Securities potentially being Securities of the same or different series and, with respect to any particular series, potentially comprising fewer than all the Securities of such series) shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect. A waiver of compliance given by or on behalf of any Holder of Securities in connection with a purchase of, or tender or exchange offer for, such Holder's Securities will not be rendered invalid by such purchase, tender or exchange.

ARTICLE XI
REDEMPTION OF SECURITIES

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

Section 11.2 Election to Redeem; Notice to Trustee. The election of the Company to redeem any Securities shall be established in or pursuant to a Board Resolution or in another manner specified as contemplated by Section 3.1 for such Securities. In case of any redemption at the election of the Company of less than all the Securities of any series (including any such redemption affecting only a single Security), the Company shall, at least 5 Business Days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities (1) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (2) pursuant to an election of the Company that is subject to a condition specified in the terms of the Securities of the series to be redeemed, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

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

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

The Trustee shall promptly notify the Company and each Security Registrar in writing of the Securities selected for redemption as aforesaid and, in case of any Securities selected for partial redemption as aforesaid, the

principal amount thereof to be redeemed.

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

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

Section 11.4 Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 1.6 not less than 30 days nor more than 60 days prior to the Redemption Date (or within such period as otherwise specified as contemplated by Section 3.1 for the relevant Securities), to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

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

(1) the Redemption Date,

(2) the Redemption Price,

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

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,

(5) the place or places where each such Security is to be surrendered for payment of the Redemption Price,

(6) for any Securities that by their terms may be converted, the terms of conversion, the date on which the right to convert the Security to be redeemed will terminate and the place or places where such Securities may be surrendered for conversion, and

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

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

Section 11.5 Deposit of Redemption Price. Prior to 11:00 A.M., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date, other than any Securities called for redemption on that date which have been converted prior to the date of such deposit.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.7 or in the terms of such Security) be paid to the Company upon Company Request or, if then held by the

Company, shall be discharged from such trust.

Section 11.6 Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 3.1, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

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

Section 11.7 Securities Redeemed in Part. Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE XII
SINKING FUNDS

Section 12.1 Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 3.1 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any Securities is herein referred to as a "*mandatory sinking fund payment*," and any payment in excess of such minimum amount provided for by the terms of such Securities is herein referred to as an "*optional sinking fund payment*." If provided for by the terms of any Securities, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities as provided for by the terms of such Securities.

Section 12.2 Satisfaction of Sinking Fund Payments with Securities. The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been converted in accordance with their terms or which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as and to the extent provided for by the terms of such Securities; provided that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as specified in the Securities so to be redeemed (or at such other prices as may be specified for such Securities as contemplated in Section 3.1), for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 12.3 Redemption of Securities for Sinking Fund. Not less than 45 days (or such shorter period as shall be satisfactory to the Trustee) prior to each sinking fund payment date for any Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to the terms of such Securities, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities

pursuant to Section 12.2 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

ARTICLE XIII
DEFEASANCE AND COVENANT DEFEASANCE

Section 13.1 Company's Option to Effect Defeasance or Covenant Defeasance. Unless otherwise designated pursuant to Section 3.1(15), the Securities of any series of Securities shall be subject to defeasance or covenant defeasance pursuant to such Section 13.2 or 13.3, in accordance with any applicable requirements provided pursuant to Section 3.1 and upon compliance with the conditions set forth below in this Article. The Company may elect, at its option, at any time, to have Section 13.2 or Section 13.3 applied to any Securities or any series of Securities so subject to defeasance or covenant defeasance. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 3.1 for such Securities.

Section 13.2 Defeasance and Discharge. Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, the Company shall be deemed to have been discharged from its obligations, and the provisions of Article XV (and the provisions of the last paragraph of Section 14.1) shall cease to be effective, with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called "***Defeasance***"). For this purpose, such Defeasance means that the Company and the Guarantors of the Securities shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all their other respective obligations under such Securities and this Indenture insofar as such Securities or such Guarantees are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 13.4(1) and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities when payments are due, (2) the obligations of the Company and the Guarantors of the Securities of such series with respect to such Securities under Sections 3.4, 3.5, 3.6, 10.2 and 10.3, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article. Subject to compliance with this Article, the Company may exercise its option (if any) to have this Section applied to any Securities notwithstanding the prior exercise of its option (if any) to have Section 13.3 applied to such Securities. Upon the effectiveness of defeasance with respect to any series of Securities, each Guarantor of the Securities of such series shall (except as provided in clause (2) of the preceding sentence) be automatically and unconditionally released and discharged from all of its obligations under its Guarantee of the Securities of such series and all of its other obligations under this Indenture in respect of the Securities of such series, without any action by the Company, any Guarantor or the Trustee and without the consent of the Holders of any Securities.

Section 13.3 Covenant Defeasance. Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, (1) the Company shall be released from its obligations under Section 10.4 and any covenants provided pursuant to Section 3.1(18), 9.1(2), 9.1(6) or 9.1(7) for the benefit of the Holders of such Securities, and (2) the occurrence of any event specified in Sections 5.1(4) (with respect to Section 10.4 and any such covenants provided pursuant to Section 3.1(18), 9.1(2), 9.1(6) or 9.1(7)) and 5.1(8) shall be deemed not to be or result in an Event of Default and (3) the provisions of Article XV (and the provisions of the last paragraph of Section 14.1) shall cease to be effective, in each case with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that, with respect to such Securities, the Company and any Guarantor may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 5.1(4)) or Article XV or the last paragraph of Section 14.1, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or Article or by reason of any reference in any such Section or Article to any other provision herein or in any other document, but the remainder of this Indenture and such Securities and any Guarantees thereof shall be unaffected thereby.

Section 13.4 Conditions to Defeasance or Covenant Defeasance. The following shall be the conditions to the application of Section 13.2 or Section 13.3 to any Securities or any series of Securities, as the case may be:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee which satisfies the requirements contemplated by Section 6.9 and agrees to comply with the provisions of this Article applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefits of the Holders of such Securities, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) such other obligations or arrangements as may be specified as contemplated by Section 3.1 with respect to such Securities, or (D) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on such Securities on the respective Stated Maturities, in accordance with the terms of this Indenture and such Securities. As used herein, "***U.S. Government Obligation***" means (x) any security which is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in Clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(2) In the event of an election to have Section 13.2 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(3) In the event of an election to have Section 13.3 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(4) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that neither such Securities nor any other Securities of the same series, if then listed on any securities exchange, will be delisted as a result of such deposit.

(5) No event which is, or after notice or lapse of time or both would become, an Event of Default with respect to such Securities or any other Securities (other than such an event or Event of Default solely with respect to such Securities resulting from the borrowing of funds to be applied to such deposit) shall have occurred and be continuing at the time of such deposit.

(6) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which it is bound.

(7) The Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of such Securities over the other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding creditors of the Company.

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

Section 13.5 Deposited Money and U.S. Government Obligations to Be Held in Trust; Miscellaneous Provisions. Subject to the provisions of the last paragraph of Section 10.3, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section and Section 13.6, the Trustee and any such other trustee are referred to collectively as the "***Trustee***") pursuant to Section 13.4 in respect of any Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent or any Guarantor of the Securities of the applicable series or any Subsidiary or Affiliate of the Company or any such Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal and any premium and interest, but money and U.S. Government Obligations so held in trust need not be segregated from other funds except to the extent required by law. Money and U.S. Government Obligations (including the proceeds thereof) so held in trust shall not be subject to the provisions of Article XV, provided that the applicable conditions of Section 13.4 have been satisfied

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 13.4 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Anything in this Article to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 13.4 with respect to any Securities which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

Section 13.6 Reinstatement. If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article with respect to any Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the respective obligations under this Indenture and such Securities and, if applicable, Guarantees of such Securities from which the Company and the applicable Guarantors have been discharged or released pursuant to Section 13.2 or 13.3 shall be revived and reinstated as though no deposit had occurred pursuant to this Article with respect to such Securities, until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 13.5 with respect to such Securities in accordance with this Article; provided, however, that if the Company or any Guarantor makes any payment of principal of or any premium or interest on any such Security following such reinstatement of its obligations, the Company or such Guarantor, as the case may be, shall be subrogated to the rights (if any) of the Holders of such Securities to receive such payment from the money so held in trust.

ARTICLE XIV
GUARANTEES

Section 14.1 Guarantees. Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed by such Guarantors as shall be established pursuant to Section 3.1 with respect to the Securities of such series. The Persons who shall initially be the Guarantors of the Securities of any such series may, but need not, include any or all of the Initial Guarantors and may include any and all such other Persons as the Company may determine; provided that, prior to the authentication and delivery upon original issuance of Securities that are to be guaranteed by a Person that is not an Initial Guarantor, the Company, the Trustee and such Person shall

enter into a supplemental indenture pursuant to Section 9.1 hereof whereby such Person shall become a Guarantor under this Indenture.

Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed in accordance with the terms of such Guarantees as established pursuant to Section 3.1 with respect to such Securities and such Guarantees thereof and (except as otherwise specified as contemplated by Section 3.1 for such Securities and such Guarantees thereof) in accordance with this Article.

Each Guarantor of any Security hereby fully and unconditionally guarantees to each Holder of such Security, and to the Trustee on behalf of such Holder, the due and punctual payment of the principal of, and premium, if any, and interest, if any, on such Security when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of such Security and of this Indenture. In case of the failure of the Company punctually to make any such payment, such Guarantor hereby agrees to cause such payment to be made punctually when and as the same shall become due and payable, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, and as if such payment were made by the Company.

The Guarantor of any Security hereby agrees that its obligations hereunder shall be absolute and unconditional irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of such Security or this Indenture, any failure to enforce the provisions of such Security or this Indenture, or any waiver, modification or indulgence granted to the Company with respect thereto, by the Holder of such Security or the Trustee or any other circumstance which may otherwise constitute a legal or equitable discharge or defense of a surety or guarantor; provided, however, that notwithstanding the foregoing, no such waiver, modification or indulgence shall, without the consent of any Guarantor, increase the principal amount of such Security, or increase the interest rate thereon, change any redemption provisions thereof (including any change to increase any premium payable upon redemption thereof) or change the Stated Maturity of any payment thereon, or increase the principal amount of any Original Issue Discount Security that would be due and payable upon a declaration of acceleration or the maturity thereof pursuant to Section 5.2 of this Indenture.

The Guarantor of any Security hereby waives the benefits of diligence, presentment, demand for payment, any requirement that the Trustee or any of the Holders exhaust any right or take any action against the Company or any other Person, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest or notice with respect to any Security or the indebtedness evidenced thereby and all demands whatsoever, and covenants that its obligations hereunder will not be discharged in respect of such Security except by complete performance of the obligations of such Guarantor contained in such Security and in this Indenture. Any Guarantee of any Guarantor hereunder shall constitute a guaranty of payment and not of collection. The Guarantor of any Security hereby agrees that, in the event of a default in payment of principal, or premium, if any, or interest, if any, on such Security, whether at its Stated Maturity, by declaration of acceleration, call for redemption or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Security, subject to the terms and conditions set forth in this Indenture, directly against such Guarantor to enforce the obligation of such Guarantor hereunder without first proceeding against the Company.

The obligations of the Guarantor of any Security hereunder with respect to such Security shall be continuing and irrevocable until the date upon which the entire principal of, premium, if any, and interest, if any, on such Security has been, or has been deemed pursuant to the provisions of Article Four of this Indenture to have been, paid in full or otherwise discharged.

The Guarantor of any Security shall be subrogated to all rights of the Holders of such Security against the Company in respect of any amounts paid by the Guarantor on account of such Security pursuant to the provisions of this Indenture; provided, however, that such Guarantor shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until the principal of, and premium, if any, and interest, if any, on all Securities issued hereunder that are due and payable shall have been paid in full.

The Guarantee by any Guarantor of any Security shall remain in full force and effect and continue notwithstanding any petition filed by or against the Company for liquidation or reorganization, the Company becoming insolvent or making an assignment for the benefit of creditors or a receiver or trustee being appointed for

all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or reinstated, as the case may be, if at any time payment of such Security, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any Holder of such Security, whether as a "voidable preference," "fraudulent transfer," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned on a Security, such Security shall, to the fullest extent permitted by law, be reinstated and deemed paid only by such amount paid and not so rescinded, reduced, restored or returned.

No Guarantor shall consolidate with or merge into any other Person or sell, convey or transfer all or substantially all its properties and assets to any Person, and no Guarantor shall permit any Person to consolidate with or merge into such Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is an Affiliate of the Company, and no Guarantor shall lease all or substantially all its properties and assets to any Person (whether or not such an Affiliate), unless, in any such case:

(1) in case such Guarantor shall consolidate with or merge into another Person or sell, convey, transfer or lease all or substantially all its properties and assets to any Person, the Person formed by such consolidation or into which such Guarantor is merged or the Person which acquires by sale, conveyance or transfer, or which leases, all or substantially all the properties and assets of such Guarantor shall be a corporation, partnership or trust, shall be organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the performance or observance of every covenant of this Indenture and any Guarantees on the part of such Guarantor to be performed or observed;

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

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

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

Upon (i) a consolidation or merger of any Guarantor with or into, or a sale, conveyance or transfer of all or substantially all the properties and assets of any Guarantor to, any other Person or any consolidation or merger of any Person with or into any Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is not an Affiliate of the Company or (ii) any sale, conveyance or transfer (including by way of merger) by the Company or any Subsidiary thereof of all or substantially all the Capital Stock of any Guarantor to any Person that is not an Affiliate of the Company, such Guarantor shall be deemed to be automatically and unconditionally released and discharged from all its obligations under its Guarantees and under this Article XIV without any further action required on the part of the Trustee or any Holder. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Section 14.1. The Company may, at its option, at any time and from time to time, cause any Guarantor to be automatically and unconditionally released and discharged from all its obligations under its Guarantees with respect to Securities of all series guaranteed by Guarantees of such Guarantor and under this Article XIV upon (i) any conditions for such release provided with respect to Securities of such series in accordance with Section 3.1 having

been satisfied and (ii) delivery by the Company to the Trustee of a Company Order relating to such release and discharge. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Section 14.1.

Anything in this Indenture, the Securities or any Guarantee to the contrary notwithstanding, the obligations of any Guarantor under its Guarantees and this Indenture shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor, result in the obligations of such Guarantor under its Guarantees and this Indenture not constituting a fraudulent advance or fraudulent transfer under any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or other law affecting the rights of creditors generally.

No Guarantee by any Guarantor of any Security, whether or not such Guarantee is or is to be endorsed thereon, shall be valid and obligatory for any purpose with respect to such Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.

The obligations of each Guarantor under its Guarantees pursuant to this Article XIV are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Guarantor Debt of such Guarantor, in each case on the same basis as the indebtedness represented by the Securities and the payment of the principal of (and premium, if any) and interest on the Securities are subordinate and subject in right of payment to the prior payment in full of all Senior Debt, mutatis mutandis. For the purposes of the foregoing sentence, the Trustee and the Holders shall have the right to receive or retain payments by any Guarantor only at such times as they may receive or retain payments and distributions in respect of the Securities pursuant to this Indenture, including Article XV hereof.

ARTICLE XV
SUBORDINATION OF SECURITIES

Section 15.1 Securities Subordinate to Senior Debt. The Company covenants and agrees, and each Holder of a Security, by his acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article, the indebtedness represented by the Securities and the payment of the principal of (and premium, if any) and interest on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

Notwithstanding the foregoing, if a deposit referred to in Section 13.4(1) is made pursuant to Section 13.2 or Section 13.3 with respect to any Securities (and provided all other conditions set out in Section 13.2 or Section 13.3, as applicable, shall have been satisfied with respect to such Securities), then no money or U.S. Government Obligations so deposited, and no proceeds thereon, will be subject to any rights of holders of Senior Debt, including any such rights arising under this *Article XV*.

Section 15.2 Payment Over of Proceeds Upon Dissolution, Etc. In the event of (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Company, then and in any such event the holders of Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt (including any interest accruing thereon after the commencement of any such case or proceeding), or provision shall be made for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, before the Holders of the Securities are entitled to receive any payment on account of principal of (or premium, if any) or interest on the Securities, and to that end the holders of Senior Debt shall be entitled to receive, for application to the payment thereof, any payment or distribution of any kind or character, whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities, which may be payable or deliverable in respect of the Securities in any such case, proceeding, dissolution, liquidation or other winding up event.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities, before all Senior Debt is paid in full or payment thereof provided for, and if such fact shall, at or prior to the time of such payment or distribution, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all Senior Debt in full, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt. Any taxes that have been withheld or deducted from any payment or distribution in respect of the Securities, or any taxes that ought to have been withheld or deducted from any such payment or distribution that have been remitted to the relevant taxing authority, shall not be considered to be an amount that the Trustee or the Holder of any Security receives for purposes of this Section.

For purposes of this Article only, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation or other entity, provided for by a plan of reorganization or readjustment which are subordinated in right of payment to all Senior Debt which may at the time be outstanding to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, or the sale, conveyance, transfer or lease by the Company of all or substantially all its properties and assets to, another Person upon the terms and conditions set forth in Article VIII, or the liquidation or dissolution of the Company following any such sale, conveyance or transfer, shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of such properties and assets, as the case may be, shall, as a part of such consolidation, merger, sale, conveyance, transfer or lease, comply with the conditions set forth in Article VIII.

Section 15.3 Prior Payment to Senior Debt Upon Acceleration of Securities. In the event that any Securities are declared due and payable before their Stated Maturity, then and in such event the holders of Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt or provision shall be made for such payment in cash, before the Holders of the Securities are entitled to receive any payment (including any payment which may be payable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities) by the Company on account of the principal of (or premium, if any) or interest on the Securities or on account of the purchase or other acquisition of Securities; provided, however, that nothing in this Section shall prevent the satisfaction of any sinking fund payment in accordance with Article XII by delivering and crediting pursuant to Section 12.2 Securities which have been acquired (upon redemption or otherwise) prior to such declaration of acceleration.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

Section 15.4 No Payment When Senior Debt in Default. Subject to the last paragraph of this Section, (a) (i) in the event and during the continuation of any default in the payment of principal of (or premium, if any) or interest on any Senior Debt beyond any applicable grace period with respect thereto, or (ii) in the event that any event of default with respect to any Senior Debt shall have occurred and be continuing permitting the holders of such Senior Debt (or a trustee on behalf of the holders thereof) to declare such Senior Debt due and payable prior to the date on which it would otherwise have become due and payable, whether or not such Senior Debt has been so accelerated (provided that, in the case of Clause (i) or Clause (ii), if such default in payment or event of default shall have been cured or waived or shall have ceased to exist and any such declaration of acceleration shall have been rescinded or annulled, then such default in payment or event of default, as the case may be, shall be deemed not to have occurred for the purposes of this Section), or (b) in the event that any judicial proceeding shall be pending with respect to any such default in payment or event of default that shall be deemed to have occurred for the purpose of

this Section, then no payment (including any payment which may be payable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities) shall be made by the Company on account of principal of (or premium, if any) or interest on the Securities or on account of the purchase or other acquisition of Securities; provided, however, that nothing in this Section shall prevent the satisfaction of any sinking fund payment in accordance with Article XII by delivering and crediting pursuant to Section 12.2 Securities which have been acquired (upon redemption or otherwise) prior to such default in payment.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

No default in payment or event of default with respect to any Senior Debt shall be deemed to be a default in payment or event of default of the kind specified in Clause (a)(i) or (a)(ii) of this Section, and no judicial proceeding with respect to any such default in payment or event of default shall be deemed to be a judicial proceeding of the kind specified in Clause (b) of this Section, if (x) the Company shall be disputing the occurrence or continuation of such default in payment or event of default, or any obligation purportedly giving rise to such default in payment or event of default, and (y) no final judgment holding that such default in payment or event of default has occurred and is continuing shall have been issued. For this purpose, a "final judgment" means a judgment that is issued by a court having jurisdiction over the Company or its property, is binding on the Company or its property, is in full force and effect and is not subject to judicial appeal or review (including because the time within which a party may seek appeal or review has expired), provided that, if any such judgment has been issued but is subject to judicial appeal or review, it shall nevertheless be deemed to be a final judgment unless the Company shall in good faith be prosecuting such appeal or a proceeding for such review and shall have obtained a stay of execution pending such appeal or review. Notwithstanding the foregoing, this paragraph shall not apply to any default in payment or event of default with respect to any Senior Debt as to which the Company has waived the application of this paragraph in the instrument evidencing such Senior Debt or by which such Senior Debt is created, incurred, assumed or guaranteed by the Company.

Section 15.5 Payment Permitted in Certain Situations. Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time except during the pendency of any case, proceeding, dissolution, liquidation or other winding up, assignment for the benefit of creditors or other marshalling of assets and liabilities of the Company referred to in Section 15.2 or under the conditions described in Section 15.3 or Section 15.4, from making payments at any time of or on account of the principal of (and premium, if any) or interest on the Securities, or on account of the purchase or other acquisition of Securities, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of (and premium, if any) or interest on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

Section 15.6 Subrogation to Rights of Holders of Senior Debt. Subject to the payment in full of all Senior Debt or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article (equally and ratably with the holders of indebtedness of the Company which by its express terms is subordinated to Indebtedness of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation) to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of (and premium, if any) and interest on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

Section 15.7 Provisions Solely to Define Relative Rights. The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article of the holders of Senior Debt, is intended to rank equally with all other general obligations of the Company), to pay to the Holders of the Securities the principal of (and premium, if any) and interest on the Securities as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt; or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

Section 15.8 Trustee to Effectuate Subordination. Each Holder of a Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 15.9 No Waiver of Subordination Provisions. No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

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

Section 15.10 Notice to Trustee. The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.1, shall be entitled in all respects to assume that no such facts exist.

Subject to the provisions of Section 6.1, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 15.11 Reliance on Judicial Order or Certificate of Liquidating Agent. Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.1,

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

Section 15.12 Trustee Not Fiduciary For Holders of Senior Debt. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders or creditors if it shall in good faith pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article or otherwise. With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Debt shall be read into this Indenture against the Trustee.

Section 15.13 Rights of Trustee as Holder of Senior Debt; Preservation of Trustees Rights. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Debt which may at any time be held by it, to the same extent as any other holder of Senior Debt and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.6.

Section 15.14 Article Applicable to Paying Agents. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “Trustee” as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee.

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

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

BEAZER HOMES USA, INC.

By: _____

SUBSIDIARY GUARANTORS:

APRIL CORPORATION
BEAZER ALLIED COMPANIES HOLDINGS, INC.
BEAZER GENERAL SERVICES, INC.
BEAZER HOMES CORP.
BEAZER HOMES HOLDINGS CORP.
BEAZER HOMES INDIANA HOLDINGS CORP.
BEAZER HOMES SALES, INC.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER REALTY CORP.
BEAZER REALTY, INC.
BEAZER REALTY LOS ANGELES, INC.
BEAZER REALTY SACREMENTO, INC.
BEAZER/SQUIRES REALTY, INC.
HOMEBUILDERS TITLE SERVICES OF VIRGINIA, INC.
HOMEBUILDERS TITLE SERVICES, INC.

By: _____

BEAZER MORTGAGE CORPORATION

By: _____

BEAZER HOMES INDIANA LLP

By: BEAZER HOMES INVESTMENTS, LLC,
its Managing Partner

By: BEAZER HOMES CORP.,
its Sole Member

By: _____

ARDEN PARK VENTURES, LLC
BEAZER CLARKSBURG, LLC
BEAZER COMMERCIAL HOLDINGS, LLC
DOVE BARRINGTON DEVELOPMENT LLC
BEAZER HOMES INVESTMENTS, LLC
BEAZER HOMES MICHIGAN, LLC
ELYSIAN HEIGHTS POTOMIA, LLC

By: BEAZER HOMES CORP.,
its Sole Member

By: _____

BEAZER HOMES TEXAS, L.P.
TEXAS LONE STAR TITLE, L.P.

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

By: _____

BEAZER REALTY SERVICES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member

By: BEAZER HOMES CORP.,
its Sole Member

By: _____

BEAZER SPE, LLC

By: BEAZER HOMES HOLDINGS CORP.,
its Sole Member

By: _____

BH BUILDING PRODUCTS, LP

By: BH PROCUREMENT SERVICES, LLC,
its General Partner

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

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

By: _____

BH PROCUREMENT SERVICES, LLC

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

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

By: _____

PARAGON TITLE, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member and Manager

By: BEAZER HOMES CORP.,
its Sole Member

By: _____

CLARKSBURG ARORA LLC

By: BEAZER CLARKSBURG, LLC,
it Sole Member

By: BEAZER HOMES CORP.,
its Sole Member

By: _____

CLARKSBURG SKYLARK, LLC

By: CLARKSBURG ARORA LLC,
its Sole Member

By: BEAZER CLARKSBURG, LLC,
it Sole Member

By: BEAZER HOMES CORP.,
its Sole Member

By: _____

[TRUSTEE]

By: _____

November 13, 2009

Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 1200
Atlanta, Georgia 30328

Ladies and Gentlemen:

I am Executive Vice President and General Counsel of Beazer Homes USA, Inc., a Delaware corporation (the "***Company***"), and have acted in my capacity as General Counsel in connection with the registration, pursuant to a registration statement on Form S-3 (the "***Registration Statement***"), filed with the Securities and Exchange Commission (the "***Commission***") under the Securities Act of 1933, as amended (the "***Act***"), relating to the offering and sale from time to time, as set forth in the Registration Statement and the form of prospectus contained therein (the "***Prospectus***"), and one or more supplements to the Prospectus (each, a "***Prospectus Supplement***"), of up to $750,000,000 aggregate principal amount of securities (the "***Securities***") consisting of (a) shares of the Company's common stock, par value $0.001 per share (the "***Common Stock***"), (b) shares of the Company's preferred stock, par value $0.01 per share (the "***Preferred Stock***"), (c) the Company's senior debt securities, in one or more series (the "***Senior Debt Securities***"), and the Company's subordinated debt securities, in one or more series (the "***Subordinated Debt Securities***" and, together with the Senior Debt Securities, the "***Company Debt Securities***"), (d) guarantees (the "***Guarantees***") of the Company Debt Securities by the subsidiaries (the "***Subsidiary Guarantors***") listed on Schedule I hereto and named in the Registration Statement (the Company Debt Securities, together with (if such Company Debt Securities have been guaranteed by Subsidiary Guarantors) the related Guarantees of such Subsidiary Guarantors, being referred to herein as the "***Debt Securities***"), (e) the Company's depositary shares representing fractional shares of Preferred Stock (the "***Depositary Shares***"), (f) the Company's warrants to purchase Common Stock, Preferred Stock, Debt Securities or other Securities (the "***Warrants***"), (g) the Company's rights to purchase Common Stock, Preferred Stock, Depositary Shares or Debt Securities (the "***Rights***"), (h) the Company's stock purchase contracts to purchase Common Stock or other Securities (the "***Stock Purchase Contracts***") and (i) the Company's obligations under stock purchase units, each representing ownership of Stock Purchase Contracts and debt securities, preferred securities, warrants or debt obligations of third parties, including U.S. treasury securities, securing a holder's obligation to purchase the securities under such Stock Purchase Contracts (to the extent constituting securities under the Act issued by the Company, the "***Stock Purchase Units***") or any combination of the foregoing, each on the terms to be determined at the time of each offering. This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act.

I have examined originals or certified copies of (i) that certain Indenture, dated as of April 17, 2002, among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Senior Debt Securities filed as Exhibit 4.2 to the Registration Statement (ii) a form of that certain Indenture for the Subordinated Debt Securities filed as Exhibit 4.4 to the Registration Statement as may be entered into by the Company and a

trustee as may be named therein (together with the trustee referred to in (i), each a "***Trustee***") (the indentures in (i) and (ii) are each referred to herein as an "***Indenture***"), the form and terms (including any Guarantees) of any series of Company Debt Securities issued under such Indenture to be established by and set forth in an officers' certificate or a supplemental indenture to such Indenture and (iii) such corporate, limited liability company or limited partnership records of the Company, the Subsidiary Guarantors and other certificates and documents of officials of the Company, the Subsidiary Guarantors, public officials and others as I have deemed appropriate for purposes of this letter. I have assumed the genuineness of all signatures, the authenticity of all documents submitted to me as originals and the conformity to authentic original documents of all copies submitted to me as conformed and certified or reproduced copies. As to various questions of fact relevant to this letter, I have relied, without independent investigation, upon certificates of public officials and certificates of and conferences with certain officers of the Company and the Subsidiary Guarantors, all of which I assume to be true, correct and complete.

Based upon the foregoing and subject to the assumptions, exceptions, qualifications and limitations set forth hereinafter, I am of the opinion that:

1. With respect to Securities constituting the Common Stock, when (i) the Company has taken all necessary action to authorize and approve the issuance of such Common Stock, the terms of offering thereof and related matters and (ii) such Common Stock has been issued and delivered, with certificates representing such Common Stock having been duly executed, countersigned, registered and delivered or, if uncertificated, valid book-entry notations for the issuance thereof in uncertificated form having been duly made in the share register of the Company, in accordance with the terms of the applicable definitive purchase, underwriting or similar agreement or, if such Common Stock is issuable upon exchange or conversion of Securities constituting Debt Securities or Preferred Stock, the applicable Indenture or certificate of designations therefor, or if such Common Stock is issuable upon exercise of Securities constituting Warrants, the applicable Warrant Agreement (defined below) therefor, if such Common Stock is issuable upon exercise of Securities constituting Rights, the applicable Rights Agreement (defined below) therefor or if such Common Stock is issuable pursuant to Stock Purchase Contracts, the applicable Stock Purchase Contract Agreement (defined below) therefor, against payment (or delivery) of the consideration therefor provided for therein, such Common Stock (including any Common Stock duly issued (a) upon exchange or conversion of any Securities constituting Debt Securities or Preferred Stock that are exchangeable for or convertible into Common Stock, (b) upon exercise of any Securities constituting Warrants or Rights that are exercisable for Common Stock or (c) pursuant to any Securities constituting Stock Purchase Contracts providing for the purchase of Common Stock) will have been duly authorized and validly issued and will be fully paid and non-assessable.

2. With respect to Securities constituting the Preferred Stock, when (i) the Company has taken all necessary action to authorize and approve the issuance of such Preferred Stock, the terms of offering thereof and related matters, (ii) the Board of Directors of the Company or duly authorized committee thereof (the "***Company Board***") has taken all necessary corporate action to

designate and establish the terms of such Preferred Stock and has caused a certificate of designations with respect to such Preferred Stock to be prepared and filed with the Secretary of State of the State of Delaware and (iii) such Preferred Stock has been duly issued and delivered, with certificates representing such Preferred Stock having been duly executed, countersigned, registered and delivered or, if uncertificated, valid book-entry notations for the issuance thereof in uncertificated form having been duly made in the share register of the Company, in accordance with the terms of the applicable definitive purchase, underwriting or similar agreement or, if such Preferred Stock is issuable upon exchange or conversion of Securities constituting Debt Securities, the applicable Indenture therefor, or if such Preferred Stock is issuable upon exercise of Securities constituting Warrants, the applicable Warrant Agreement therefor, or if such Preferred Stock is issuable upon exercise of Securities constituting Rights, the applicable Rights Agreement therefore, or if such Preferred Stock is issuable pursuant to Stock Purchase Contracts, the applicable Stock Purchase Contract Agreement therefor, against payment (or delivery) of the consideration therefor provided for therein, such Preferred Stock (including any Preferred Stock duly issued upon (a) exchange or conversion of any Securities constituting Debt Securities that are exchangeable for or convertible into Preferred Stock, (b) exercise of any Securities constituting Warrants or Rights that are exercisable for Preferred Stock, or (c) pursuant to any Securities constituting Stock Purchase Contracts providing for the purchase of Preferred Stock) will have been duly authorized and validly issued and will be fully paid and non-assessable.

3. With respect to Securities constituting the Debt Securities (including, if Company Debt Securities are guaranteed by Guarantees, such Company Debt Securities and such Guarantees), when (i) the Company and, if the Debt Securities constitute Company Debt Securities guaranteed by Guarantees, the Subsidiary Guarantors (together with the Company, the "***Issuers***") have taken all necessary action to establish the form and terms of such Debt Securities and to authorize and approve the issuance of such Debt Securities, the terms of the offering thereof and related matters, (ii) the applicable Indenture in substantially the form filed as an exhibit to the Registration Statement and any supplemental indenture thereto relating to such Debt Securities have been duly authorized, executed and delivered by the parties thereto (including, if Debt Securities constitute Company Debt Securities guaranteed by Guarantees, the applicable Subsidiary Guarantors) with the terms of such Debt Securities and, if Debt Securities constitute Company Debt Securities guaranteed by Guarantees, such Guarantees having been set forth in such Indenture or such a supplemental indenture or an officers' certificate delivered pursuant thereto, (iii) an eligible Trustee under the applicable Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended (the "***TIA***"), and (iv) such Debt Securities (including, if such Debt Securities constitute Company Debt Securities guaranteed by Guarantees, any notations of such Guarantees thereon) have been duly executed, authenticated, issued and delivered in accordance with the terms of the applicable Indenture and the applicable resolution of the Company Board or supplemental indenture relating to such Debt Securities and the applicable definitive purchase, underwriting or similar agreement or, if such Debt Securities are issuable upon exchange or conversion of Securities constituting Preferred Stock, the certificate of designations therefor, or if such Debt Securities are issuable upon exercise of Securities constituting Warrants, the applicable Warrant Agreement therefor, or if such Debt

Securities are issuable upon exercise of Securities constituting Rights, the applicable Rights Agreement therefor, against payment (or delivery) of the consideration therefor provided for therein, such Debt Securities (including, if Company Debt Securities are guaranteed by Guarantees, such Company Debt Securities and such Guarantees and including any Debt Securities duly issued upon (a) exchange or conversion of Securities constituting any Preferred Stock that are exchangeable for or convertible into Debt Securities, or (b) exercise of Securities constituting any Warrants or Rights that are exercisable for Debt Securities) will have been duly authorized by all necessary corporate, limited liability company or limited partnership action on the part of the Company and, if such Debt Securities constitute Company Debt Securities guaranteed by Guarantees, each of the applicable Subsidiary Guarantors, and will be valid and binding obligations of each such Issuer and will be entitled to the benefits of the Indenture.

4. With respect to Securities constituting the Depositary Shares, when (i) the Company has taken all necessary action to approve the issuance of such Depositary Shares, the terms of the offering thereof and related matters, (ii) the action with respect to the Preferred Stock underlying such Depositary Shares referred to in paragraph 2 above has been taken and such Preferred Stock has been duly deposited with the Depositary (defined below) under the applicable Depositary Agreement (defined below) and (iii) such Depositary Shares have been issued and delivered, with Depositary Receipts (defined below) representing such Depositary Shares having been duly executed, countersigned, registered and delivered in accordance with the terms of the applicable Depositary Agreement and the applicable definitive purchase, underwriting or similar agreement or, if such Depositary Shares are issuable upon exercise of Securities constituting Warrants, the applicable Warrant Agreement therefor, or, if such Depositary Shares are issuable upon exercise of Securities constituting Rights, the applicable Rights Agreement therefor, or if such Depositary Shares are issuable pursuant to Stock Purchase Contracts, the applicable Stock Purchase Contract Agreement therefor, against payment (or delivery) of the consideration therefor provided for therein, such Depositary Shares (including any Depositary Shares duly issued upon (a) exercise of any Securities constituting Warrants or Rights that are exercisable for Depositary Shares or (b) pursuant to any Securities constituting Stock Purchase Contracts providing for the purchase of Depositary Shares) will have been duly authorized and validly issued.

5. With respect to Securities constituting the Warrants, when (i) the Company has taken all necessary action to authorize and approve the issuance of such Warrants, the terms of the offering thereof and related matters and (ii) such Warrants have been duly executed, countersigned, issued and delivered in accordance with the terms of the applicable Warrant Agreement and the applicable resolution of the Company Board relating to such Warrants and the applicable definitive purchase, underwriting or similar agreement, against payment (or delivery) of the consideration therefor provided for therein, such Warrants will have been duly authorized by all necessary corporate action on the part of the Company and will be valid and binding obligations of the Company.

6. With respect to Securities constituting the Rights, when (i) the Company has taken all necessary action to authorize and approve the issuance of such Rights, the terms of the

offering thereof and related matters and (ii) such Rights have been duly executed, countersigned, issued and delivered in accordance with the terms of the applicable Rights Agreement and the applicable resolution of the Company Board relating to such Rights and the applicable definitive purchase, underwriting or similar agreement, against payment (or delivery) of the consideration therefor provided for therein, such Rights will have been duly authorized by all necessary corporate action on the part of the Company and will be valid and binding obligations of the Company.

7. With respect to Securities constituting the Stock Purchase Contracts, when (i) the Company has taken all necessary action to authorize and approve the issuance of such Stock Purchase Contracts, the terms of the offering thereof and related matters and (ii) such Stock Purchase Contracts have been duly executed, countersigned, issued and delivered in accordance with the terms of the applicable Stock Purchase Contract Agreement and the applicable resolution of the Company Board relating to such Stock Purchase Contracts and the applicable definitive purchase, underwriting or similar agreement, against payment (or delivery) of the consideration therefor provided for therein, such Stock Purchase Contracts will have been duly authorized by all necessary corporate action on the part of the Company and will be valid and binding obligations of the Company.

8. With respect to Securities constituting the Stock Purchase Units, when (i) the Company has taken all necessary action to authorize and approve the issuance of such Stock Purchase Units, the terms of the offering thereof and related matters, (ii) the action with respect to the Stock Purchase Contracts comprising a part of such Stock Purchase Units referred to in paragraph 7 above has been taken, (iii) such Stock Purchase Units have been duly issued and delivered, with certificates representing such Stock Purchase Units having been duly executed, countersigned, issued and delivered in accordance with the terms of the applicable Stock Purchase Unit Agreement (defined below) and the applicable resolution of the Company Board relating to such Stock Purchase Units and the applicable definitive purchase, underwriting or similar agreement, against payment (or delivery) of the consideration therefor provided for therein, (iv) any securities other than such Stock Purchase Contracts comprising a part of such Stock Purchase Units shall have been duly executed, issued and delivered by the respective issuers thereof and constitute valid and binding obligations of such issuers, enforceable in accordance with their respective terms and (v) any collateral arrangements relating to such Stock Purchase Units have been duly established and any agreements in respect thereof have been duly executed and delivered and the collateral has been deposited with the collateral agent in accordance with such arrangements, such Stock Purchase Units will constitute valid and binding obligations of the Company, enforceable in accordance with their terms.

The opinions and other matters in this letter are qualified in their entirety and subject to the following:

A. I have assumed that, in the case of each offering and sale of Securities, (i) the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective under the Act and, if such Securities constitute Debt Securities, the Trustee will have been eligible and qualified and the Indenture will have been qualified, under

the TIA and such effectiveness, eligibility or qualification shall not have been terminated or rescinded; (ii) a Prospectus Supplement will have been prepared and filed with the Commission describing such Securities; (iii) such Securities will have been issued and sold in compliance with applicable United States federal and state securities Laws (hereinafter defined) and pursuant to and in the manner stated in the Registration Statement and the applicable Prospectus Supplement; (iv) unless such Securities constitute (a) Common Stock or Debt Securities issuable upon exchange or conversion of Securities constituting Preferred Stock, (b) Common Stock or Preferred Stock issuable upon exchange or conversion of Securities constituting Debt Securities, (c) Common Stock, Preferred Stock, Debt Securities or Depositary Shares issuable upon exercise of Securities constituting Warrants or Rights or (d) Common Stock, Preferred Stock or Depositary Shares issuable upon purchase pursuant to Securities constituting Stock Purchase Contracts, a definitive purchase, underwriting or similar agreement with respect to the issuance and sale of such Securities will have been duly authorized, executed and delivered by the Company and the other parties thereto; (v) at the time of the issuance of such Securities, the Company and, if such Securities constitute Debt Securities that constitute Company Debt Securities guaranteed by Guarantees, each of the other Issuers (a) will validly exist and be duly qualified and in good standing under the laws of its jurisdiction of incorporation or organization and (b) will have the necessary corporate, limited liability company or limited partnership power and due authorization; (vi) the terms of such Securities and of their issuance and sale will have been established in conformity with and so as not to violate, or result in a default under or breach of, the certificate of incorporation and bylaws or other organizational documents of the Company and, if such Securities constitute Debt Securities that constitute Company Debt Securities guaranteed by Guarantees, each of the other Issuers (and, if such Securities constitute Stock Purchase Units a part of which comprises securities other than Stock Purchase Contracts, each issuer of such securities), and the terms of all Securities and of their issuance and sale will have been established in conformity with and so as not to violate, or result in a default under or breach of any applicable law, regulation or administrative order or any agreement or instrument binding upon each such Issuer (and, if such Securities constitute Stock Purchase Units a part of which comprises securities other than Stock Purchase Contracts, each issuer of such securities) and so as to comply with any requirement or restriction imposed by any court or governmental or regulatory body (including any stock exchange on which the Company's shares are listed for trading) having jurisdiction over each such Issuer (and, if such Securities constitute Stock Purchase Units a part of which comprises securities other than Stock Purchase Contracts, each issuer of such securities) and, if such Securities constitute Debt Securities, in conformity with the applicable Indenture and the applicable resolution of the Company Board or supplemental indenture relating to such Debt Securities and, if such Securities constitute Warrants, in conformity with the applicable Warrant Agreement and the applicable resolution of the Company Board relating to such Warrants and, if such Securities constitute Rights, in conformity with the applicable Rights Agreement and the applicable resolution of the Company Board relating to such Rights and, if such Securities constitute (or constitute Stock Purchase Units a part of which comprises) Stock Purchase Contracts, in conformity with the applicable Stock Purchase Contract Agreement and the applicable resolution of the Company Board relating to such Stock Purchase Contracts and, if such Securities constitute Stock Purchase Units, in conformity with the applicable Stock Purchase Unit Agreement (and, if such Securities constitute Stock Purchase

Units a part of which comprises securities other than Stock Purchase Contracts, any agreement providing for such securities) and any collateral arrangements relating to such Stock Purchase Units and any agreement in respect thereof and the applicable resolution of the Company Board relating to such Stock Purchase Units; (vii) if such Securities constitute Common Stock, Preferred Stock or Depositary Shares in respect of underlying Preferred Stock, (a) sufficient shares of Common Stock or Preferred Stock, as applicable, will be authorized for issuance under the certificate of incorporation of the Company that have not otherwise been issued or reserved for issuance and (b) the consideration for the issuance and sale of such Common Stock, Preferred Stock or Depositary Shares established by the Company Board and provided for in the applicable definitive purchase, underwriting or similar agreement (or, if (A) such Common Stock is issuable upon exchange or conversion of Securities constituting Preferred Stock, the certificate of designations therefor; (B) such Common Stock or Preferred Stock is issuable upon exchange or conversion of Securities constituting Debt Securities, the applicable Indenture therefor; (C) such Common Stock or Preferred Stock is issuable upon exercise of Securities constituting Warrants, the applicable Warrant Agreement therefor; (D) such Common Stock or Preferred Stock is issuable upon exercise of Securities constituting Rights, the applicable Rights Agreement therefor; or (E) such Common Stock or Preferred Stock is issuable upon purchase pursuant to Securities constituting Stock Purchase Contracts, the applicable Stock Purchase Contract Agreement therefor) will not be less than the par value of such Common Stock or Preferred Stock or the Preferred Stock underlying such Depositary Shares, as applicable; (viii) if (a) such Securities constitute Common Stock or Debt Securities issuable upon exchange or conversion of Securities constituting Preferred Stock, the action with respect to such Preferred Stock referred to in paragraph 2 above will have been taken, (b) such Securities constitute Common Stock or Preferred Stock issuable upon exchange or conversion of Securities constituting Debt Securities, the action with respect to such Debt Securities referred to in paragraph 3 above will have been taken, (c) such Securities constitute Common Stock, Preferred Stock, Debt Securities or Depositary Shares issuable upon exercise of Securities constituting Warrants, the action with respect to such Warrants referred to in paragraph 5 above will have been taken, (d) such Securities constitute Common Stock, Preferred Stock, Debt Securities or Depositary Shares issuable upon exercise of Securities constituting Rights, the action with respect to such Rights referred to in paragraph 6 above will have been taken or (e) such Securities constitute Common Stock, Preferred Stock or Depositary Shares issuable under Securities constituting Stock Purchase Contracts, the action with respect to such Stock Purchase Contracts referred to in paragraph 7 above will have been taken; (ix) if (a) such Securities constitute (or constitute Depositary Shares in respect of underlying) Preferred Stock that is exchangeable for or convertible into Securities constituting Common Stock or Debt Securities, the Company will have taken all necessary action to authorize and approve the issuance of such Common Stock or Debt Securities upon exchange or conversion of such Preferred Stock, the terms of such exchange or conversion and related matters and, in the case of Common Stock, to reserve such Common Stock for issuance upon such exchange or conversion, (b) such Securities constitute Debt Securities that are exchangeable for or convertible into Securities constituting Common Stock or Preferred Stock, the Company will have then taken all necessary action to authorize and approve the issuance of such Common Stock or Preferred Stock upon exchange or conversion of such Debt Securities (including, in the case of Preferred Stock, the preparation and filing of a

certificate of designations respecting such Preferred Stock with the Secretary of State of the State of Delaware), the terms of such exchange or conversion and related matters and to reserve such Common Stock or Preferred Stock for issuance upon such exchange or conversion, (c) such Securities constitute Warrants that are exercisable for Securities constituting Common Stock, Preferred Stock, Debt Securities or Depositary Shares, the Company will have taken all necessary action to authorize and approve the issuance of such Common Stock, Preferred Stock, Debt Securities or Depositary Shares upon the exercise of such Warrants (including, in the case of Preferred Stock, the filing of a certificate of designations respecting such Preferred Stock with the Secretary of State of the State of Delaware), the terms of such exercise and related matters and, in the case of Preferred Stock or Common Stock, to reserve such Common Stock or Preferred Stock for issuance upon such exercise, (d) such Securities constitute Rights that are exercisable for Securities constituting Common Stock, Preferred Stock, Debt Securities or Depositary Shares, the Company will have taken all necessary action to authorize and approve the issuance of such Common Stock, Preferred Stock, Debt Securities or Depositary Shares upon the exercise of such Rights (including, in the case of Preferred Stock, the filing of a certificate of designations respecting such Preferred Stock with the Secretary of State of the State of Delaware), the terms of such exercise and related matters and, in the case of Preferred Stock or Common Stock, to reserve such Common Stock or Preferred Stock for issuance upon such exercise, or (e) such Securities constitute (or constitute Stock Purchase Units a part of which comprises) Stock Purchase Contracts providing for the purchase of Securities constituting Common Stock, Preferred Stock or Depositary Shares, the Company will have taken all necessary action to authorize and approve the issuance of such Common Stock, Preferred Stock or Depositary Shares upon purchase thereof pursuant to such Stock Purchase Contracts (including, in the case of Preferred Stock, the filing of a certificate of designations respecting such Preferred Stock with the Secretary of State of the State of Delaware), the terms of such purchase and related matters and to reserve such Common Stock or Preferred Stock for issuance upon such purchase; (x) if such Securities constitute (a) Company Debt Securities, the officers' certificate or supplemental indenture to the related Indenture establishing any terms different from those in such Indenture shall not include any provision that is unenforceable against the Company and (b) Company Debt Securities guaranteed by Guarantees, the officers' certificate or supplemental indenture to the related Indenture establishing any terms different from those in such Indenture shall not include any provision that is unenforceable against the applicable Subsidiary Guarantors; (xi) if such Securities constitute Warrants, a warrant agreement (the "***Warrant Agreement***") relating to such Warrants and not including any provision that is unenforceable against the Company will have been duly authorized, executed and delivered by the Company and a bank or trust company to be selected by the Company, as warrant agent; (xii) if such Securities constitute Rights, a rights agreement (the "***Rights Agreement***") relating to such Rights and not including any provision that is unenforceable against the Company will have been duly authorized, executed and delivered by the Company and a bank or trust company to be selected by the Company, as rights agent; (xiii) if such Securities constitute (or constitute Warrants or Rights exercisable into or constitute (or constitute Stock Purchase Units a part of which comprises) Stock Purchase Contracts providing for the purchase of) Depositary Shares, a depositary agreement (the "***Depositary Agreement***") relating to such Depositary Shares and the related depositary receipts evidencing such Depositary Shares ("***Depositary Receipts***") and not

including any provision that is unenforceable against the Company will have been duly authorized, executed and delivered by the Company and a bank or trust company to be selected by the Company, as depositary (the "***Depositary***"); (xiv) if such Securities constitute (or constitute Stock Purchase Units a part of which comprises) Stock Purchase Contracts, a stock purchase contract agreement (the "***Stock Purchase Contract Agreement***") relating to such Stock Purchase Contracts and not including any provision that is unenforceable against the Company will have been duly authorized, executed and delivered by the Company and any other party thereto; (xv) if such Securities constitute Stock Purchase Units, a stock purchase unit agreement (the "***Stock Purchase Unit Agreement***" and, with an Indenture, Warrant Agreement, Rights Agreement, Depositary Agreement and Stock Purchase Contract Agreement, each, an "***Instrument***") relating to such Stock Purchase Units and a Stock Purchase Contract Agreement relating to the Stock Purchase Contracts comprising a part of such Stock Purchase Units and, in each case, not including any provision that is unenforceable against the Company will have been duly authorized, executed and delivered by the Company and any other party thereto; and (xvi) if such Securities constitute Debt Securities, Depositary Shares, Warrants, Rights, Stock Purchase Contracts or Stock Purchase Units, the applicable Instrument and, if such Securities constitute Stock Purchase Units, the Stock Purchase Contract Agreement related to the Stock Purchase Contracts comprising a part of such Stock Purchase Units and, if such Securities constitute Warrants or Rights exercisable into Depositary Shares or Debt Securities, the Depositary Agreement or Indenture related to such Depositary Shares or Debt Securities, respectively, and, if such Securities constitute (or constitute Stock Purchase Units a part of which comprises) Stock Purchase Contracts providing for the purchase of Depositary Shares, the applicable Depositary Agreement, in each case, will constitute the legal, valid and binding obligation of each party thereto other than the Company and, if such Debt Securities constitute Company Debt Securities guaranteed by Guarantees, each of the applicable Subsidiary Guarantors, enforceable against such party in accordance with its terms.

B. I am qualified to practice law in the State of New York, and I express no opinion as to the laws of any jurisdiction other than any published constitutions, treaties, laws, rules or regulations or judicial or administrative decisions ("***Laws***") of (i) the federal Laws of the United States, (ii) the Laws of the State New York, (iii) the General Corporation Law of the State of Delaware, the Constitution of the State of Delaware and related published proceedings under the Delaware courts, (iv) the Limited Liability Company Act of the State of Delaware and (v) the Revised Uniform Limited Partnership Act of the State of Delaware.

C. The matters expressed in this letter are subject to and qualified and limited by (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally; (ii) general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief (regardless of whether considered in a proceeding in equity or at law); and (iii) securities Laws and public policy underlying such Laws with respect to rights to indemnification and contribution.

I hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of my name in the Prospectus under the caption “Legal Matters.” In giving this consent, I do not thereby admit that I am within the category of persons whose consent is required under Section 7 of the Act and the rules and regulations thereunder. I also consent to your filing copies of this opinion as an exhibit to the Registration Statement. This opinion is being delivered solely for the benefit of the Company and such other persons as are entitled to rely upon it pursuant to applicable provisions of the Act; provided however, that this opinion may not be used, quoted, relied upon or referred to for any purpose other than the foregoing purpose. In particular, but without limitation, this opinion may not be used, quoted, relied upon or referred to by any lawyer or law firms providing one or more subsequent legal opinions, without my prior written consent.

Very truly yours,

/s/ Kenneth F. Khoury

Kenneth F. Khoury

Schedule I

Subsidiary Guarantors

Beazer Homes Corp.
Beazer/Squires Realty, Inc.
Beazer Homes Sales, Inc.
Beazer Realty Corp.
Beazer Homes Holdings Corp.
Beazer Homes Texas Holdings, Inc.
Beazer Homes Texas, L.P.
April Corporation
Beazer SPE, LLC
Beazer Homes Investments, LLC.
Beazer Realty, Inc.
Beazer Clarksburg, LLC
Homebuilders Title Services of Virginia, Inc.
Homebuilders Title Services, Inc.
Texas Lone Star Title, L.P.
Beazer Allied Companies Holdings, Inc.
Beazer Homes Indiana LLP
Beazer Realty Services, LLC
Paragon Title, LLC
Trinity Homes, LLC
Beazer Commercial Holdings, LLC
Beazer General Services, Inc.
Beazer Homes Indiana Holdings Corp.
Beazer Realty Los Angeles, Inc.
Beazer Realty Sacramento, Inc.
BH Building Products, LP
BH Procurement Services, LLC
Arden Park Ventures, LLC
Beazer Mortgage Corporation
Beazer Homes Michigan, LLC
Dove Barrington Development LLC
Elysian Heights Potomia, LLC
Clarksburg Arora LLC
Clarksburg Skylark, LLC

Exhibit 12.1

BEAZER HOMES USA, INC.
FIXED CHARGE COVERAGE RATIO CALCULATION

	Year ended September 30,				
	2009	**2008**	**2007**	**2006**	**2005**
(LOSS) INCOME FROM CONTINUING OPERATIONS BEFORE INCOME TAXES	($186,546)	($729,115)	($574,593)	$ 609,835	$ 572,340
FIXED CHARGES	137,631	145,604	154,743	130,636	95,242
LESS: INTEREST CAPITALIZED	(50,451)	(84,474)	(148,444)	(124,162)	(89,696)
ADD: INTEREST AMORTIZED TO COS	54,714	112,262	127,530	95,974	80,180
ADD: INTEREST IMPAIRED TO COS	3,376	13,795	12,350	—	—
EARNINGS AVAILABLE FOR FIXED CHARGES	(41,276)	(541,928)	(428,414)	712,283	658,066
FIXED CHARGES	$ 137,631	$ 145,604	$ 154,743	$ 130,636	$ 95,242
RATIO OF EARNINGS TO FIXED CHARGES(a)	**(a)**	**(a)**	**(a)**	**5.45x**	**6.91x**

(a) The ratio of earnings to fixed charges for each of the periods is determined by dividing earnings by fixed charges. Earnings consist of (loss) income from continuing operations before income taxes, amortization of previously capitalized interest and fixed charges, exclusive of capitalized interest cost. Fixed charges consist of interest incurred, amortization of deferred loan costs and debt discount, and that portion of operating lease rental expense (33%) deemed to be representative of interest. Earnings for fiscal years ended September 30, 2009, 2008 and 2007 were insufficient to cover fixed charges by $41 million, $542 million and $428 million, respectively.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our reports dated November 10, 2009, relating to the consolidated financial statements of Beazer Homes USA, Inc. (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of new accounting guidance on the accounting for uncertainty in income taxes on October 1, 2007), and the effectiveness of Beazer Homes USA, Inc's internal control over financial reporting, appearing in the Annual Report on Form 10-K of Beazer Homes USA, Inc. for the year ended September 30, 2009, and to the reference to us under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Deloitte & Touche LLP

November 12, 2009
Atlanta, Georgia

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE
Check if an Application to Determine Eligibility of
a Trustee Pursuant to Section 305(b)(2)

U.S. BANK NATIONAL ASSOCIATION
(Exact name of Trustee as specified in its charter)

31-0841368
I.R.S. Employer Identification No.

800 Nicollet Mall Minneapolis, Minnesota	55402
(Address of principal executive offices)	(Zip Code)

Jack Ellerin
U.S. Bank National Association
1349 W. Peachtree Street, Suite 1050
Atlanta, GA 30309
(404) 898-8830
(Name, address and telephone number of agent for service)

Beazer Homes USA, Inc.
(Issuer with respect to the Securities)

DELAWARE	58-2086934
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1000 Abernathy Road, Suite 1200 Atlanta GA	30328
(Address of Principal Executive Offices)	(Zip Code)

Senior Debt Securities
(Title of the Indenture Securities)

FORM T-1

Item 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.

a) *Name and address of each examining or supervising authority to which it is subject.*

Comptroller of the Currency
Washington, D.C.

b) *Whether it is authorized to exercise corporate trust powers.*

Yes

Item 2. AFFILIATIONS WITH OBLIGOR. *If the obligor is an affiliate of the Trustee, describe each such affiliation.*

None

Items 3-15 *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

Item 16. LIST OF EXHIBITS: *List below all exhibits filed as a part of this statement of eligibility and qualification.*

1. A copy of the Articles of Association of the Trustee.*
2. A copy of the certificate of authority of the Trustee to commence business.*
3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers.*
4. A copy of the existing bylaws of the Trustee.**
5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached as Exhibit 6.
7. Report of Condition of the Trustee as of September 30, 2009 published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.

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* Incorporated by reference to Exhibit 25.1 to Amendment No. 2 to registration statement on S-4, Registration Number 333-128217 filed on November 15, 2005.

** Incorporated by reference to Exhibit 25.1 to registration statement on S-4, Registration Number 333-159463 filed on August 24, 2009.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Atlanta, State of Georgia on the 13th of November, 2009.

By: /s/ Jack Ellerin
Jack Ellerin
Vice President

By: /s/ Felicia H. Powell
Felicia H. Powell
Assistant Vice President

Exhibit 6

CONSENT

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: November 13, 2009

By: /s/ Jack Ellerin
Jack Ellerin
Vice President

By: /s/ Felicia H. Powell
Felicia H. Powell
Assistant Vice President

Exhibit 7
U.S. Bank National Association
Statement of Financial Condition
As of 9/30/2009

($000's)

	9/30/2009
Assets	
Cash and Balances Due From Depository Institutions	$ 5,280,939
Securities	40,563,378
Federal Funds	3,740,525
Loans & Lease Financing Receivables	179,125,128
Fixed Assets	4,619,442
Intangible Assets	12,762,329
Other Assets	13,851,241
Total Assets	**$ 259,942,982**
Liabilities	
Deposits	$ 180,624,239
Fed Funds	10,951,345
Treasury Demand Notes	0
Trading Liabilities	469,006
Other Borrowed Money	28,305,774
Acceptances	0
Subordinated Notes and Debentures	7,779,967
Other Liabilities	6,311,437
Total Liabilities	**$ 234,441,768**
Equity	
Minority Interest in Subsidiaries	$ 1,640,987
Common and Preferred Stock	18,200
Surplus	12,642,020
Undivided Profits	11,200,007
Total Equity Capital	**$ 25,501,214**
Total Liabilities and Equity Capital	**$ 259,942,982**

To the best of the undersigned's determination, as of the date hereof, the above financial information is true and correct.

U.S. Bank National Association

By: /s/ Jack Ellerin
Vice President

Date: November 13, 2009