
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2004

OR

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

Commission File Number 1-9977



(Exact Name of Registrant as Specified in its Charter)

Maryland

(State or Other Jurisdiction of Incorporation or Organization)

86-0611231

(IRS Employer Identification No.)

8501 E. Princess Drive, Suite 290, Scottsdale, Arizona

(Address of Principal Executive Offices)

85255

(Zip Code)

(480) 609-3330

(Registrant's telephone number, including area code)

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

Common Stock, \$.01 par value

New York Stock Exchange

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

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

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes No

The aggregate market value of common stock held by non-affiliates of the registrant (21,078,742 shares) as of June 30, 2004, was \$725,108,725, based on the closing sales price per share as reported by the New York Stock Exchange on such date. The number of shares outstanding of the registrant's common stock on March 7, 2005 was 26,946,308.

DOCUMENTS INCORPORATED BY REFERENCE

Portions from the registrant's Proxy Statement relating to the Annual Meeting of Stockholders to be held on May 11, 2005 have been incorporated by reference into Part III, Items 10, 11, 12 and 13.

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PART I

Item 1. Business

The Company

Meritage Homes Corporation is a leading designer and builder of single-family homes in the rapidly growing Southern and Western United States, based on the number of home closings and revenue. We focus on providing a broad range of first-time, move-up, active adult and luxury homes to our targeted customer base. We and our predecessors have operated in Arizona since 1985, in Texas since 1987, in Northern California since 1989 and in Nevada since 1993. In 2004, we entered the Inland Empire market of Southern California with our acquisition of Citation Homes of Southern California, and began operating in Colorado and Florida, which are both considered to be among the top twenty housing markets in the United States. We are organized into six geographic regions and we operate in one business segment, homebuilding.

Our homebuilding and marketing activities are conducted under the name of Meritage Homes in each of our markets, except for certain communities in Arizona, where we operate under the name of Monterey Homes and in Texas, where we operate in certain communities as Legacy Homes, Monterey Homes and Hammonds Homes. At December 31, 2004, we were actively selling homes in 139 communities, with base prices ranging from approximately \$96,000 to \$927,000.

Available Information; Corporate Governance

Information about our company and communities is provided on our website at www.meritagehomes.com. Our periodic and current reports, including any amendments, filed or furnished pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") are available, free of charge, on our website as soon as reasonably practicable after electronically filing such reports with the Securities and Exchange Commission ("SEC"). The information contained on our website is not considered part of this annual report on Form 10-K.

Meritage operates within a comprehensive plan of corporate governance for the purpose of defining responsibilities and setting high standards for ethical conduct. Our Board of Directors has established an audit committee, executive compensation committee and nominating/governance committee. The charters of each of these committees are included on our website. In addition, we have included on our website our Code of Ethics and our Corporate Governance Principles and Practices. Our committee charters, Code of Ethics and Corporate Governance Principles and Practices are available in print, free of charge, to any stockholder who requests it by calling us or by writing to us at our principal executive offices in Arizona at the following address: Meritage Homes Corporation, 8501 East Princess Drive, Suite 290, Scottsdale, Arizona 85255, Attention: Investor Relations. Our telephone number is (480) 609-3330.

Competitive Strengths

We believe Meritage possesses the following competitive strengths:

Conservative inventory management. We seek to minimize land and inventory risk in order to optimize our use of capital and maintain moderate leverage ratios. We accomplish this by:

- generally purchasing land after full entitlements have been obtained that will allow us to construct homes, including zoning and utility services;
- developing smaller parcels, generally projects that can be completed within a three-year period;
- controlling approximately 89% of our land inventory through rolling options and land purchase contracts with initial deposit requirements typically between 1% and 15% of the land price;
- managing housing inventory by pre-selling and obtaining substantial customer deposits on a significant majority of our homes prior to starting construction;
- limiting construction starts on unsold homes; and

- minimizing home construction cycles.

Disciplined financial management. We believe that our disciplined financial management policies enable us to achieve above-average returns on assets compared to our competitors in the homebuilding industry and maintain reasonable leverage ratios. Our rigorous investment requirements for our new communities, both through internal growth and acquisition, enable us to deploy capital efficiently and to generate strong cash flows to fund the acquisition of additional land or homebuilding operations.

Strong margins. We believe that our focus on achieving good margins results in greater profitability during strong economic periods and also enables us to realize lower break-even points and provides greater pricing flexibility during slower economic periods. In addition to maintaining low overhead costs, we actively manage construction costs and pricing and marketing strategies in order to maximize margins. We seek to optimize our mix of available housing upgrades and customization features to offer the highest value to customers at the lowest cost. Within our pricing structure we provide our sales and marketing professionals with the autonomy and flexibility to respond rapidly to changing market dynamics by customizing our sales programs and customer incentives.

Experienced management team with significant equity ownership. Members of our senior management team have extensive experience in the homebuilding industry as well as in-depth knowledge of the local markets that we serve. Our co-chief executive officers and senior executives average over 19 years of homebuilding experience and each has delivered successful results through varying homebuilding cycles. At March 3, 2005, our co-chief executive officers together beneficially owned approximately 13% of our outstanding common stock.

Product breadth. We believe that our product breadth and geographic diversity enhance our growth potential and help to reduce exposure to any specific economic cycles. In Arizona, we serve the first-time, move-up, and the active adult markets. We also build within the Arizona luxury market, and since 2002, in the Texas and California luxury markets, which are characterized by unique communities and distinctive luxury homes. In Texas we mainly target the first and second-time move-up markets, and in California and Nevada, we focus primarily on move-up homes. In 2005 we plan to begin selling homes in our greenfield start-up markets in Orlando, Florida and Denver, Colorado, where we initially plan to build within the first and second-time move up markets. In addition, in February 2005 we completed our acquisition of Colonial Homes of Flort Myers/Naples, Florida. Colonial Homes builds within the first and second-time move up and multi-story condominium markets. We are also exploring the entering of condominium development opportunities in the other markets in which we operate. Most recently, we announced our entry into Reno, Nevada, through a start-up operation. We plan to begin delivering homes in Reno in mid-2006.

Business Strategies

We seek to distinguish ourselves from other production homebuilders through business strategies focused on the following:

Focus on high growth markets. Our housing markets are located in six rapidly growing Western and Southern states; Texas, Arizona, California, Nevada, Colorado and Florida. These areas are generally characterized by high job and population growth trends, creating strong demand for new housing, and we believe they represent attractive homebuilding markets with opportunities for long-term growth. Our operations in the Texas, Arizona, California and Nevada markets are well established and we believe that we have developed a reputation for building distinctive quality homes within these markets.

Expand into new and within existing markets. We continuously evaluate expansion opportunities through strategic acquisitions of other homebuilders and internal growth through expansion of our product offering in existing markets or start-up operations in new geographic markets. In pursuing expansion, we explore markets with demographic and other growth characteristics similar to our current markets and seek the acquisition of entities with operating policies, cash flow and earnings-focused philosophies similar to ours. We began start-up operations in the high growth markets of Colorado and Florida in 2004 and we believe that these new geographic markets possess demographic and growth characteristics that meet our growth criteria.

In the past seven years we have successfully completed seven acquisitions (including our February 2005 acquisition of Colonial Homes), enabling us to substantially increase our revenue and earnings, expand our geographic footprint, increase our market share in existing markets and develop new product lines, such as active adult housing for the Arizona retirement market and condominiums in certain Florida markets.

Maintain low cost structure. Throughout our history, we have focused on minimizing construction costs and overhead, and we believe this attention is a key factor in maintaining high margins and profitability. We reduce costs by:

- using subcontractors for home construction and site improvement on a fixed-price basis;
- obtaining favorable pricing from subcontractors through long-term relationships and high volume;
- reducing interest carry by minimizing our inventory of unsold or speculative homes and minimizing the home construction cycle;
- generally beginning construction on a home once it is under contract, we have received a satisfactory earnest money deposit and the buyer has obtained preliminary approval for a mortgage loan;
- minimizing overhead by centralizing certain administrative activities; and
- monitoring homebuilding production, scheduling and budgeting through management information systems.

Superior design, quality and customer service. We believe we maximize customer satisfaction by offering homes that are built with quality materials and craftsmanship, exhibit distinctive design features and are situated in premium locations. We believe that we generally offer higher caliber homes in their defined price range or category compared to those built by our competitors. In addition, we are committed to achieving the highest level of customer satisfaction as an integral part of our competitive strategy. As part of the sales process, our experienced sales personnel continually inform customers of their home's construction progress. After delivery, our customer care departments respond to homebuyers' questions and warranty matters.

Markets and Products

Our homes range from entry level to semi-custom luxury, with base prices ranging from approximately \$96,000 to \$927,000. In 2004, we began start-up operations in Colorado and Florida but have not yet begun sales activities. At December 31, 2004, we had 374 and 323 lots under our control in Colorado and Florida, respectively. A summary of activity by state and product type as of and for the year ended December 31, 2004, follows (dollars in thousands):

	# of Homes Closed	Avg. Closing Price	Homes in Backlog	\$ Value of Backlog	Home Sites Remaining (1)	# of Active Communities
Texas – Entry Level	53	\$ 145	80	\$ 11,232	853	1
Texas – First Time Move-up	1,625	183	764	142,338	8,490	47
Texas – Second Time Move-up	1,394	243	610	148,080	4,664	39
Texas – Semi-custom/ Luxury	80	463	31	11,440	434	2

Arizona – Entry Level	330	133	377	54,854	2,911	3
Arizona – Active Adult	513	193	418	85,029	4,758	9
Arizona – First-time Move-up	898	202	680	145,834	4,984	8
Arizona – Second Time Move-up	471	345	342	123,468	1,261	2
Arizona – Semi-custom/ Luxury	119	835	174	128,202	402	4
California – Entry Level	138	276	21	7,035	345	1
California – First Time Move-up	409	395	206	94,810	4,743	5
California – Second Time Move-up	642	479	310	170,412	1,199	7
California – Semi-custom/ Luxury	178	680	158	119,014	636	5
Nevada – First Time Move-up	133	234	114	32,191	1,136	3
Nevada – Second Time Move-up	271	330	123	47,012	1,915	3
Total Company	7,254	\$ 278	4,408	\$ 1,320,951	38,731	139

(1) “Home Sites Remaining” is the estimated number of homes that could be built both on the remaining lots available for sale and land expected to be developed into lots.

Land Acquisition and Development

We typically acquire land only after necessary entitlements have been obtained so that development or construction may begin as market conditions dictate. The term “entitlements” refers to development agreements, tentative maps or recorded plats, depending on the jurisdiction within which the land is located. Entitlements generally give the developer the right to obtain building permits upon compliance with conditions that are ordinarily within the developer’s control. Even though entitlements are usually obtained before land is purchased, we are still required to secure a variety of other governmental approvals and permits during development. The process of obtaining such approvals and permits can substantially delay the development process. We may consider, on a limited basis, purchasing unentitled property when we can do so in a manner consistent with our business strategy. Although historically we have generally developed parcels ranging from 100 to 300 lots, in order to achieve and maintain an adequate inventory of lots, we are beginning to purchase larger parcels, in some cases with joint venture partners. In some cases these joint ventures purchase undeveloped land and develop the land themselves.

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

- extensive internal and external demographic and marketing studies;
- project suitability, which generally means developments with fewer than 300 lots;
- suitability for development generally within a one to four-year time period from the beginning of the development process to the delivery of the last home;
- financial review as to the feasibility of the proposed project, including projected profit margins, returns on capital employed, and the capital payback period;
- the ability to secure governmental approvals and entitlements;
- results of environmental and legal due diligence;
- proximity to local traffic corridors and amenities; and
- management’s judgment as to the real estate market and economic trends, and our experience in particular markets.

We acquire land through options and land purchase contracts. Purchases are generally financed through our revolving credit facility or working capital. Acquiring our land through option contracts allows us to control lots and land through third parties who own or buy properties on which we plan to build homes. We enter into option contracts to purchase finished lots at a certain price during a specified period of time from these third parties as home construction begins. These contracts are generally non-recourse and typically require the payment of non-refundable deposits of 1% to 15% of the sales price. At December 31, 2004, we had approximately \$132.6 million in cash deposits and \$44.8 million in letters of credit deposits on real estate under option or contract. The total value of land under option or contract at that time was approximately \$1.7 billion. Additional information relating to our lots and land under option is presented in Note 3 – Variable Interest Entities and Consolidated Real Estate Not Owned, in the accompanying consolidated financial statements.

Once we acquire land, we generally initiate development through contractual agreements with subcontractors. These activities include site planning and engineering, as well as constructing road, sewer, water, utilities, drainage, recreation facilities and other refinements. We often build homes in master-planned communities with home sites that are along or near a major amenity, such as a golf course.

We develop a design and marketing concept tailored to each community, which includes the determination of size, style and price range of homes. We also determine street layout, individual lot size and layout, and overall community design for these projects. The product lines offered depend upon many factors, including the housing generally available in the area, the needs of a particular market, and our lot costs for the project; though we are sometimes able to use standardized design plans for a product line.

We may use joint ventures from time to time to purchase and develop land where such arrangements are necessary to acquire the property or appear to be otherwise economically advantageous. At December 31, 2004, we were involved in several joint ventures related exclusively to land acquisition or development, which are

accounted for using the equity or cost method of accounting, as appropriate. Our investment in these entities was approximately \$50.6 million at the end of 2004.

The following table presents information regarding land owned or land under contract or option by market as of December 31, 2004 (dollars in thousands):

	Land Owned (1)			Land Under Contract or Option (1) (2)			Total
	Finished Lots	Lots Under Development	Lots Held for Development	Finished Lots	Lots Under Development	Lots Held for Development	
TEXAS:							
Dallas/Ft. Worth	921	579	0	839	768	1,746	4,853
Houston	849	0	0	1,226	1,780	361	4,216
Austin	507	59	0	370	607	990	2,533
San Antonio	188	0	0	715	1,166	182	2,251
Total Texas	2,465	638	0	3,150	4,321	3,279	13,853

ARIZONA:							
Phoenix/Scottsdale	503	265	0	820	6,925	1,213	9,726
Tucson	201	0	104	718	3,615	133	4,771
Total Arizona	704	265	104	1,538	10,540	1,346	14,497
CALIFORNIA:							
Sacramento	14	0	0	137	1,195	897	2,243
East San Francisco Bay	34	0	0	551	603	1,785	2,973
Southern California	51	0	0	0	458	1,201	1,710
Total California	99	0	0	688	2,256	3,883	6,926
NEVADA:							
Las Vegas	114	0	0	0	2,883	0	2,997
COLORADO:							
Denver	0	0	0	0	374	0	374
FLORIDA:							
Orlando	0	0	0	0	323	0	323
TOTAL	3,382	903	104	5,376	20,697	8,508	38,970
Total book cost (3)	\$ 179,306	\$ 83,735	\$ 3,588	\$ 33,841	\$ 67,166	\$ 29,891	\$ 397,527

- (1) Excludes lots with finished homes or homes under construction. The numbers of lots under development and lots held for development are estimates, which are subject to change.
- (2) There can be no assurance that we will actually acquire any lots under option or properties in which we have entered into a variety of contractual relationships, including purchase agreements with customary conditions precedent and other similar arrangements. These amounts do not include 4,491 lots under contract with refundable earnest money deposits of \$1.7 million for which we have not completed due diligence and, accordingly, have no money at risk and are under no obligation to perform under the contract.
- (3) For Land Owned, book cost primarily represents land, development, interest and common costs. For Land Under Contract or Option, book cost primarily represents earnest deposits and option deposits.

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Construction Operations

We act as the general contractor for our projects and typically hire subcontractors on a project-by-project or reasonable geographic-proximity basis to complete construction at a fixed price. We usually enter into agreements with subcontractors and materials suppliers on an individual basis after receiving competitive bids. We obtain information from prospective subcontractors and suppliers with respect to their financial condition and ability to perform their agreements before formal bidding begins. Occasionally, we enter into longer-term contracts with subcontractors and suppliers if we can obtain more favorable terms to minimize costs of construction. Our project managers and field superintendents coordinate and supervise the activities of subcontractors and suppliers, subject the development and construction work to quality and cost controls, and assure compliance with zoning and building codes. At December 31, 2004, we employed approximately 540 construction operations personnel.

We specify that quality, durable materials be used in construction of our homes and we do not maintain significant inventories of construction materials, except for work in process materials for homes under construction. When possible, we negotiate price and volume discounts with manufacturers and suppliers on behalf of our subcontractors to take advantage of production volume. Historically, access to our principal subcontracting trades, materials and supplies has been readily available in each of our markets. Prices for these goods and services may fluctuate due to various factors, including supply and demand shortages that may be beyond the control of our vendors. We believe that we have strong relationships with our suppliers and subcontractors.

We generally build and sell homes in clusters or phases within our larger projects, which we believe creates efficiencies in land development and construction, and improves customer satisfaction by reducing the number of vacant lots surrounding a completed home. Our homes are typically completed within four to nine months from the start of construction, depending upon home size and complexity. Construction schedules may vary depending on the availability of labor, materials and supplies, product type, location and weather. Our homes are usually designed to promote efficient use of space and materials, and to minimize construction costs and time. We typically have not entered into any weather or materials commodity futures derivative contracts as we do not believe they are particularly advantageous to our operations.

Marketing and Sales

We believe that we have an established reputation for developing high quality homes, which helps generate interest in each new project. We also use advertising and other promotional activities, including our website at www.meritagehomes.com, magazine and newspaper advertisements, brochures, direct mailings and the placement of strategically located signs in the immediate areas of our developments.

We use furnished model homes as tools in demonstrating to prospective homebuyers the advantages of our home designs and various features. We generally employ or contract with interior and landscape designers who are responsible for creating an attractive model home with many built-in options for each product line within a project. We generally build between one and four model homes for each actively selling community, depending upon the number of homes to be built in the project and the products to be offered. Often, we lease our model homes from institutional investors who own the homes for investment purposes or from buyers who do not intend to occupy the home immediately. At December 31, 2004, we owned or leased 287 model homes, with an additional 82 models under construction. Total monthly payments for these models approximate \$518,000, of which approximately \$307,000 is accounted for as interest on debt related to our model lease program.

Our homes generally are sold by full-time, commissioned employees who typically work from a sales office located in one of the model homes for each project. At December 31, 2004, we had 260 sales and marketing personnel. Our goal is to ensure that our sales force has extensive knowledge of our operating policies and housing products. To achieve this goal, we train our sales associates and conduct periodic meetings to update them on sales techniques, competitive products in the area, financing availability, construction schedules, marketing and advertising plans and the available product lines, pricing, options and warranties offered. Our sales associates are licensed real estate agents where required by law. Independent brokers also sell our homes, and are

usually paid a sales commission based on the price of the home. Our sales associates assist our customers in selecting upgrades or in adding available customization features to their homes, which we design to appeal to local consumer demands. Occasionally we offer various sales incentives, such as landscaping or interior upgrades, to attract buyers. The use and type of incentives depends largely on economic and local competitive market conditions.

Backlog

Most of our home sales are made under standard sales contracts signed before construction of the home begins. The contracts require substantial cash deposits and are usually subject to certain contingencies such as the buyer's ability to qualify for financing. Homes covered by such sales contracts but not yet closed are considered "backlog." Sales contingent upon the sale of a customer's existing home are not included as new sales contracts until the contingency is removed. We do not recognize revenue upon the sale of a home until it is delivered to the homebuyer and other criteria for sale and profit recognition are met. We sometimes build homes before obtaining a sales contract, however, these homes are excluded from backlog until a sales contract is signed. At December 31, 2004, of our homes in inventory, 12% were under construction without sales contracts and 3% were completed homes without sales contracts. We believe that we will deliver substantially all homes in backlog at December 31, 2004 to customers during 2005.

Our backlog increased to 4,408 units with a value of \$1.3 billion at December 31, 2004 from 2,580 units with a value of \$710.8 million at December 31, 2003. These increases are primarily due to additional communities that opened for sale in 2004, along with continued strong buyer demand for homes.

Customer Financing

We attempt to help qualified homebuyers who require financing to obtain loans from mortgage lenders that offer a variety of financing options. We provide mortgage-broker services in some of our markets through investments in mortgage-brokers, which facilitate obtaining customer loans on behalf of third party lenders. In other markets we use unaffiliated preferred mortgage lenders. We may pay a portion of the closing costs and discount mortgage points to assist homebuyers with financing. We do not fund or service the mortgages obtained by our homebuyers, and therefore do not assume the risks associated with a mortgage banking business. Since many customers use long-term mortgage financing to purchase homes, adverse economic conditions, rising mortgage interest rates and increases in unemployment may deter or reduce the number of potential homebuyers.

Customer Relations, Quality Control and Warranty Programs

We believe that positive customer relations and an adherence to stringent quality control standards are fundamental to our continued success, and that our commitment to buyer satisfaction and quality control has significantly contributed to our reputation as a high quality builder.

A Meritage project manager or project superintendent and a customer relations representative generally oversee compliance with quality control standards for each community. These representatives perform the following tasks:

- oversee home construction;
- oversee subcontractor and supplier performance;
- review the progress of each home and conduct formal inspections as specific stages of construction are completed; and
- regularly update buyers on the progress of their homes.

We generally provide for each home a one to two-year limited warranty on workmanship and building materials and a two- to ten-year structural warranty, which may be provided by a third party insurer. As subcontractors usually provide an indemnity and a certificate of insurance before beginning work, claims relating to workmanship and materials are generally the subcontractors' responsibility. Reserves for future warranty costs are established based on historical experience within each division or region, and are recorded when the homes are

closed. Reserves generally range from 0.33% to 0.78% of a home's sale price. Historically, these reserves have been sufficient to cover warranty repairs. Our reserve for our one- to two-year warranty at December 31, 2004 was \$12.7 million, which covered approximately 8,800 homes under warranty at that time. Our two- to ten-year structural warranty was \$2.3 million at December 31, 2004.

Competition and Market Factors

The development and sale of residential property is a highly competitive industry. We compete for sales in each of our markets with national, regional and local developers and homebuilders, existing home resales, and to a lesser extent, condominiums and rental housing. Some of our competitors have significantly greater financial resources, lower costs and/or more favorable land positions than we do. Competition among both small and large residential homebuilders is based on a number of interrelated factors, including location, reputation, amenities, design, quality and price. We believe that we compare favorably to other homebuilders in the markets in which we operate due to our:

- experience within our geographic markets which allows us to develop and offer new products;
- ability to recognize and adapt to changing market conditions, including from a capital and human resource perspective;
- ability to capitalize on opportunities to acquire land on favorable terms; and
- reputation for outstanding service and quality products.

Government Regulation and Environmental Matters

We acquire most of our land after entitlements have been obtained, which provide for zoning and utility services to project sites and give us the right to obtain building permits. Construction may begin almost immediately on such entitled land upon compliance with and receipt of specified permits, approvals and other conditions, which generally are within our control. The time needed to obtain such approvals and permits affects the carrying costs of unimproved property acquired for development and construction. The continued effectiveness of permits already granted is subject to factors such as changes in government policies, rules and regulations, and their interpretation and application. To date, the government approval processes discussed above have not had a material adverse effect on our development activities, although there is no assurance that these and other restrictions will not adversely affect future operations.

Local and state governments have broad discretion regarding the imposition of development fees for projects under their jurisdictions. These fees are normally established when we receive recorded maps and building permits. In addition, communities occasionally impose construction moratoriums. Because most of our land is entitled, construction moratoriums generally would not affect us in the near term unless they arose from health, safety or welfare issues, such as insufficient water, electric or sewage facilities. In the long term, we could become subject to delays or may be precluded entirely from developing communities due to building moratoriums, "no growth" or "slow growth" initiatives or building permit allocation ordinances, which could be implemented in the future.

We are also subject to a variety of local, state, and federal statutes, ordinances, rules and regulations concerning the protection of health and the environment. In some markets, we are subject to environmentally sensitive land ordinances that mandate open space areas with public elements in housing developments, and prevent development on hillsides, wetlands and other protected areas. We must also comply with flood plain restrictions, desert wash area restrictions, native plant regulations, endangered species acts and view restrictions. These and similar laws may result in delays, cause substantial compliance and other costs, and prohibit or severely restrict development in certain environmentally sensitive regions or areas. To date, compliance with such ordinances has not materially affected our operations, although it may do so in the future.

We usually will condition our obligation to acquire property on, among other things, an environmental review of the land. To date, we have not incurred any unanticipated liabilities relating to the removal of unknown toxic wastes or other environmental matters. However, there is no assurance that we will not incur material liabilities in the future relating to toxic waste removal or other environmental matters affecting land currently or previously owned.

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Beginning in late 2003, we established relationships with title insurance companies in three states where we do business, pursuant to which one of our subsidiaries receives a portion of the fees and premiums on title insurance purchase by certain of our homebuyers and reinsures a portion of the policy risk. The California Insurance Commissioner and regulators in other states are investigating these types of arrangements. We are in the process of terminating those arrangements that have not been expressly approved by a state regulator. In total, these arrangements contributed approximately \$600,000 to our fiscal 2004 pre-tax earnings.

Employees and Subcontractors

At December 31, 2004, we had approximately 1,200 full-time employees, including 400 in management and administration, 260 in sales and marketing, and 540 in construction operations. Our employees are not unionized, and we believe that we have good employee relationships. We believe we provide competitive group life and medical insurance programs for full-time employees at each location. The Company pays for a substantial portion of the insurance costs, with the balance contributed by the employees. We also have a 401(k) savings plan, which is available to most of our employees.

We act solely as a general contractor, and all construction operations are conducted by our project managers and field superintendents who manage third party subcontractors. We use independent contractors for construction, architectural and advertising services, and we strive to maintain good relationships with our subcontractors and independent contractors.

Investments in Unconsolidated Entities

We participate in several joint ventures with independent third parties in which we have less than a controlling interest. These joint ventures are involved in mortgage brokerage, title services and the purchase, development and/or sale of land. We do not recognize profits from lots or land that we purchase from the joint ventures, but instead defer any profits until we sell the related homes. At December 31, 2004, we had approximately \$50.6 million invested in joint ventures involved in the purchase, development and/or sale of land. We also had approximately \$0.3 million invested in mortgage brokerage and title service joint ventures. Our share of 2004 pre-tax earnings of our joint ventures was approximately \$2.8 million.

We and/or our joint venture partners occasionally provide limited repayment guarantees of the debt of certain unconsolidated entities on a pro rata share basis. At December 31, 2004, Meritage had limited repayment guarantees of approximately \$16.1 million. We and our joint venture partners are also typically obligated to the project lenders to complete land development improvements if the joint venture itself does not perform the required development. Provided we and the other joint venture partners are in compliance with these completion obligations, the project lenders would be obligated to fund these improvements through any financing commitments available under the applicable joint venture development and construction loans. In addition, we and our joint venture partners have from time to time provided unsecured environmental indemnities to joint venture project lenders. In some instances, these indemnities are subject to caps, and obligate us to reimburse the project lenders only for claims related to environmental matters for which such lenders are held responsible. As part of our project acquisition due diligence process to determine potential environmental risks, we generally obtain an independent environmental review from outside consultants.

Additionally, we and our joint venture partners have agreed to indemnify third party surety providers with respect to performance bonds issued on behalf of certain of our joint ventures. If a joint venture does not perform its obligations, the surety bond could be called. If these surety bonds are called and the joint venture fails to reimburse the surety, we and our joint venture partners would be obligated to indemnify the surety. These surety indemnity arrangements are generally joint and several obligations with our other joint venture partners. As of December 31, 2004, there were approximately \$13.4 million of surety bonds outstanding subject to these indemnity arrangements. None of these bonds have been called to date and we believe it is unlikely that any of these bonds will be called in the future.

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Item 2. Properties

Our corporate offices are leased properties located in Scottsdale, Arizona, and Plano, Texas. The leases expire in February 2006 and April 2011, respectively. Our Dallas/Ft. Worth division occupies a building that is leased from a company owned beneficially by one of our co-chairmen. The lease expires in May 2005 and we believe that this lease is competitive with rates for comparable space in the area and the terms of the lease are similar to those we could obtain in an arms-length transaction. See Note 11 in the accompanying consolidated financial statements for further discussion of related party transactions.

We lease an aggregate of approximately 173,000 square feet of office space in our markets for our operating divisions and corporate and executive offices.

Item 3. Legal Proceedings

We are involved in various routine legal proceedings incidental to our business, some of which are covered by insurance. With respect to the majority of pending litigation matters, our ultimate legal and financial responsibility, if any, cannot be estimated with certainty and, in most cases, any potential losses related to these matters are not considered probable. At December 31, 2004, we had approximately \$548,000 in accrued legal expenses and settlement costs reserved for losses related to litigation and asserted claims where our ultimate exposure is considered probable and the potential loss can be reasonably estimated. Most of these matters relate to correction of home construction defects, foundation issues and general customer claims. We believe that none of these matters will have a material adverse impact upon our consolidated financial condition, results of operations or cash flows.

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

No matters were submitted to a vote of security holders during the quarter ended December 31, 2004.

Executive Officers of the Registrant

The executive officers of the Company are elected each year at a meeting of the Board of Directors, which follows the annual meeting of the stockholders, and at

other Board of Directors meetings as appropriate.

The names, ages, positions and business experience of our executive officers are listed below (all ages are as of March 1, 2005). There are no understandings between any of our executive officers and any other person pursuant to which any executive officer was appointed to his office.

Name	Age	Position
Steven J. Hilton	43	Co-Chairman of the Board and Chief Executive Officer
John R. Landon	47	Co-Chairman of the Board and Chief Executive Officer
Larry W. Seay	49	Chief Financial Officer, Vice President and Secretary
Richard T. Morgan	49	Vice President and Treasurer

Steven J. Hilton co-founded Monterey Homes in 1985, which merged with the Company's predecessor in December 1996. Mr. Hilton has been Co-Chairman and CEO since July 1997.

John R. Landon founded Legacy Homes in 1987, which combined with the Company in July 1997. Mr. Landon has been Co-Chairman and CEO since July 1997.

Larry W. Seay has been Chief Financial Officer and Vice President since December 1996 and was named as secretary in 1997.

Richard T. Morgan has been Vice President since April 1998 and was appointed the Company's Treasurer in 2002.

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PART II

Item 5. Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock is traded on the New York Stock Exchange ("NYSE") under the symbol "MTH". The high and low sales prices per share of our common stock for the periods indicated, as reported by the NYSE, follow. All amounts reflect a 2-for-1 stock split in the form of a stock dividend that occurred in January 2005:

Quarter Ended	2004		2003	
	High	Low	High	Low
March 31	\$ 39.83	\$ 29.56	\$ 18.93	\$ 14.50
June 30	\$ 37.35	\$ 29.46	\$ 26.90	\$ 16.53
September 30	\$ 39.81	\$ 29.54	\$ 27.30	\$ 21.05
December 31	\$ 57.17	\$ 35.80	\$ 34.80	\$ 23.53

On March 7, 2005, the closing sales price of the common stock as reported by the NYSE was \$74.06 per share. At that date, there were approximately 208 owners of record. There are approximately 20,900 beneficial owners of common stock.

The transfer agent for our common stock is Mellon Investor Services LLC, 85 Challenger Road, Ridgefield Park, NJ 07660(www.melloninvestor.com).

We have not declared cash dividends for the past eight years, nor do we intend to declare cash dividends in the foreseeable future. We plan to retain the Company's earnings to finance the continuing development of the business. Future cash dividends, if any, will depend upon our financial condition, results of operations, capital requirements, compliance with certain restrictive debt covenants, as well as other factors considered relevant by our Board of Directors. Certain of our debt instruments contain restrictions on the payment of cash dividends. See "Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources" and "Consolidated Financial Statements, Note 5."

In May 1999, we announced a stock repurchase program in which our Board of Directors approved the repurchase of up to \$6 million of outstanding Meritage common stock. The amount was increased to \$20 million in July of 2000. Under this program, which ended in September 2001, we repurchased 1,637,926 shares at an average price of \$6.85.

In August 2002, our Board of Directors authorized the expenditure of up to \$32 million to repurchase shares of our common stock. In January 2004, our Board of Directors approved an increase in this amount of \$26.8 million. During 2004, we completed the August 2002 stock repurchase program by repurchasing 1.1 million shares.

In August 2004, the Board of Directors approved a new stock buyback program, authorizing the expenditure of up to \$50 million to repurchase shares of our common stock. As of December 31, 2004, no shares were purchased under this program. No date for completing the program has been determined, but we will purchase shares subject to applicable securities law, and at times and in amounts as management deems appropriate.

Item 6. Selected Financial Data

The following table presents selected historical consolidated financial and operating data of Meritage Homes Corporation and subsidiaries as of and for each of the last five years ended December 31, 2004. The financial data has been derived from our consolidated financial statements and related notes for the periods presented, audited by our independent registered public accounting firms. This table should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and the Results of Operations" and the

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consolidated financial statements included elsewhere in this Annual Report on Form 10-K. These historical results may not be indicative of future results.

The data in the table includes the operations of Hancock Communities, Hammonds Homes, Perma-Bilt Homes and Citation Homes since their dates of acquisition, May 2001, July 2002, October 2002 and January 2004, respectively.

	Historical Consolidated Financial Data Years Ended December 31, (\$ in thousands, except per share amounts)				
	2004	2003	2002	2001	2000
Statement of Earnings Data:					
Total closing revenue	\$ 2,040,004	\$ 1,471,001	\$ 1,119,817	\$ 744,174	\$ 520,467
Total cost of closings	(1,631,534)	(1,178,484)	(904,921)	(586,914)	(415,649)

Gross profit	408,470	292,517	214,896	157,260	104,818
Commissions and other sales costs	(116,527)	(92,904)	(65,291)	(41,085)	(28,680)
General and administrative expenses (1)	(79,257)	(53,929)	(41,496)	(36,105)	(21,215)
Other income, net	12,072	5,776	5,435	2,884	1,839
Earnings before income taxes	224,758	151,460	113,544	82,954	56,762
Income taxes (1)	(85,790)	(57,054)	(43,607)	(32,295)	(21,000)
Net earnings	\$ 138,968	\$ 94,406	\$ 69,937	\$ 50,659	\$ 35,762

Earnings per common share: (2)

Basic	\$ 5.33	\$ 3.62	\$ 2.82	\$ 2.39	\$ 1.73
Diluted	\$ 5.03	\$ 3.42	\$ 2.66	\$ 2.15	\$ 1.57

Balance Sheet Data (December 31):

Real estate (3)	\$ 867,218	\$ 678,011	\$ 484,970	\$ 330,238	\$ 211,307
Total assets (3)	1,265,394	954,539	691,788	436,715	267,075
Senior notes, loans payable and other borrowings (3)	471,415	351,491	264,927	177,561	86,152
Total liabilities and minority Interest (3)	742,839	542,644	374,480	260,128	145,976
Stockholders' equity	522,555	411,895	317,308	176,587	121,099

Supplemental Financial Data:

Cash provided by (used in):

Operating activities	\$ 60,171	\$ (50,302)	\$ 1,050	\$ (16,411)	\$ 6,252
Investing activities	(81,804)	(35,812)	(149,691)	(76,465)	(8,175)
Financing activities	64,710	84,313	151,858	91,862	(7,102)

- (1) 2001 includes a \$383 loss related to the net effect of early extinguishments of long-term debt. Previously this amount, net of the tax effect of \$149, was reported as an extraordinary item. We have reclassified this loss as general and administrative expense and income tax benefit, respectively, to conform with the requirements of SFAS No. 145, which was effective January 31, 2003.
- (2) 2000-2001 amounts have been adjusted to reflect a 2-for-1 stock split in the form of a stock dividend that occurred in April 2002 and all amounts have been adjusted to reflect a 2-for-1 stock split in the form of a stock dividend that occurred in January 2005.
- (3) The Company recently determined that costs associated with models that we use to market our communities and that are built by us on lots owned by a third-party and leased from them during our sales process, are required to be included in the Company's financial statements. We do not legally own the models, but we are reimbursed by the owner for our construction costs, and we have the right but not the obligation to purchase these homes. For accounting purposes we are deemed to be the owner due to our "continuing involvement" with these assets. At December 31, 2004, the amount of real estate and notes and loans payable relating to such homes was \$53.8 million.

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

Overview

We are a leading designer and builder of single-family homes in the rapidly growing Southern and Western United States based on the number of home closings and revenue. We focus on providing a broad range of first-time, move-up, active adult and luxury homes to our targeted customer base. We believe that the relatively strong population, job and income growth as well as the favorable migration characteristics of our markets will continue to provide significant growth opportunities for us. At December 31, 2004, we were actively selling homes in 139 communities, with base prices ranging from \$96,000 to \$927,000.

We achieved record home closings, home sales, revenues and net earnings in 2004. Home closing revenue increased 37.9% in 2004 to \$2.0 billion and net earnings increased 47.2% to \$139.0 million. In addition, in 2004 we closed 7,254 homes, up 28.6% from 2003 and we received 9,007 new orders for homes, up 46.4% from 2003. At December 31, 2004, we have 4,408 homes in backlog up 70.9% from 2003, with a value of \$1.3 billion.

In general, we focus on minimizing land risk by purchasing property only after full entitlements have been obtained and typically begin development or construction immediately after close. We acquire land primarily through rolling option contracts, allowing us to purchase individual lots as our building needs dictate. These arrangements allow us to control lot inventory typically on a non-recourse basis without incurring the risks of land ownership or financial commitments other than relatively small non-refundable deposits. At December 31, 2004, we owned or had options to acquire approximately 39,000 housing lots, of which approximately 89% were under rolling option and land purchase contracts. We believe that the lots we own or have the right to acquire represent an approximate five year supply, and that we are well positioned for future growth.

We have completed seven acquisitions over the last seven years, including our February 2005 acquisition of Colonial Homes. Our recent acquisitions have provided us with an entry into important new markets. Our 2002 acquisition of Perma-Bilt Homes provided us entry into the fast growing Las Vegas market and our January 2004 acquisition of Citation Homes of Southern California provided us entry into the Los Angeles metro area market, which is the second largest single-family housing market in the United States. Our 2001 acquisition of Hancock (Phoenix and Tucson) and our 2002 acquisition of Hammonds Homes (Dallas, Houston and Austin) have strengthened our positions in our important Arizona and Texas markets.

We began start-up operations in the high growth markets of Denver, Colorado and Orlando, Florida in 2004 and we believe that these new geographic markets possess demographic and growth characteristics that meet our growth criteria. We expect closings to begin in these markets toward the latter half of 2005. In March 2005 we announced our entry into the Reno, Nevada market through a start-up operation. We plan to begin delivering homes in Reno in mid-2006.

In February 2005 we completed the acquisition of substantially all of the homebuilding assets of Colonial Homes of Fort Myers/Naples, Florida. The purchase price was approximately \$64 million in cash plus the assumption of accrued liabilities of approximately \$9 million. In addition, we have the right to acquire approximately 1,800 lots over a four-year period pursuant to an option agreement entered into between Meritage and Colonial. We anticipate that the Colonial acquisition will allow us to expand our presence in the Florida market. In addition to single-family homes, Colonial Homes is also involved in the construction and sale of multi-story condominiums. We plan to develop condominium units in our Fort Myers/Naples market, and we are exploring expanding into condominium construction and sales in other markets in which we operate.

In February 2005 we announced a series of refinancing transactions that we believe will enhance our liquidity and, in the long term, result in significant cash interest

savings to the Company. On March 2, 2005, we completed the sale of 1,035,000 shares of our common stock in a registered public offering resulting in net proceeds to the Company of approximately \$69.5 million. On March 10, 2005, we completed the private placement of \$350 million in aggregate principal amount of 6.25% senior notes due 2015 which resulted in net proceeds to the Company, after commissions, discounts and fees of approximately \$344 million. We used the proceeds from

these transactions to repurchase pursuant to a tender offer and consent solicitation approximately \$276.8 million of our outstanding 9.75% senior notes due 2011. In connection with this tender offer and repurchase, we will report in the first quarter of fiscal 2005 a one-time charge of approximately \$19.4 million for premiums, commissions and expenses associated with the tender offer and the write-off of existing offering costs associated with the 9.75% senior notes, net of the accretion of existing note premiums on the 9.75% senior notes and taxes. Approximately \$3.2 million of the 9.75% senior notes remain outstanding and subject to tender until March 23, 2005.

This discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America.

Critical Accounting Policies

We have established various accounting policies which govern the application of accounting principles generally accepted in the United States of America in the preparation and presentation of our consolidated financial statements. Our significant accounting policies are described in Note 1 of the consolidated financial statements. Certain of these policies involve significant judgments, assumptions and estimates by management that have a material impact on the carrying value of certain assets and liabilities, and revenue and costs. The judgments, assumptions and estimates we use and believe to be critical to our business are based on historical experience, knowledge of the accounts and other factors, which we believe to be reasonable under the circumstances. We evaluate our judgments and assumptions on an on-going basis. Because of the nature of the judgments and assumptions we have made, actual results may differ from these judgments and estimates, which could have a material impact on the carrying values of assets and liabilities and the results of our operations.

The accounting policies that we deem most critical to us, and involve the most difficult, subjective or complex judgments, include our estimates of costs to complete our individual projects, the ultimate recoverability (or impairment) of these costs, goodwill impairment, the likelihood of closing lots held under option or contract, the ability to determine the fair value of consolidated real estate not owned and liabilities related to such, certain estimates and assumptions related to the application of Financial Accounting Standards Board Interpretation No. 46, "Consolidation of Variable Interest Entities, an interpretation of ARB No. 51" (FIN 46R), and the ability to estimate expenses and accruals, including legal and warranty reserves. Should we under or over estimate costs to complete individual projects, gross margins in a particular period could be misstated and the ultimate recoverability of costs related to a project from home sales may be uncertain. Furthermore, non-refundable deposits paid for land options or contracts may have no economic value to us if we do not ultimately purchase the land. Our inability to accurately estimate expenses, accruals, or an impairment of real estate or goodwill could result in charges, or income, in future periods, which relate to activities or transactions in a preceding period. The estimates and assumptions we make relating to our application of FIN 46R, if not accurate, could result in us incorrectly including or excluding certain contractual land acquisition arrangements as variable interest entities in, or from, respectively, our consolidated financial statements.

Home Closing Revenue, Home Orders and Order Backlog

The tables provided below show operating and financial data regarding our homebuilding activities (dollars in thousands).

	Years Ended December 31,		
	2004	2003	2002
Home Closing Revenue			
<u>Total</u>			
Dollars	\$ 2,015,742	\$ 1,461,981	\$ 1,112,439
Homes closed	7,254	5,642	4,574
Average sales price	\$ 277.9	\$ 259.1	\$ 243.2
<u>Texas</u>			
Dollars	\$ 681,099	\$ 577,330	\$ 387,264
Homes closed	3,152	2,828	2,090
Average sales price	\$ 216.1	\$ 204.1	\$ 185.3
<u>Arizona</u>			
Dollars	\$ 585,743	\$ 415,709	\$ 445,275
Homes closed	2,331	1,515	1,735
Average sales price	\$ 251.3	\$ 274.4	\$ 256.6
<u>California</u>			
Dollars	\$ 628,324	\$ 334,677	\$ 245,640
Homes closed	1,367	735	594
Average sales price	\$ 459.6	\$ 455.3	\$ 413.5
<u>Nevada</u>			
Dollars	\$ 120,576	\$ 134,265	\$ 34,260
Homes closed	404	564	155
Average sales price	\$ 298.5	\$ 238.1	\$ 221.0
Home Orders			
<u>Total</u>			
Dollars	\$ 2,604,948	\$ 1,634,988	\$ 1,161,899
Homes ordered	9,007	6,152	4,504
Average sales price	\$ 289.2	\$ 265.8	\$ 258.0
<u>Texas</u>			
Dollars	\$ 752,770	\$ 599,850	\$ 417,158
Homes ordered	3,518	2,862	2,134
Average sales price	\$ 214.0	\$ 209.6	\$ 195.5

<u>Arizona</u>						
Dollars	\$	884,771	\$	509,913	\$	383,445
Homes ordered		3,490		1,881		1,425
Average sales price	\$	253.5	\$	271.1	\$	269.1
<u>California</u>						
Dollars	\$	821,266	\$	375,105	\$	329,252
Homes ordered		1,582		807		794
Average sales price	\$	519.1	\$	464.8	\$	414.7
<u>Nevada</u>						
Dollars	\$	146,141	\$	150,120	\$	32,044
Homes ordered		417		602		151
Average sales price	\$	350.5	\$	249.4	\$	212.2

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	Years Ended December 31,					
	2004	2003	2002			
Order Backlog						
<u>Total</u>						
Dollars	\$	1,320,951	\$	710,771	\$	537,764
Homes in backlog		4,408		2,580		2,070
Average sales price	\$	299.7	\$	275.5	\$	259.8
<u>Texas</u>						
Dollars	\$	313,090	\$	241,419	\$	218,899
Homes in backlog		1,485		1,119		1,085
Average sales price	\$	210.8	\$	215.7	\$	201.8
<u>Arizona</u>						
Dollars	\$	537,387	\$	238,359	\$	144,155
Homes in backlog		1,991		832		466
Average sales price	\$	269.9	\$	286.5	\$	309.3
<u>California</u>						
Dollars	\$	391,271	\$	177,355	\$	136,927
Homes in backlog		695		405		333
Average sales price	\$	563.0	\$	437.9	\$	411.2
<u>Nevada</u>						
Dollars	\$	79,203	\$	53,638	\$	37,783
Homes in backlog		237		224		186
Average sales price	\$	334.2	\$	239.5	\$	203.1

Home Closing Revenue. Home closing revenue in 2004 increased 38% to a Company record of \$2.0 billion, compared to \$1.5 billion in 2003. Contributing to our 2004 record year in home closing revenue was beginning 2004 with a record year-end order backlog of \$710.8 million. Additionally, our record high home closing revenue benefited from a 7% increase in the average sales price of homes closed and a 29% increase in the number of homes closed led by our Arizona and California regions where the housing markets are very strong in general and where we believe we have honed our competitive advantage. We have benefited from continued strong demand in our markets where we have positioned ourselves to have the right product at the right price and in the right locations. We increased the number of actively selling communities through organic growth as well as our January 2004 acquisition of Citation Homes in the Southern California market. The number of closings in our Texas region increased 11% to 3,152 in 2004, reflecting somewhat more competitive market conditions. Our Arizona region posted a 54% increase in the number of homes closed in 2004 to 2,331. The increase in Arizona is primarily due to the increase in closings of more affordable homes in Arizona, particularly in our Active Adult communities in Arizona, representing a shift in our historical product mix in this market. The average closing price per home in Arizona declined 8% in 2004 as a result of this shift in product mix. Our California region, which offers our highest priced homes, posted an 86% increase in the number of homes closed, resulting in an 88% increase in home closing revenue in 2004. The increase in home closings in California is primarily due to a generally strong housing market and a 29% increase in actively selling communities. In Nevada, closings were off moderately for the year because we sold out of several communities faster than anticipated in 2003, before our replacement communities were open for sales. In 2004, we benefited from increasingly positive demographic factors in the Southern and Western United States, an increasing home ownership rate and favorable employment statistics.

Home closing revenue in 2003 increased 31% over 2002, resulting primarily from a 23% increase in the number of homes closed and a 7% increase in the average sales price year over year. We benefited from an increase in the number of communities that closed homes, from continued strong demand for homes and from an overall increase in the U.S. home ownership rate in 2003, which was at an all-time high of 68.6% at the end of the year. The number of home closings in Texas increased 35% to 2,828 from 2,090, mainly representing the full-year impact of our mid-year 2002 Hammonds acquisition. While the slower demand experienced in both our Austin and Monterey Phoenix divisions in 2002 stabilized in 2003, the number of home closings in California was

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up 24% in 2003, resulting from the strong California homebuilding market and an increase in actively selling communities. The number of homes closed in Nevada increased from 155 to 564, due to the full-year impact in 2003 of our fourth quarter 2002 acquisition of Perma-Bilt. Somewhat offsetting these increases was a reduction in the number of home closings in Arizona of 13%, due to the earlier than anticipated sell out of some communities and delays in opening their replacements. The overall 7% increase in the average home closing price was primarily the result of a shift in mix toward our higher-priced homes, particularly in California. As a whole, we benefited from positive demographic factors, an historically high home ownership rate and generally favorable employment statistics.

Home Orders. Home orders for any period represent the aggregate sales price of all homes ordered by customers, net of cancellations. We do not include orders contingent upon the sale of a customer's existing home as a sales contract until the contingency is removed. Historically, we have experienced a cancellation rate of approximately 25% of the gross sales, which we believe is consistent with industry norms. We ended the 2004 fiscal year with 9,007 homes ordered compared to 6,152, representing a 46% increase in home orders. Our Arizona and California regions posted particularly strong results, primarily due to healthy housing markets in both states as well as communities that are thoughtfully designed, in good locations and that meet the needs of our homebuyers. Orders in Arizona rose 86% due to newly opened

communities and the diversification of our product offerings to take advantage of emerging demographic trends such as maturing baby boomers in the form of Active Adult communities. Our Active Adult communities generated 786 sales orders in 2004, as compared to 302 in 2003. In California, sales orders increased 96% primarily due to an increase in active communities in Northern California, the acquisition of Citation Homes in January 2004 and continued strong demand for homes. During the latter half of 2004, we opened several new communities in Nevada for sales, tripling our number of actively selling communities to six. Overall, our home orders in Nevada declined to 417, but our fourth quarter orders reflected the increase in our actively selling communities by generating a 56% increase in the quarter, year-over-year, which is evidence that the Nevada housing market is strong.

The dollar value of sales contracts in 2003 increased 41% over 2002. This increase was driven by a 37% increase in the number of new home orders and a 3% increase in average selling price. The number of new home orders increased by 34% in Texas, a portion of which represents the full-year impact of our Hammonds acquisition. The number of orders in Arizona increased 32% during 2003, primarily the result of a 17% increase in actively selling communities and continued strong demand for homes. The number of orders in California was relatively stable, up 2% over 2002, reflecting the earlier than anticipated sellout of communities in the beginning of 2003. However, the number of orders was up 76% in the fourth quarter of 2003 in California versus the prior year's fourth quarter, due to the introduction of new communities during the second half of 2003. New home orders increased in Nevada from 151 in 2002 to 602 in 2003, as a result of the full-year impact of our Perma-Bilt acquisition. We believe the demand for our homes can be attributed in part to the continuing maturation of first- and second-generation baby boomers and increases in immigration to the south and west.

Order Backlog. Our backlog represents net sales contracts that have not closed. Our optimism regarding 2005 is anchored in our very strong backlog at year-end 2004, and the market conditions and order flow driving that backlog. As a result of the accelerating order momentum during the second half of 2004, we ended 2004 with 4,408 homes in backlog, a 71% increase compared to year-end 2003, resulting in a dollar backlog of \$1.3 billion for year-end 2004, an 86% increase over year-end 2003. In addition to a 71% increase in the number of homes in order backlog, the increase in dollar backlog was also due to a 9% increase in the average sales price of those homes. Our Arizona region more than doubled their number of homes in backlog at the end of 2004 compared to 2003, with an increase of 139%. In California, the number of units and average sales price of the units in backlog increased 72% and 29%, respectively, to 695 units and \$391.3 million, primarily as a result of the increased active selling communities in Northern California and also due to the acquisition of Citation Homes in January 2004. Our Nevada region ended 2004 with \$79.2 million in backlog, an increase of 48% over year-end 2003, mainly due to a 40% increase in the average selling price of homes in order backlog. The price increase was primarily due to a strong housing market in Nevada represented by our year-end 2004 order backlog with higher priced selling communities compared to lower priced selling communities for year-end 2003. In Texas, our backlog increased 30% to \$313.1 million at year-end 2004 from year-end 2003, primarily due to an increase in unit orders of 33%.

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Total dollar backlog at December 31, 2003 increased 32% over the amount at year-end 2002 due to a 25% increase in the number of homes in backlog and a 6% increase in the average sales price of those homes. Unit backlog was up 79% in Arizona and 22% in California due to an increase in the number of communities and continued strong demand for homes in those markets during 2003. From year-end 2002 to year-end 2003, the number of active communities in Arizona and California increased 17% and 40%, respectively. Unit backlog in Nevada increased 20% at the end of 2003, and the average home price in backlog increased 18% due to a shift in product mix, resulting in the dollar value of backlog increasing by 42%. Unit backlog in Texas on December 31, 2003 was relatively in line with December 31, 2002, up 3%. However, the average selling price in backlog in Texas increased 7%, resulting in the dollar value of backlog increasing 10% year-over-year.

Other Operating Information

	Years Ended December 31,		
	(\$ in thousands)		
	2004	2003	2002
Home Closing Gross Profit			
Dollars	\$ 400,287	\$ 291,282	\$ 214,096
Percent of home closing revenue	19.9%	19.9%	19.2%
Commissions and Other Sales Costs			
Dollars	\$ 116,527	\$ 92,904	\$ 65,291
Percent of home closing revenue	5.8%	6.4%	5.9%
General and Administrative Expenses			
Dollars	\$ 79,257	\$ 53,929	\$ 41,496
Percent of total revenue	3.9%	3.7%	3.7%
Income Taxes			
Dollars	\$ 85,790	\$ 57,054	\$ 43,607
Percent of earnings before income taxes	38.2%	37.7%	38.4%

Home Closing Gross Profit. Home closing gross profit represents home closing revenue less cost of home closings. Cost of home closings include developed lot costs, direct home construction costs, an allocation of common community costs (such as model complex costs and architectural, legal and zoning costs), interest, sales tax, warranty, construction overhead and closing costs. Home closing gross profit as a percentage of home closing revenue was consistent in 2004 and 2003 at 19.9%.

Home closing gross profit as a percentage of home closing revenue was 19.9% in 2003, up from 19.2% in 2002. This improvement can be attributed to home closing prices in 2003 increasing at a greater rate than cost of home closings. Average home closing prices were up 7% in 2003 while the average cost of home closings increased by 6%.

Land Closings. The sale of land is not a significant component of our business plan and takes place occasionally as we sell excess land that is not needed in our homebuilding operations. Incidental sales of land may continue in the future, but could fluctuate substantially. A summary of land closings is presented below:

	Years ended December 31,		
	(in thousands)		
	2004	2003	2002
Land closing revenue	\$ 24,262	\$ 9,020	\$ 7,378
Cost of land closings	(16,079)	(7,785)	(6,578)
Land closing gross profit	\$ 8,183	\$ 1,235	\$ 800

Land closings for the year ended December 31, 2004 primarily related to one land closing in Nevada during the third quarter of 2004 for \$19.2 million, which resulted in a \$7.1 million gain.

Commissions and Other Sales Costs. Commissions and other sales costs, such as advertising and sales office expenses, were 5.8% of home closing revenue in 2004, down from 6.4% in 2003. This decrease was primarily the result of our ability to leverage our fixed and semi-fixed sales and marketing costs with our 38% increase in home closing revenue.

For the year ended December 31, 2003, commissions and other sales costs were 6.4% of home closing revenue, up from 5.9% in 2002. This increase was primarily the result of the rising use of independent brokers who are paid higher commissions than our employee brokers, along with costs associated with opening new communities for sale. Our marketing expenses are incurred in connection with the promotion of new communities, and these expenses are often incurred in advance of actual home closings, which tend to lag sales by a period of four to nine months.

General and Administrative Expenses. General and administrative expenses represent corporate and divisional overhead expenses such as salaries and bonuses, occupancy, insurance and travel expenses. General and administrative costs as a percent of total revenue remained relatively consistent in 2004 at 3.9% of total revenue compared to 3.7% for 2003 and 2002.

Income Taxes. Income taxes increased to \$85.8 million in 2004 from \$57.1 million in 2003. As a percent of pre-tax earnings, taxes were 38.2% in 2004, up from 37.7% in 2003. This increase was mainly due to the 2004 increase in pre-tax earnings in Arizona and California, which have higher state tax rates than Nevada and Texas. The tax benefit associated with the exercise of employee stock options reduced taxes payable for 2004 by approximately \$3.0 million, which was credited to additional paid-in-capital.

Income taxes increased to \$57.1 million in 2003 from \$43.6 million in 2002. As a percent of pre-tax earnings, taxes were 37.7% in 2003, down from 38.4% in 2002. This reduction was mainly due to the 2003 increase in pre-tax earnings in Texas and Nevada, which have minimal or no state taxes. Also, the tax benefit related to the exercise of employee stock options reduced taxes payable by approximately \$2.8 million, which was credited to additional paid-in capital.

Liquidity and Capital Resources

Our principal uses of capital for the year ended December 31, 2004 were for operating expenses, land and property purchases, lot development, home construction, the repurchase of common stock, income taxes, interest and investments in joint ventures. We used a combination of borrowings under our revolving credit facility and funds generated by operations to meet our short-term working capital requirements.

Cash flows for each of our communities depend on the status of the development cycle and can differ substantially from reported earnings. Early stages of development or expansion require significant cash outlays for land acquisitions, plat and other approvals, and construction of model homes, roads, utilities, general landscaping and other amenities. Because these costs are capitalized, income reported for financial statement purposes during those early stages may significantly exceed cash flow. Future cash flows may significantly exceed earnings reported for financial statement purposes, as cost of closings includes charges for substantial amounts of previously expended costs.

We enter into various options and purchase contracts for land in the normal course of business. Except for our specific performance options, none of these agreements require us to purchase lots. Generally, our options to purchase lots remain effective so long as we purchase a pre-established minimum number of lots each month or quarter, as determined by the respective agreement. The pre-established number is typically structured to approximate our expected rate of home construction starts. At December 31, 2004, we had entered into option purchase contracts with an aggregate purchase price of approximately \$1.7 billion, on which we had made deposits of approximately \$132.6 million in cash along with approximately \$44.8 million in letters of credit. Additional information regarding our purchase agreements and related deposits is presented in Note 3 – Variable Interest Entities and Consolidated Real Estate Not Owned in the accompanying consolidated financial statements.

In December 2003 we increased the capacity of our unsecured credit facility by \$150 million, raising the total commitment to \$400 million. The facility is with a consortium of banks, led by Guaranty Bank and Bank One, NA. The revised agreement also lengthened the term of the facility by 18 months, extending the maturity date to May 2007, and expanded the number of banks participating in the facility from seven to ten.

At December 31, 2004, there was no outstanding balance under our senior unsecured revolving credit facility and approximately \$50.0 million was outstanding in letters of credit that collateralize our obligations under various land purchase and other contracts. After considering our most restrictive bank covenants, our borrowing availability under the bank credit facility was approximately \$210.7 million at December 31, 2004, as determined by borrowing base limitations defined by our agreement with the lending banks.

This credit facility contains certain financial and other covenants, including covenants:

- requiring us to maintain tangible net worth of at least \$225 million plus 50% of net income earned since January 1, 2004 plus 75% of the aggregate net increase in tangible net worth resulting from the sale of capital stock and other equity interests (as defined);
- prohibiting our ratio of indebtedness (including accrued expenses) to tangible net worth from being greater than 2.25 to 1;
- requiring us to maintain a ratio of EBITDA (including interest amortized to cost of sales) to interest incurred (as defined) of at least 2.0 to 1;
- prohibiting the net book value of our land and lots where construction of a home has not commenced to exceed 125% of tangible net worth and prohibiting the net book value of our raw land where grading or infrastructure improvements have not begun to exceed 20% of tangible net worth;
- limiting the number of unsold housing units and model units that we may have in our inventory at the end of any fiscal quarter as follows:
 - (1) unsold homes cannot exceed 25% of the number of home closings within the four fiscal quarters ending on such date; and
 - (2) model homes cannot exceed 10% of the number of home closings within the four fiscal quarters ending on such date; and
- prohibiting us from entering into any sale and leaseback transaction, excluding the sale and leaseback of model homes and prohibiting us from creating or incurring any off-balance sheet liability. For purposes of our credit facility, off-balance sheet liabilities include:
 - (1) certain liabilities arising under asset securitization transactions;
 - (2) monetary obligations under synthetic leases, tax retention or off-balance sheet lease transactions that upon the application of any debtor relief law to us would be characterized as indebtedness;
 - (3) any other monetary obligation with respect to any transaction which upon the application of any debtor relief law to us would be characterized as

indebtedness or which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on our consolidated balance sheet.

Notwithstanding the above, our credit facility specifically provides that liabilities (i) under rolling options and similar contracts for the acquisition of real property and (ii) arising under model home leases, and (iii) liabilities arising under guarantees shall not be deemed off-balance sheet liabilities.

We have outstanding \$280 million in aggregate principal amount of 9.75% senior notes due 2011, which were originally issued in May 2001 and subsequent add-on financings in February 2003 and September 2003.

In April 2004, we issued \$130.0 million in principal amount of 7.0% senior notes due 2014. Approximately \$129.4 million of this amount was used to pay down our senior unsecured credit facility.

The indentures for our 9.75% senior notes and our 7.0% senior notes require us to comply with a number of covenants that restrict certain transactions, including covenants:

- limiting the amount of additional indebtedness we can incur unless after giving effect to such additional indebtedness, either (i) our fixed charge coverage ratio would be at least 2.0 to 1.0 or (ii) our ratio of consolidated debt to consolidated tangible net worth would be less than 3.0 to 1.0, provided, however, this limitation does not apply to most types of inter-company indebtedness, purchase money indebtedness up to \$15 million, non-recourse indebtedness and other indebtedness up to \$15 million;
- generally limiting the amount of dividends, redemptions of equity interests and certain investments we can make to \$10 million plus (i) 50% of our net income since June 1, 2001 plus (ii) 100% of the net cash proceeds from the sale of qualified equity interests, plus other items and subject to other exceptions;
- requiring us to maintain tangible net worth of at least \$60 million;
- limiting our ability to incur or create certain liens; and
- placing limitations on the sale of assets, mergers and consolidations and transactions with affiliates.

As of and for the year ended December 31, 2004, we were in compliance with the credit facility and senior note covenants.

In February 2005 we announced a series of refinancing transactions that we believe will enhance our liquidity and, in the long term, result in significant cash interest savings to the Company.

On March 2, 2005, we completed the sale of 1,035,000 shares of our common stock in a registered public offering resulting in net proceeds to the Company of approximately \$69.5 million.

On March 10, 2005, we completed the private placement of \$350 million in aggregate principal amount of 6.25% senior notes due 2015 which resulted in net proceeds to the Company, after commissions, discounts and fees of approximately \$344 million. The indenture which governs the new 6.25% senior notes contains covenants that are substantially similar to the covenants in the indentures which govern our existing 9.75% senior notes and 7.0% senior notes, except that, among other things, the new indenture:

- does not require us to maintain a certain level of minimum tangible net worth;
- provides that the exceptions to the limitation of the amount of additional indebtedness we may acquire with respect to purchase money indebtedness and non-recourse and other indebtedness is unlimited;
- provides that the amount of dividends, redemptions of equity interests and certain investments we can make is limited to \$25 million plus (i) 50% of net income since June 1, 2001 plus (ii) 100% of the net cash proceeds from the sale of qualified equity interests, plus other items and subject to other exceptions;

- increases the amount of investments we can make in joint ventures in a permitted business with unaffiliated third parties to 30% of our consolidated tangible net worth (as defined in the new indenture); and
- provides for a suspension of certain covenants if the new 6.25% senior notes have "investment grade ratings", as defined in the indenture, including covenants relating to change of control, limitations on additional indebtedness, limitations on the amount of dividends, redemptions of equity interest and certain limitations on investments and asset sales.

On March 10, 2005, we used the proceeds from these transactions to repurchase pursuant to a tender offer and consent solicitation approximately \$276.8 million of our outstanding 9.75% senior notes due 2011. In connection with this tender offer and repurchase, we will report in the first quarter of fiscal 2005 a one time charge of approximately \$19.4 million for premiums, commissions and expenses associated with the tender offer and the write-off of existing offering costs associated with the 9.75% senior notes, net of the accretion of existing note premiums on the 9.75% senior notes and taxes. Approximately \$3.2 million of the 9.75% senior notes remain outstanding and subject to tender until March 23, 2005.

We believe that our current borrowing capacity, cash on hand and anticipated net cash flows from operations are and will be sufficient to meet liquidity needs for the foreseeable future. We believe our future cash needs will include funds for the completion of projects that are underway, the maintenance of our day-to-day operations, and the acquisition or start-up of additional homebuilding operations, should the opportunities arise. There is no assurance, however, that future cash flows will be sufficient to meet future capital needs. The amount and types of indebtedness that we incur may be limited by the terms of the indenture governing our senior notes and by the terms of the credit agreement governing our senior unsecured credit facility.

In August 2002, our Board of Directors authorized the expenditure of up to \$32 million, with an increase of \$26.8 million approved in January 2004, to repurchase shares of our common stock. By December 31, 2004, we had purchased 2,428,600 shares of our common stock under the August 2002 program at an average price of \$23.78 per share. For the fiscal year ended December 31, 2004, we repurchased 1,100,000 shares at an average price of \$32.20, completing the August 2002 program.

In August 2004, the Board of Directors approved a new stock buyback program, authorizing the expenditure of up to \$50 million to repurchase shares of our common stock. As of December 31, 2004, no shares were purchased under this program. No date for completing the program has been determined, but we will purchase shares subject to applicable securities law, and at times and in amounts as management deems appropriate.

Effective April 1, 2004, the construction costs and related debt associated with model homes which are owned and leased to us by others that we use to market our communities are included in our balance sheet. We do not legally own the model homes, but we are reimbursed by the owner for our construction costs, and we have the right, but not the obligation, to purchase these homes. Although we have no legal obligation to repay any amounts received from third-party owners, the amounts are recorded as debt and are typically deemed repaid when we simultaneously exercise our option to purchase the model home and sell such model home to a third-party home buyer. Should we elect not to exercise our rights to purchase these model homes, the model costs and related debt under the model home lease program will be eliminated upon the termination of the lease, which is generally between one and three years from the origination of the lease.

Off-Balance Sheet Arrangements

We often acquire finished building lots at market prices from various development entities under fixed price purchase agreements. This lot acquisition strategy reduces the financial requirements and risks associated with direct land ownership and land development. Under these purchase agreements, we are usually required to make deposits in the form of cash or letters of credit, which may be forfeited if we fail to perform under the agreement. At December 31, 2004, we had entered into purchase agreements with an aggregate purchase price of approximately \$1.7 billion, by making deposits of approximately \$132.6 million in the form of cash and approximately \$44.8 million in letters of credit.

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Occasionally, we enter into land development joint ventures. The Company and/or its partners occasionally provide limited repayment guarantees on debt of certain unconsolidated entities on a pro rata share basis. At December 31, 2004, the Company had limited repayment guarantees of \$16.1 million.

We and our joint venture partners are also typically obligated to the project lenders to complete land development improvements if the joint venture does not perform the required development. Provided we and the other joint venture partners are in compliance with these completion obligations, the project lenders would be obligated to fund these improvements through any financing commitments available under the applicable joint venture development and construction loans. In addition, we and our joint venture partners have from time to time provided unsecured environmental indemnities to joint venture project lenders. In some instances, these indemnities are subject to caps. These indemnities obligate us to reimburse the project lenders only for claims related to environmental matters for which such lenders are held responsible. As part of our project acquisition due diligence process to determine potential environmental risks, we generally obtain an independent environmental review from outside consultants.

Additionally, we and our joint venture partners have agreed to indemnify third party surety providers with respect to performance bonds issued on behalf of certain of our joint ventures. If a joint venture does not perform its obligations, the surety bond could be called. If these surety bonds are called and the joint venture fails to reimburse the surety, we and our joint venture partners would be obligated to indemnify the surety. These surety indemnity arrangements are generally joint and several obligations with our other joint venture partners. As of December 31, 2004, there were approximately \$13.4 million of surety bonds outstanding subject to these indemnity arrangements. None of these bonds have been called to date and we believe it is unlikely that any of these bonds will be called.

We also obtain letters of credit and performance, maintenance, and other bonds in support of our related obligations with respect to the development of our projects. The amount of these obligations outstanding at any time varies depending on the stage and level of our development activities. In the event the letters of credit or bonds are drawn upon, we would be obligated to reimburse the issuer of the letter of credit or bond. At December 31, 2004, we had approximately \$5.2 million in outstanding letters of credit and \$171.5 million in performance bonds for such purposes. We believe it is unlikely that any of these letters of credit or bonds will be drawn upon.

Contractual Obligations

The following is a summary of our contractual obligations at December 31, 2004, and the effect such obligations are expected to have on our liquidity and cash flows in future periods (in thousands):

	Total	Payments Due by Period			
		Less than 1 Year	1-3 Years	4-5 Years	More Than 5 Years
Principal, senior notes	\$ 410,000	—	—	—	\$ 410,000
Interest, senior notes	269,208	\$ 36,400	\$ 72,800	\$ 72,800	87,208
Other borrowing obligations (1)	54,419	47,466	6,953	—	—
Interest, other borrowing obligations (1)	2,156	1,855	301	—	—
Operating lease obligations (1)	24,158	5,483	7,751	5,338	5,586
Specific performance option obligations	8,176	6,907	1,269	—	—
Total	\$ 768,117	\$ 98,111	\$ 89,074	\$ 78,138	\$ 502,794

- (1) As a part of our model home construction activities, we enter into lease transactions with third parties, the monthly payments for which are typically calculated by applying a LIBOR-based rate to the agreed upon basis of the leased asset. As discussed in Note 5, at December 31, 2004, approximately \$53.8 million of these transactions were included in our balance sheet as model home inventory with a corresponding debt balance,

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which is included in the other borrowings category above. The portion of the lease payments relating to that debt is included in the above table in "Interest, other borrowing obligations". The remainder of the lease payments relating to the model home leases and other operating leases is included in the "Operating lease obligations" category. See Notes 3 and 13 to our consolidated financial statements included in this report for additional information regarding our contractual obligations.

We do not engage in commodity trading or other similar activities. We had no derivative financial instruments at December 31, 2004 or 2003.

Seasonality

We historically close more homes in the second half of the fiscal year than in the first half, due in part to the slightly seasonal nature of the market for our move-up and luxury products. We expect this seasonal trend to continue, although it may vary as our operations continue to expand.

Recent Accounting Standards

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities" ("FIN 46R"), which governs whether certain transactions should be accounted for as on- or off-balance sheet transactions. We have adopted FIN 46R, and a discussion of its impact on our consolidated financial statements can be found in Note 3 – Variable Interest Entities and Consolidated Real Estate Not Owned in the accompanying consolidated financial statements.

In November 2004, the FASB issued Statement of Financial Accounting Standard ("SFAS") No. 151, "Inventory Costs, an amendment of ARB No. 43, Chapter 4". SFAS No. 151 clarifies the accounting for amounts of idle facility expenses, freight, handling costs, and wasted material (spoilage). This statement is effective for the Company on January 1, 2006. The adoption of SFAS No. 151 is not expected to have a material effect on our consolidated financial statements.

In December 2004, FASB issued Statement of Financial Accounting Standard ("SFAS") No. 123 (revised 2004), "Share-Based Payment" ("SFAS 123R"), effective for periods beginning after June 15, 2005. SFAS 123R requires that all stock-based compensation be treated as a cost that is reflected in the financial statements. The Company is required to adopt the new standard for its interim period beginning July 1, 2005, and we are currently reviewing the effect of this statement on our consolidated financial statements.

In December 2004, the FASB issued SFAS No. 153, "Exchanges of Nonmonetary Assets, an amendment of APB No. 29". SFAS No. 153 amends APB Opinion No. 29 to eliminate the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. A monetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. This statement is effective for the Company on January 1, 2006. The adoption of SFAS No. 153 is not expected to have a material effect on our consolidated financial statements.

Factors That May Affect Our Future Results and Financial Condition

Future operating results and financial condition depend on our ability to successfully design, develop, construct and sell homes that satisfy dynamic customer demand patterns. Inherent in this process are factors that we must successfully manage to achieve favorable future operating results and financial condition. These operating and financial factors, along with many other factors, could affect the price of our common stock and notes. Potential risks and uncertainties that could affect future operating results and financial condition could include the factors discussed below.

Interest Rates and Mortgage Financing. In general, housing demand is adversely affected by increases in interest rates and housing costs and the unavailability of mortgage financing. Most of our buyers finance their home purchases through third-party lenders providing mortgage financing. If mortgage interest rates increase and, consequently, the ability of prospective buyers to finance home purchases is adversely affected, home sales, gross margins and cash flow may also be adversely affected and the impact may be material. Interest rates are currently near historically low levels, however, it is impossible to predict future increases or decreases in market interest rates. In addition, homebuilding activities depend upon the availability and costs of mortgage financing for buyers of homes owned by potential customers, as those customers (move-up buyers) often must sell their residences before they purchase our homes. Any reduction of financing availability could adversely affect home sales.

Future Expansion. We may continue to consider growth or expansion of our operations in our current markets or in other areas of the country. Our expansion into new or existing markets could have a material adverse effect on our cash flows or profitability. The magnitude, timing and nature of any future expansion will depend on a number of factors, including suitable acquisition candidates, the negotiation of acceptable terms, our financial capabilities and general economic and business conditions. New acquisitions may result in the incurrence of additional debt. Acquisitions also involve numerous risks, including difficulties in the assimilation of the acquired company's operations, the incurrence of unanticipated liabilities or expenses, the diversion of

management's attention from other business concerns, risks of entering markets in which we have limited or no direct experience and the potential loss of key employees of the acquired company.

Dependence on Subcontractors. We conduct our construction operations only as a general contractor. Virtually all architectural and construction work is performed by unaffiliated third-party subcontractors. As a consequence, we depend on the continued availability of and satisfactory performance by these subcontractors for the design and construction of our homes. We cannot assure you that there will be sufficient availability of and satisfactory performance by these unaffiliated third-party subcontractors. In addition, inadequate subcontractor resources could have a material adverse effect on our business.

Operating and Financial Limitations. The indentures for our senior notes and the agreement for our senior unsecured credit facility impose significant operating and financial restrictions on us. These restrictions limit our ability and the ability of our subsidiaries, among other things, to:

- incur additional indebtedness or liens;
- pay dividends or make other distributions;
- repurchase our stock;
- make investments;
- sell assets;
- enter into agreements restricting our subsidiaries' ability to pay dividends;
- enter into transactions with affiliates; and
- consolidate, merge or sell all or substantially all of our assets.

In addition, the indentures for our senior notes and our senior unsecured credit facility require us to maintain a minimum consolidated tangible net worth and our credit facility requires us to maintain other specified financial ratios. We cannot assure you that these covenants will not adversely affect our ability to finance our future operations or capital needs or to pursue available business opportunities. A breach of any of these covenants or our inability to maintain the required financial ratios could result in a default in respect of the related indebtedness. If a default occurs, the relevant lenders could elect to declare the indebtedness, together with accrued interest and other fees, to be immediately due and payable.

Colonial Homes Acquisition. In February 2005 we completed the acquisition of substantially all of the homebuilding operations of Colonial Homes of Fort Myers/Naples, Florida. The integration of Colonial Homes into our operations following the acquisition will involve a number of risks. In particular, the combined companies may experience attrition among management and personnel. The integration process could also disrupt the activities of our current business. The combination of the two companies will require, among other things, coordination of management, administrative and other functions. Failure to overcome these challenges or any other problems encountered in connection with the acquisition of Colonial Homes could cause our financial condition, results of operations and competitive position to decline.

Our integration of the Colonial Homes acquisition assumes certain synergies and other benefits. We cannot assure you that unforeseen factors will not offset the intended benefits of the acquisition in whole or in part.

In connection with the acquisition of Colonial, we will be involved in the construction and sale of multi-story condominium homes. Prior to this acquisition, our business has involved only the construction and sale of single-family homes. The construction and sale of condominium homes involves different construction processes and

subcontractors and, to a degree, different customers. In addition, condominium homes typically involve more extensive sales and warranty regulations. Although we now employ most of the Colonial Homes employees that were involved with the Colonial business (including condominium construction and sales), we have no prior experience in the condominium business. In addition, we are exploring expanding into condominium construction and sales in other markets in which we operate and we would face similar challenges and risk with such an endeavor.

Dependence on Key Personnel. Our success largely depends on the continuing services of certain key employees, including our Co-Chief Executive Officers, John R. Landon and Steven J. Hilton, and our continued

development depends on our ability to attract and retain qualified personnel. We have employment agreements with Messrs. Landon and Hilton, but we do not have employment agreements with certain other key employees. We believe that Messrs. Landon and Hilton each possess valuable industry knowledge, experience and leadership abilities that would be difficult in the short term to replicate. The loss of the services of key employees could harm our operations and business plans.

Limited Geographic Diversification. We have operations in Texas, Arizona, California, Nevada, Colorado and Florida. Our limited geographic diversification could adversely impact us if the homebuilding business in our current markets should decline, since there may not be a balancing opportunity in a stronger market in other geographic regions.

Increased Insurance Costs. Recently, lawsuits have been filed against builders asserting claims of personal injury and property damage caused by the presence of mold in residential dwellings. Some of these lawsuits have resulted in substantial monetary judgments or settlements. We believe that we have maintained adequate insurance coverage to insure against these types of claims for homes completed before October 1, 2003. Insurance carriers have been excluding claims from policies arising from the presence of mold for many builders and, as of October 1, 2003, our insurance policy began excluding mold coverage. If our retentions are not sufficient to protect against these types of claims or if we are unable to obtain adequate insurance coverage, a material adverse effect on our business, financial condition and results of operations could result if we are exposed to claims arising from the presence of mold in the homes that we sell.

Natural Disasters. We have significant homebuilding operations in Texas, California and Florida. Some of our markets in Texas and Florida occasionally experience extreme weather conditions such as tornadoes or hurricanes. California has experienced a significant number of earthquakes, flooding, landslides and other natural disasters in recent years. We do not insure against some of these risks. These occurrences could damage or destroy some of our homes under construction or our building lots, which may result in losses that exceed our insurance coverage. We could also suffer significant construction delays or substantial fluctuations in the pricing or availability of building materials. Any of these events could cause a decrease in our revenue, cash flows and earnings.

Inflation. We, like other homebuilders, may be adversely affected during periods of high inflation, mainly because of higher land and construction costs. Also, higher mortgage interest rates may significantly affect the affordability of mortgage financing to prospective buyers. Inflation increases our cost of financing, materials and labor and could cause our financial results or growth to decline. We attempt to pass cost increases on to our customers through higher sales prices. To date, inflation has not had a material adverse effect on our results of operations; however, inflation could impact our future operating results.

Home Warranty Factors. Construction defect and home warranty claims are common in the homebuilding industry and can be costly. While we maintain product liability insurance and generally require our subcontractors and design professionals to indemnify us for liabilities arising from their work, we cannot assure you that these insurance rights and indemnities will be adequate to cover all construction defect and warranty claims for which we may be held liable. For example, we may be responsible for applicable self-insured retentions, which have increased recently, and certain claims may not be covered by insurance or may exceed applicable coverage limits.

Homebuilding Industry Factors. The homebuilding industry is cyclical and is significantly affected by changes in economic and other conditions such as employment levels, availability of financing, interest rates, and consumer confidence. These factors can negatively affect demand for and cost of our homes. We are also subject to various risks, many of which are outside of our control, including delays in construction schedules, cost overruns, changes in governmental regulations (such as no- or slow-growth initiatives), increases in real estate taxes and other local government fees, and raw materials and labor costs.

We are also subject to the potential for significant variability and fluctuations in the cost and availability of real estate. Although historically we have generally developed parcels ranging from 100 to 300 lots, in order to achieve and maintain an adequate inventory of lots, we are beginning to purchase larger parcels, in some cases with a joint venture partner. Write-downs of our real estate could occur if market conditions deteriorate and these

write-downs could be material in amount. Write-downs may also occur if we purchase land at higher prices during stronger economic periods and the value of that land subsequently declines during slower economic periods.

Fluctuations in Operating Results. We historically have experienced, and expect to continue to experience, variability in home sales and net earnings on a quarterly basis. As a result of such variability, our historical performance may not be a meaningful indicator of future results. Factors that contribute to this variability include:

- timing of home deliveries and land sales;
- our ability to acquire additional land or options for additional land on acceptable terms;
- conditions of the real estate market in areas where we operate and of the general economy;
- the cyclical nature of the homebuilding industry, changes in prevailing interest rates and the availability of mortgage financing;
- costs and availability of materials and labor; and
- delays in construction schedules due to strikes, adverse weather, acts of God, reduced subcontractor availability and governmental restrictions.

Competition. The homebuilding industry is highly competitive. We compete for sales in each of our markets with national, regional and local developers and homebuilders, existing home resales and, to a lesser extent, condominiums and available rental housing. If we are unable to successfully compete, our financial results and growth could suffer. Some of our competitors have significantly greater financial resources or lower costs than we do. Competition among both small and large residential homebuilders is based on a number of interrelated factors, including location, reputation, amenities, design, quality and price. Competition is expected to continue and become more intense, and there may be new entrants in the markets in which we currently operate and in markets we may enter in the future.

Additional Financing; Limitations. The homebuilding industry is capital intensive and requires significant up-front expenditures to acquire land and begin development. Accordingly, we incur substantial indebtedness to finance our homebuilding activities. At December 31, 2004, we had approximately \$471.4 million of indebtedness and other borrowings. If we require working capital greater than that provided by operations or available under our credit facility, we may be required to seek additional capital in the form of equity or debt financing from a variety of potential sources, including bank financing and securities offerings. The level of our indebtedness could have important consequences to our stockholders, including the following:

- our ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired;

- we must use a substantial portion of our cash flow from operations to pay interest and principal on our indebtedness, which will reduce the funds available to us for other purposes such as capital expenditures;
- we have a higher level of indebtedness than some of our competitors, which may put us at a competitive disadvantage and reduce our flexibility in planning for, or responding to, changing conditions in our industry, including increased competition; and
- we are more vulnerable to economic downturns and adverse developments in our business.

We expect to obtain the money to pay our expenses and to pay the principal and interest on our indebtedness from cash flow from operations. Our ability to meet our expenses thus depends on our future performance, which will be affected by financial, business, economic and other factors. We will not be able to control many of these factors, such as economic conditions in the markets where we operate and pressure from competitors.

We cannot be certain that our cash flow will be sufficient to allow us to pay principal and interest on our debt and meet our other obligations. If we do not have sufficient funds, we may be required to refinance all or part of our existing debt, sell assets or borrow additional funds. We cannot guarantee that we will be able to do so on terms acceptable to us, if at all. In addition, the terms of existing or future debt agreements may restrict us from pursuing any of these alternatives.

Government Regulations; Environmental Conditions. Regulatory requirements could cause us to incur significant liabilities and costs and could restrict our business activities. We are subject to local, state and federal statutes and rules regulating certain developmental matters, as well as building and site design. We are subject to various fees and charges of government authorities designed to defray the cost of providing certain governmental services and improvements. We may be subject to additional costs and delays or may be precluded entirely from building projects because of “no-growth” or “slow-growth” initiatives, building permit ordinances, building moratoriums, or similar government regulations that could be imposed in the future due to health, safety, welfare or environmental concerns. We must also obtain licenses, permits and approvals from government agencies to engage in certain activities, the granting or receipt of which are beyond our control, but could cause delays in our homebuilding projects.

We are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning the protection of health and the environment. Environmental laws or permit restrictions may result in project delays, may cause substantial compliance and other costs and may prohibit or severely restrict development in certain environmentally sensitive regions or geographic areas. Environmental regulations can also have an adverse impact on the availability and price of certain raw materials, such as lumber.

Beginning in late 2003, we established relationships with title insurance companies in three states where we do business, pursuant to which one of our subsidiaries receives a portion of the fees and premiums on title insurance purchase by certain of our homebuyers and reinsures a portion of the policy risk. The California Insurance Commissioner and regulators in other states are investigating these types of arrangements. We are in the process of terminating those arrangements that have not been expressly approved by a state regulator. In total, these arrangements contributed approximately \$600,000 to our fiscal 2004 pre-tax earnings.

Acts of War. Acts of war or any outbreak or escalation of hostilities between the United States and any foreign power, including the conflict with Iraq, may cause disruption to the economy, our company, our employees and our customers, which could impact our revenue, costs and expenses and financial condition.

Special Note of Caution Regarding Forward-Looking Statements

In passing the Private Securities Litigation Reform Act of 1995 (PSLRA), Congress encouraged public companies to make “forward-looking statements” by creating a safe-harbor to protect companies from securities law liability in connection with forward-looking statements. We intend to qualify both our written and oral forward-looking statements for protection under the PSLRA.

The words “believe,” “expect,” “anticipate,” “forecast,” “plan,” and “project” and similar expressions identify forward-looking statements, which speak only as of the date the statement was made. All statements other than of historical fact are forward-looking statements and are within the meaning of that term in Section 27A of the Securities Act of 1933, and Section 21E of the Exchange Act. Forward-looking statements in this Annual Report and Form 10-K include statements concerning the demand for and the pricing of our homes, the growth potential of the markets we operate in, our acquisition strategy, positive demographic and other trends related to the homebuilding industry in general and our ability to capitalize on them, the future supply of housing inventory in our markets and the homebuilding industry in general, our ability to renew existing leases on comparable terms, our expectation that existing letters of credit and performance bonds will not be drawn on, the adequacy of our insurance coverage and warranty reserves, our ability to deliver existing backlog, the expected outcome of legal proceedings against us, the sufficiency of our capital resources to support our growth strategy, the future impact of deferred tax assets or liabilities, the expectation of continued positive operating results in 2005 and beyond and the expected benefits of our acquisitions. Such statements are subject to significant risks and uncertainties.

Important factors currently known to management that could cause actual results to differ materially from those in forward-looking statements, and that could negatively affect our business are discussed in this report under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Factors That May Affect Our Future Results and Financial Condition.”

Forward-looking statements express expectations of future events. All forward-looking statements are inherently uncertain as they are based on various expectations and assumptions concerning future events and they are subject to numerous known and unknown risks and uncertainties that could cause actual events or results to differ materially from those projected. Due to these inherent uncertainties, the investment community is urged not to place undue reliance on forward-looking statements. In addition, we undertake no obligations to update or revise forward-looking statements to reflect changed assumptions, the occurrence of anticipated events or changes to projections over time. As a result of these and other factors, our stock and note prices may fluctuate dramatically.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risk primarily related to potential adverse changes in interest rates on our existing revolving credit facility. The interest rate relative to this borrowing fluctuates with the prime and Eurodollar lending rates. At December 31, 2004, we had no advances drawn under our revolving credit facility that would be subject to changes in interest rates. We do not enter into, or intend to enter into, derivative financial instruments for trading or speculative purposes.

Our fixed rate debt is made up primarily of our \$280.0 million in principal of our 9.75% senior notes and \$130.0 million of our 7.0% senior notes. Except in limited circumstances, we do not have an obligation to prepay our fixed-rate debt prior to maturity and, as a result, interest rate risk and changes in fair value should not have a significant impact on the fixed rate borrowings until we would be required to refinance such debt.

The following table presents our long-term debt obligations, principal cash flows by maturity, weighted average interest rates and estimated fair market value. Information regarding interest rate sensitivity principal (notional) amount by expected maturity and average interest rates for the years ended December 31, 2004 and 2003 follows:

December 31, 2004

	For the Years Ended December 31,							Fair Value at December 31, 2004
	2005	2006	2007	2008	2009	Thereafter	Total	
	(dollars in millions)							
Fixed rate	\$ 0.6	—	—	—	—	\$ 410.0	\$ 410.6	\$ 443.9(a)
Average interest rate	7%	—	—	—	—	8.88%	8.88%	n/a
Variable rate	\$ 46.9(b)	5.2	1.7	—	—	—	53.8	53.8(b)
Average interest rate	—	—	—	—	—	—	—	n/a

(a) Fair value of our fixed rate debt at December 31, 2004, is based on quoted market prices by independent dealers.

(b) Amount relates to our model home lease program. Although we have no legal obligation to repay this amount, generally accepted accounting principles require we include this liability and a related asset in our consolidated financial statements. The lease payments required under this program are based on LIBOR + 4.25% per annum, which is comparable to current market rates, therefore the cost basis approximates fair value.

No amounts were outstanding at December 31, 2004 relating to our revolving credit facility which carries a variable interest rate of LIBOR plus 2.0% or Prime.

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December 31, 2003

	For the Years Ended December 31,						Fair Value at December 31, 2003	
	2004	2005	2006	2007	2008	Thereafter		Total
	(dollars in millions)							
Fixed rate	\$ 0.6	—	—	—	—	\$ 280.0	\$ 280.6	\$ 313.6(a)
Average interest rate	7%	—	—	—	—	9.75%	9.74%	n/a
Variable rate	—	—	\$ 62.9(b)	—	—	—	62.9	62.9(b)
Average interest rate	—	—	—	—	—	—	—	n/a

(a) Fair value of our fixed rate debt at December 31, 2003, is based on quoted market prices by independent dealers.

(b) Our revolving credit facility carries a variable interest rate of LIBOR plus 2.0% or Prime, which is comparable to current market rates, therefore the cost basis approximates fair value.

Our operations are interest rate sensitive. As overall housing demand is adversely affected by increases in interest rates, a significant increase in mortgage interest rates may negatively affect the ability of homebuyers to secure adequate financing. Higher interest rates could adversely affect our revenues, gross margins and net income and would also increase our variable rate borrowing costs.

Item 8. Financial Statements and Supplementary Data

Our consolidated financial statements as of December 31, 2004 and 2003 and for each of the years in the three-year period ended December 31, 2004, together with related notes and the report of Deloitte & Touche LLP and KPMG LLP, independent registered public accounting firms, are on the following pages. Other required financial information is more fully described in Item 15.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Meritage Homes Corporation:

We have audited the accompanying consolidated balance sheet of Meritage Homes Corporation and subsidiaries (the "Company") as of December 31, 2004, and the related consolidated statements of earnings, stockholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such 2004 consolidated financial statements present fairly, in all material respects, the financial position of Meritage Homes Corporation and subsidiaries as of December 31, 2004, and the results of their operations and their cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2004, based on the criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2005 expressed an unqualified opinion on management's assessment of the effectiveness of the Company's internal control over financial reporting and an adverse opinion on the effectiveness of the Company's internal control over financial reporting.

DELOITTE & TOUCHE LLP

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Meritage Homes Corporation:

We have audited the accompanying consolidated balance sheet of Meritage Homes Corporation and subsidiaries, formerly Meritage Corporation (the Company) as of December 31, 2003, and the related consolidated statements of earnings, stockholders' equity and cash flows for the years ended December 31, 2003 and 2002. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Meritage Homes Corporation as of December 31, 2003, and the results of their operations and their cash flows for the years ended December 31, 2003 and 2002, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 1 to the consolidated financial statements, the Company changed their method of accounting for goodwill in 2002.

KPMG LLP

Phoenix, Arizona
February 16, 2004

**MERITAGE HOMES CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS**

	December 31,	
	2004	2003
(In thousands, except share data)		
Assets		
Cash and cash equivalents	\$ 47,876	\$ 4,799
Real estate	867,218	678,011
Real estate not owned	18,344	18,572
Deposits on real estate under option or contract	129,072	105,870
Receivables	15,974	8,716
Deferred tax asset, net	—	1,204
Goodwill	91,475	75,645
Property and equipment, net	27,742	23,669
Prepaid expenses and other assets	16,749	14,525
Investments in unconsolidated entities	50,944	23,528
Total assets	\$ 1,265,394	\$ 954,539
Liabilities		
Accounts payable	\$ 77,799	\$ 80,737
Accrued liabilities	135,590	67,411
Home sale deposits	41,537	25,352
Liabilities related to real estate not owned	14,780	17,653
Deferred tax liability, net	1,518	—
Loans payable and other borrowings	54,419	63,500
Senior notes	416,996	287,991
Total liabilities	742,639	542,644
Minority Interests	200	—
Stockholders' Equity		
Common stock, par value \$0.01. Authorized 50,000,000 shares; issued and outstanding 31,460,050 and 30,959,116 shares at December 31, 2004 and 2003, respectively *	315	310
Additional paid-in capital	209,630	202,523
Retained earnings	381,583	242,615
Treasury stock at cost, 5,704,452 and 4,604,452 shares at December 31, 2004 and 2003, respectively *	(68,973)	(33,553)
Total stockholders' equity	522,555	411,895
Total liabilities and stockholders' equity	\$ 1,265,394	\$ 954,539

* All share amounts reflect a 2-for-1 stock split in the form of a stock dividend that occurred in January 2005.

See accompanying notes to consolidated financial statements

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**MERITAGE HOMES CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF EARNINGS**

	Years Ended December 31,		
	2004	2003	2002
	(In thousands, except per share data)		
Home closing revenue	\$ 2,015,742	\$ 1,461,981	\$ 1,112,439
Land closing revenue	24,262	9,020	7,378
	<u>2,040,004</u>	<u>1,471,001</u>	<u>1,119,817</u>
Cost of home closings	(1,615,455)	(1,170,699)	(898,343)
Cost of land closings	(16,079)	(7,785)	(6,578)
	<u>(1,631,534)</u>	<u>(1,178,484)</u>	<u>(904,921)</u>
Home closing gross profit	400,287	291,282	214,096
Land closing gross profit	8,183	1,235	800
	<u>408,470</u>	<u>292,517</u>	<u>214,896</u>
Commissions and other sales costs	(116,527)	(92,904)	(65,291)
General and administrative expenses	(79,257)	(53,929)	(41,496)
Other income, net	12,072	5,776	5,435
Earnings before provision for income taxes	224,758	151,460	113,544
Provision for income taxes	(85,790)	(57,054)	(43,607)
Net earnings	<u>\$ 138,968</u>	<u>\$ 94,406</u>	<u>\$ 69,937</u>
Earnings per share:			
Basic earnings per share *	<u>\$ 5.33</u>	<u>\$ 3.62</u>	<u>\$ 2.82</u>
Diluted earnings per share *	<u>\$ 5.03</u>	<u>\$ 3.42</u>	<u>\$ 2.66</u>

* All share amounts reflect a 2-for-1 stock split in the form of a stock dividend that occurred in January 2005.

See accompanying notes to consolidated financial statements

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**MERITAGE HOMES CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

	Years Ended December 31, 2004, 2003 and 2002					
	(In thousands)					
	Number of Shares *	Common Stock*	Additional Paid-In Capital*	Retained Earnings	Treasury Stock	Total
Balance at January 1, 2002	25,228	\$ 252	\$ 109,286	\$ 78,272	\$ (11,223)	\$ 176,587
Net earnings	—	—	—	69,937	—	69,937
Tax benefit from stock option exercises	—	—	5,222	—	—	5,222
Exercise of stock options	1,202	12	3,000	—	—	3,012
Purchase of treasury stock	—	—	—	—	(17,150)	(17,150)
Issuance of common stock upon public offering	4,024	40	79,660	—	—	79,700
Balance at December 31, 2002	30,454	304	197,168	148,209	(28,373)	317,308
Net earnings	—	—	—	94,406	—	94,406
Tax benefit from stock option exercises	—	—	2,805	—	—	2,805
Exercise of stock options	504	6	2,539	—	—	2,545
Purchase of treasury stock	—	—	—	—	(5,180)	(5,180)
Stock option expense	—	—	11	—	—	11
Balance at December 31, 2003	30,958	310	202,523	242,615	(33,553)	411,895
Net earnings	—	—	—	138,968	—	138,968
Tax benefit from stock option exercises	—	—	2,972	—	—	2,972
Exercise of stock options	502	5	4,114	—	—	4,119

Purchase of treasury stock	—	—	—	—	(35,420)	(35,420)
Stock option expense	—	—	21	—	—	21
Balance at December 31, 2004	31,460	\$ 315	\$ 209,630	\$ 381,583	\$ (68,973)	\$ 522,555

See accompanying notes to consolidated financial statements

* Amounts reflect a 2-for-1 stock split in the form of a stock dividend that occurred in January 2005.

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**MERITAGE HOMES CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Years Ended December 31,		
	2004	2003	2002
(In thousands)			
Cash flows from operating activities:			
Net earnings	\$ 138,968	\$ 94,406	\$ 69,937
Adjustments to reconcile net earnings to net cash provided by (used in) operating activities:			
Depreciation and amortization	13,233	8,536	6,780
Deferred income taxes	609	1,497	(89)
Tax benefit from stock option exercises	2,972	2,805	5,222
Equity in earnings of unconsolidated entities	(2,788)	(1,743)	(1,383)
Changes in assets and liabilities, net of effect of acquisitions in 2004 and 2002:			
Increase in real estate	(136,967)	(188,696)	(54,896)
Increase in deposits on real estate under option or contract	(23,776)	(29,273)	(29,088)
Increase in receivables and prepaid expenses and other assets	(11,347)	(1,781)	(5,585)
Increase in accounts payable and accrued liabilities	63,169	54,686	10,291
Increase (decrease) in home sale deposits	16,098	9,261	(139)
Net cash provided by (used in) operating activities	<u>60,171</u>	<u>(50,302)</u>	<u>1,050</u>
Cash flows from investing activities:			
Investments in unconsolidated entities	(44,616)	(18,580)	(8,022)
Distributions from unconsolidated entities	3,698	1,664	1,136
Cash paid for acquisitions	(24,165)	—	(129,582)
Cash paid for earn-out agreements	(1,780)	(1,860)	(4,938)
Purchases of property and equipment	(15,113)	(17,133)	(8,285)
Proceeds from sales of property and equipment	172	97	—
Net cash used in investing activities	<u>(81,804)</u>	<u>(35,812)</u>	<u>(149,691)</u>
Cash flows from financing activities:			
Proceeds from loans payable and other borrowings	2,044,902	1,386,535	816,153
Repayments of loans payable and other borrowings	(2,078,979)	(1,432,962)	(729,857)
Proceeds from issuance of senior notes	130,088	133,375	—
Proceeds from sale of common stock, net	—	—	79,700
Purchase of treasury stock	(35,420)	(5,180)	(17,150)
Proceeds from stock option exercises	4,119	2,545	3,012
Net cash provided by financing activities	<u>64,710</u>	<u>84,313</u>	<u>151,858</u>
Net increase (decrease) in cash and cash equivalents	43,077	(1,801)	3,217
Cash and cash equivalents, beginning of year	4,799	6,600	3,383
Cash and cash equivalents, end of year	<u>\$ 47,876</u>	<u>\$ 4,799</u>	<u>\$ 6,600</u>

See Supplemental Disclosure of Cash Flow Information at Note 10.

See accompanying notes to consolidated financial statements

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**MERITAGE HOMES CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004, 2003 and 2002**

NOTE 1 – BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization. We are a leading designer and builder of single-family homes in the rapidly growing Western and Southern states of Texas, Arizona, California, Nevada, Colorado and Florida. We focus on providing a broad range of first-time, move-up, luxury and Active Adult homes to our targeted customer base. We and our predecessors have operated in Arizona since 1985, in Texas since 1987 and in Northern California since 1989. In 2002 we acquired Hammonds Homes (Hammonds), a builder of primarily move-up homes in Houston, Austin and Dallas, Texas, and Perma-Bilt Homes (Perma-Bilt), a homebuilder that serves the move-up market in the Las Vegas, Nevada area. We entered the Inland Empire region of the greater Los Angeles area in January 2004 with our acquisition of Citation Homes of Southern California (Citation) (see Note 6). In 2004, we began start-up operations in the Denver, Colorado and Orlando, Florida markets. In February 2005, we acquired Colonial Homes, a homebuilder that serves the Fort Myers/Naples, Florida market (see Note 15).

We operate in Texas as Legacy Homes, Monterey Homes, and Hammonds Homes; in Arizona as Meritage Homes and Monterey Homes; and in Northern California, Nevada, Colorado and Florida as Meritage Homes. At December 31, 2004, we were actively selling homes in 139 communities, with base prices ranging from \$96,000 to \$927,000.

Basis of Presentation. The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the

United States of America and include the accounts of Meritage Homes Corporation and those of our consolidated subsidiaries, partnerships and other entities in which we have a controlling financial interest, and variable interest entities (see Note 3) in which we are deemed the primary beneficiary (the "Company"). Intercompany balances and transactions have been eliminated in consolidation and certain prior year amounts have been reclassified to conform to our current year financial statement presentation.

Cash and Cash Equivalents. Liquid investments with an initial maturity of three months or less are classified as cash equivalents. Amounts in transit from title companies for home closings of approximately \$12.9 million and \$3.3 million are included in cash and cash equivalents at December 31, 2004 and 2003, respectively.

Real Estate. Real estate consists of finished home sites and home sites under development, completed homes and homes under construction, and land held for development. Costs capitalized include direct construction costs for homes, development period interest and certain common costs that benefit the entire community. Common costs are incurred on a community-by-community basis and allocated to residential lots based on the number of lots to be built in the project, which approximates the relative sales value method. Common costs incurred prior to construction are allocated to the land parcel benefited, based on the relative fair value of the parcel prior to construction.

An impairment loss is recorded when events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable from the cash flows generated by future disposition. In such cases, amounts are carried at the lower of cost or estimated fair value less disposal costs.

Deposits paid related to land options and contracts to purchase land are capitalized when incurred and classified as deposits on real estate under option or contract until the related land is purchased. The deposits are then transferred to real estate at the time the lots are acquired. Deposits are charged to expense if the land acquisition is no longer considered probable.

Property and Equipment. Property and equipment at December 31, 2004 and 2003 consists of approximately \$13.5 million and \$12.5 million, respectively, of computer and office equipment and approximately \$14.2 million and \$11.2 million, respectively, of model home furnishings, and is stated at cost less accumulated depreciation. Accumulated depreciation related to these assets amounted to approximately \$16.0 million and \$11.8 million at December 31, 2004 and 2003, respectively. Depreciation is generally calculated using the straight-line method over

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the estimated useful lives of the assets, which range from three to seven years. Maintenance and repair costs are expensed as incurred.

Deferred Costs. We incurred costs of approximately \$5.2 million related to the 2001 issuance of our 9.75% senior notes due June 2011 and approximately \$1.5 million in bank fees related to the addition of our December 2002 credit facility. In 2003, we incurred an additional \$2.1 million related to the February and September additions to our 9.75% senior notes and approximately \$1.5 million related to the restructuring of our credit facility. We incurred costs of approximately \$0.4 million related to the 2004 issuance of our 7.0% senior notes due May 2014. We have deferred these costs and are amortizing them over the life of the debt. The costs related to the issuance of our senior notes are amortized using the effective interest method. At December 31, 2004 and 2003, approximately \$6.7 million and \$8.4 million, respectively, of deferred costs, net of accumulated amortization of approximately \$3.7 and \$2.0, respectively, were included on our consolidated balance sheets within prepaid expenses and other assets. In February 2005, we completed a series of refinancing transactions that resulted in the repurchase of \$276.8 million of our 9.75% senior notes. As a result of these transactions, we will record a one-time after tax charge to write-off \$19.4 million related to the tender costs of our 9.75% senior notes (see Note 15). Approximately \$3.2 million of the 9.75% senior notes remain outstanding and subject to tender until March 23, 2005.

Investments in Unconsolidated Entities. We use the equity method of accounting for investments in unconsolidated entities over which we exercise significant influence but do not have a controlling interest. Under the equity method, our share of the unconsolidated entities' earnings or loss is included in other income, net. We use the cost method of accounting for investments in unconsolidated entities over which we do not have significant influence.

Revenue Recognition. Revenue from closings of residential real estate is recognized when closings have occurred, the buyer has made the required minimum down payment, obtained necessary financing, the risks and rewards of ownership are transferred to the buyer, and we have no continuing involvement with the property.

Cost of Home Closings. Cost of home closings includes direct home construction costs, closing costs, land acquisition and development costs, development period interest and common costs. Direct construction costs are accumulated during the period of construction and charged to cost of closings under specific identification methods, as are closing costs.

Estimated future warranty costs are charged to cost of home closings in the period when the revenues from the related home closings are recognized. Costs are accrued based upon historical experience and generally range from 0.33% to 0.78% of the home's sales price (see Note 13).

Minority Interests. The Company has several joint venture arrangements in the title and mortgage business in which we have a controlling financial interest in these joint ventures, so their financial position and results of operations are consolidated in the Company's financial statements and the partners' equity positions are recorded as minority interest.

Income Taxes. We account for income taxes in accordance with Statement of Financial Accounting Standards (SFAS) No. 109, "Accounting for Income Taxes." Under the asset and liability method of SFAS No. 109, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using the enacted tax rates expected to apply to taxable income in future years and are subsequently adjusted for changes in the rates. The effect on deferred tax assets and liabilities of a change in tax rates is a charge or credit to deferred tax expense in the period of enactment.

Advertising Costs. The Company expenses advertising costs as they are incurred. Advertising expenses were approximately \$14.4 million, \$12.4 million and \$7.9 million in fiscal 2004, 2003 and 2002, respectively.

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Stock Splits. In April 2002 and in January 2005, we completed two-for-one splits of our common stock in the form of stock dividends. All share and per share amounts have been restated to reflect the stock splits.

Earnings Per Share. We compute basic earnings per share by dividing net earnings available to common stockholders by the weighted average number of common shares outstanding during the period. Diluted earnings per share gives effect to the potential dilution that could occur if securities or contracts to issue common stock that are dilutive were exercised or converted into common stock or resulted in the issuance of common stock that then shared in our earnings.

Stock-Based Compensation. We have a stock-based employee compensation plan under which officers, key employees, non-employee directors and consultants may be granted options to purchase shares of our authorized but unissued common stock. This plan is described more fully in Note 8. We apply the intrinsic value-based method of accounting prescribed in Accounting Principles Board ("APB") Opinion No. 25 "Accounting for Stock Issued to Employees", as allowed by SFAS No. 123 "Accounting for Stock-Based Compensation" and SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure." Under this method, compensation expense is recorded on the date of the grant only if the market price of the underlying stock on the date of the grant was greater than the exercise price. SFAS

No. 123 established accounting and disclosure requirements using a fair value-based method of accounting for stock-based employee compensation plans. As allowed by SFAS No. 123, we continue to apply the intrinsic value-based method of accounting described above, and have adopted the disclosure requirements of SFAS No. 123. We have not issued options with exercise prices below the market value on the date of the grant; therefore, we have not recognized compensation expense relating to below-market grants for our stock-based plan. Had compensation cost for this plan been determined pursuant to SFAS No. 123, our net earnings and earnings per share would have been reduced to the following unaudited pro forma amounts. Per share amounts reflect a 2-for-1 stock split effective January, 2005.

		Years Ended December 31,		
		(in thousands, except per share amounts)		
		2004	2003	2002
Net earnings	As reported	\$ 138,968	\$ 94,406	\$ 69,937
	Deduct*	(4,357)	(3,541)	(2,237)
	Pro forma	\$ 134,611	\$ 90,865	\$ 67,700
Basic earnings per share	As reported	\$ 5.33	\$ 3.62	\$ 2.82
	Pro forma	\$ 5.16	\$ 3.49	\$ 2.73
Diluted earnings per share	As reported	\$ 5.03	\$ 3.42	\$ 2.66
	Pro forma	\$ 4.88	\$ 3.29	\$ 2.57

* Deduct: Total stock-based employee compensation expense determined under fair value based method for awards, net of related tax effects. See Note 8 for assumptions used to determine fair value.

The fair value of these options was established at the grant date using a Black-Scholes option pricing model with the following weighted average assumptions for the years presented:

	2004	2003	2002
Expected dividend yield	0%	0%	0%
Risk-free interest rate	4.39%	3.33%	4.57%
Expected volatility	55.50%	54.66%	54.93%
Expected life (in years)	7	7	7
Weighted average fair value of options	\$ 19.37	\$ 9.56	\$ 11.74

Goodwill. Upon our January 1, 2002 adoption of SFAS No. 142, "Goodwill and Other Intangible Assets", goodwill is no longer subject to amortization, though it is subject to at least an annual assessment for impairment by applying a fair value-based test. If the carrying amount of the net assets of an identified reporting unit exceeds the fair value of that reporting unit, goodwill is considered to be impaired. We continually evaluate whether events and circumstances have occurred that indicate the remaining balance of goodwill may not be recoverable. In evaluating impairment, we base our estimates of fair value on an analysis of selected business acquisitions in the homebuilding industry provided to us by an independent third party. Such evaluations for impairment are significantly impacted by the amount a buyer is willing to pay in the current market for a like business.

Fair Value of Financial Instruments. We determine fair value of financial instruments as required by SFAS No. 107, "Disclosures about Fair Value of Financial Instruments."

The estimated fair value of our 9.75% senior notes at December 31, 2004 and 2003 was \$309.4 million and \$313.6 million, respectively, based on quoted market prices by independent dealers. The aggregate principal amount of our 9.75% senior notes at December 31, 2004 and 2003 was \$280.0 million.

The estimated fair value of our 7.0% senior notes at December 31, 2004 was \$133.9 million based on quoted market prices by independent dealers. The aggregate principal amount of our 7.0% senior notes at December 31, 2004 was \$130.0 million.

Our revolving credit facility and liabilities related to our model lease program carry interest rates that are variable and/or comparable to current market rates based on the nature of the obligations, their terms and remaining maturity, and therefore, the cost basis approximates fair value.

Due to the short-term nature of other financial assets and liabilities, we consider the carrying amounts of our short-term financial instruments to be at fair value.

Recently Issued Accounting Pronouncements. In January 2003, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities" (FIN 46), which governs whether certain transactions should be accounted for as on- or off-balance sheet transactions. We have adopted FIN 46, and a discussion of its impact on our consolidated financial statements can be found in Note 3 – Variable Interest Entities and Consolidated Real Estate Not Owned.

In November 2004, the FASB issued Statement of Financial Accounting Standard ("SFAS") No. 151, "Inventory Costs, an amendment of ARB No. 43, Chapter 4." SFAS No. 151 clarifies the accounting for amounts of idle facility expenses, freight, handling costs, and wasted material (spoilage). This statement is effective for the Company on January 1, 2006. The adoption of SFAS No. 151 is not expected to have a material effect on our consolidated financial statements.

In December 2004, the Financial Accounting Standards Board ("FASB") issued SFAS No. 123 (revised 2004), "Share-Based Payment" ("SFAS No. 123R"), effective for periods beginning after June 15, 2005. SFAS 123R requires that all stock-based compensation be treated as a cost that is reflected in the financial statements. The Company is required to adopt the new standard for its interim period beginning July 1, 2005. The Company is currently reviewing the effect of this statement on the Company's financial statements.

In December 2004, the FASB issued SFAS No. 153, "Exchanges of Nonmonetary Assets, an amendment of APB No. 29", SFAS No. 153 amends APB Opinion No. 29 to eliminate the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. A monetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. This statement is effective for the Company on January 1, 2006. The adoption of SFAS No. 153 is not expected to have a material effect on our consolidated financial statements.

NOTE 2 - REAL ESTATE AND CAPITALIZED INTEREST

Real estate at December 31 consists of the following (in thousands):

	2004	2003
Homes under contract under construction	\$ 492,378	\$ 281,931
Finished home sites	179,306	166,456

Home sites under development	83,735	97,141
Unsold homes, completed and under construction	53,098	96,576
Model homes	1,294	22,170
Model home lease program	53,819	—
Land held for development	3,588	13,737
	<u>\$ 867,218</u>	<u>\$ 678,011</u>

We capitalize all development period interest costs incurred in connection with the development and construction of real estate. Capitalized interest is allocated to real estate when incurred and charged to cost of closings when the related property is delivered. Certain information regarding interest follows (in thousands):

	Years Ended December 31,	
	2004	2003
Capitalized interest, beginning of year	\$ 13,074	\$ 8,781
Interest incurred and capitalized	38,855	26,580
Amortization to cost of home and land closings	(32,228)	(22,287)
Capitalized interest, end of year	<u>\$ 19,701</u>	<u>\$ 13,074</u>

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NOTE 3 – VARIABLE INTEREST ENTITIES AND CONSOLIDATED REAL ESTATE NOT OWNED

FIN 46R requires the consolidation of entities in which an enterprise absorbs a majority of the entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity. Prior to the issuance of FIN 46R, entities were generally consolidated by an enterprise when it had a controlling financial interest through ownership of a majority voting interest in the entity. FIN 46R applied immediately to variable interests created after January 31, 2003, and with respect to variable interests created before February 1, 2003, FIN 46R application was deferred and not required to be applied until the end of the first reporting period ending after March 15, 2004. Accordingly, we fully implemented FIN 46R by March 31, 2004.

Under FIN 46R, a variable interest entity, or VIE, is created when (i) the equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support from other parties or (ii) equity holders either (a) lack direct or indirect ability to make decisions about the entity, (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur.

Based on the provisions of FIN 46R, we have concluded that when we enter into option or purchase agreements to acquire land or lots from an entity and pay a non-refundable deposit, a VIE is created because we are deemed to have provided subordinated financial support, which refers to variable interests that will absorb some or all of an entity's expected losses if they occur. For each VIE created where the fair value of the land or lots under contract are not more than half of the total fair value of the entity's assets, we are not deemed to be the primary beneficiary of the VIE and therefore do not consolidate the assets on our financial statements. For each VIE created where the fair value of the land or lots under contract are more than half of the total fair value of the entity's assets, then we compute expected losses and residual returns based on the probability of future cash flows as outlined in FIN 46R. If we are deemed to be the primary beneficiary of the VIE, because we are obligated to absorb the majority of the expected losses, receive the majority of the residual returns, or both, we will consolidate the VIE in our consolidated financial statements. Not all of our purchase or option agreements are determined to be VIEs.

We have applied FIN 46R by developing a methodology to determine whether or not we are the primary beneficiary of the VIE. Part of this methodology requires the use of estimates in assigning probabilities to various future cash flow possibilities relative to changes in the fair value and changes in the development costs associated with the property. Although we believe that our accounting policy properly identifies our primary beneficiary status with these VIEs, changes in the probability estimates could produce different conclusions regarding our primary beneficiary status.

We generally do not have any ownership interest in the VIEs that hold the lots and land under option or contract, and accordingly, we generally do not have legal or other access to the VIE's books or records. Therefore, it is not possible for us to compel the VIEs to provide financial or other data to us in performing our primary beneficiary evaluation. Accordingly, this lack of information from the VIEs may result in our evaluation being conducted primarily based on management judgements and estimates.

Creditors, if any, of the entities with which we have option agreements have no recourse against us. In most cases, the maximum exposure to loss in our option agreements is limited to our option deposit. Occasionally, we may be at risk for items over budget related to land development on property we have under option. In these cases, we have contracted to complete development at a fixed cost on behalf of the land owner. Some of our option deposits may be refundable if certain contractual conditions are not performed by the party selling the lots.

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The table below presents a summary of our lots under option at December 31, 2004 (dollars in thousands):

	# of Lots	Fair Value	Purchase Price	Option/Earnest Money Deposits	
				Cash	Letters of Credit
Specific performance options (1)	200	\$ 8,960	\$ 8,960	\$ 784	—
Options recorded on balance sheet(4)	136	9,384	9,564	2,780	—
Total options recorded on balance sheet as real estate not owned (2)	336	18,344	18,524	3,564	—
Option contracts not recorded on balance sheet – non-refundable deposits (2)	22,845	—	1,224,623	108,221	\$ 44,278
Purchase contracts not recorded on balance sheet – non-refundable deposits (2)	10,734	—	344,677	18,341	—
Purchase contracts not recorded on balance sheet – refundable deposits (3)	5,157	—	99,344	2,510	552
Total options not recorded on balance sheet	38,736	—	1,668,644	129,072	44,830
Total lots under option or contract	<u>39,072</u>	<u>\$ 18,344</u>	<u>\$ 1,687,168</u>	<u>\$ 132,636</u>	<u>\$ 44,830</u>

(1) Fair value of specific performance options approximates purchase price due to the short-lived nature of the options.

- (2) Deposits are non-refundable except if certain contractual conditions are not performed by the selling party.
(3) Deposits are refundable at our sole discretion.
(4) The purpose and nature of these consolidated lot option contracts (VIE's) is to provide the Company the option to purchase lots in anticipation of building homes on the lots in the future.

Note: Except for our specific performance options, none of our option agreements require us to purchase lots. Our option to purchase lots remains effective so long as we purchase a pre-established minimum number of lots each month or quarter, as determined by the agreement. The pre-established number of lots typically is structured to approximate our expected rate of home orders. As of December 31, 2003, real estate not owned on the consolidated balance sheet is comprised entirely of specific performance options.

NOTE 4 – INVESTMENTS IN UNCONSOLIDATED ENTITIES

We enter into homebuilding and land development joint ventures from time to time as a means of accessing larger parcels of land and lot positions, expanding our market opportunities and managing our risk profile and leveraging our capital base. At December 31, 2004, we had equity investments of 50% or less and did not have controlling financial interests in these unconsolidated entities. Our partners generally are unrelated homebuilders, land sellers or other real estate entities. These unconsolidated entities follow accounting principles generally accepted in the United States of America and we share in their profits and losses generally in accordance with our ownership interests.

We and/or our joint venture partners sometimes obtain certain options or enter into other arrangements under which we can purchase portions of the land held by the unconsolidated joint ventures. Option prices are generally negotiated prices that approximate fair value when we enter into the option contract. Our share of the joint venture earnings is deferred until homes are delivered by us and title passes to a homebuyer. At such time, we allocate our joint venture earnings to the land acquired by us as a reduction in the basis of the property. Summarized condensed financial information related to unconsolidated joint ventures that are accounted for using the equity method was as follows:

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	At December 31,	
	2004	2003
	(in thousands)	
Assets:		
Cash	\$ 8,689	\$ 3,947
Inventories	227,104	109,774
Other assets	13,026	8,283
Total assets	<u>\$ 248,819</u>	<u>\$ 122,004</u>
Liabilities and equity:		
Accounts payable and other liabilities	\$ 13,284	\$ 8,738
Notes and mortgages payable	145,209	67,341
Equity of:		
Meritage	40,785	22,528
Other	49,541	23,397
Total liabilities and equity	<u>\$ 248,819</u>	<u>\$ 122,004</u>

	Years Ended December 31,		
	2004	2003	2002
	(in thousands)		
Revenues	\$ 29,130	\$ 20,404	\$ 6,217
Costs and expenses	(21,917)	(12,248)	(2,750)
Net earnings of unconsolidated entities	<u>\$ 7,213</u>	<u>\$ 8,156</u>	<u>\$ 3,467</u>
Meritage's share of pre-tax earnings	<u>\$ 2,788</u>	<u>\$ 1,743</u>	<u>\$ 1,383</u>

Our share of net earnings, including any applicable management fees, is recorded in "Other income, net" on our consolidated statements of earnings.

At December 31, 2004 and 2003, our investment in unconsolidated entities includes \$2.9 million and \$1.0 million, respectively, related to the difference between the amounts at which our investments are carried and the amount of underlying equity in net assets. This amount will be amortized to equity of earnings of unconsolidated entities over the lives of the respective joint ventures.

In addition to joint ventures accounted for under the equity method summarized in the above table, at December 31, 2004, our investment in unconsolidated entities included one joint venture recorded under the cost method which has total assets of approximately \$607.0 million, of which \$587.3 million related to inventory. The joint venture had outstanding notes payable of approximately \$402.1 million and total equity of approximately \$204.9 million, of which \$7.2 million related to our investment in the joint venture. As of December 31, 2004, we have not recorded any income or expense from this joint venture and have not received any distributions from this joint venture.

We and/or our partners occasionally provide limited repayment guarantees on debt of certain unconsolidated entities on a pro rata share basis. At December 31, 2004, we had limited repayment guarantees of approximately \$16.1 million.

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NOTE 5 – LOANS PAYABLE AND OTHER BORROWINGS AND SENIOR NOTES

Loans payable at December 31 consist of the following (in thousands):

	2004	2003
\$400 million unsecured revolving credit facility maturing May 2007 with extension provisions, with interest payable monthly approximating prime (5.25% at December 31, 2004) or LIBOR (approximately 2.584% at December 31, 2004) plus 2.0%.	\$ —	\$ 62,900
Model home lease program, with interest in the form of lease payments payable monthly approximating LIBOR (approximately 2.584% at December 31, 2004) plus 4.25%	53,819	—

Acquisition and development seller carry back financing, interest payable at a fixed rate of 7.0% per annum, paid in full in 2005.	600	600
Total loans payable and other borrowings	<u>\$ 54,419</u>	<u>\$ 63,500</u>

During January 2005 we determined that the construction costs and related debt associated with model homes which are owned and leased to us by others and that we use to market our communities are required to be included on our balance sheet. We do not legally own the model homes, but we are reimbursed by the owner for our construction costs and we have the right, but not the obligation, to purchase these homes. Although we have no legal obligation to repay any amounts received from the third-party owner, such amounts are recorded as debt and are typically deemed repaid when we simultaneously exercise our option to purchase the model home and sell such model home to a third-party home buyer. Should we elect not to exercise our rights to purchase these model homes, the model home costs and related debt under the model lease program will be eliminated upon the termination of the lease, which is generally between one and three years from the origination of the lease.

At December 31, 2004 our outstanding 9.75% senior notes due 2011 totaled approximately \$286.9 million, which includes \$155.0 million in principal amount issued in May 2001, and the December 31, 2004 balance of add-ons of \$51.3 million and \$80.6 million, including unamortized premiums, issued in February 2003 and September 2003, respectively. The add-on offerings of \$50 and \$75 million in aggregate principal amount of our 9.75% senior notes were issued at prices of 103.25% and 109.0% of their face amounts with a yield to worst 9.054% and 7.642%, respectively, and together with the May 2001 offering, constitute a single series of notes.

On April 21, 2004 we issued \$130 million in aggregate principal amount of our 7% senior notes due 2014. The notes were priced to us at a slight premium implying an interest rate to us of 6.99%. We used the proceeds from the offering to pay down our senior credit facility and to repurchase shares of our common stock. At December 31, 2004, these notes totaled approximately \$130.1 million, including unamortized premium.

The bank credit facility and senior notes contain covenants which require maintenance of certain levels of tangible net worth and compliance with certain minimum financial ratios, place limitations on the payment of dividends and redemptions of equity, and limit the incurrence of additional indebtedness, asset dispositions, mergers, certain investments and creations of liens, among other items. As of and for the year ended December 31, 2004, we were in compliance with these covenants. After considering our most restrictive bank covenants, our borrowing availability under the bank credit facility was approximately \$210.7 million at December 31, 2004 as determined by borrowing base limitations defined by our agreement with the lending banks. The revolving credit facility and senior notes restrict our ability to pay dividends, and at December 31, 2004, our maximum permitted amount available to pay dividends was \$69.5 million, which is equal to 50% of our consolidated net income for the most recent four quarters.

On March 10, 2005, we completed the private placement of \$350 million in aggregate principal amount of 6.25% senior notes due 2015 which resulted in net proceeds to the Company, after commissions, discounts and fees

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of approximately \$344 million. The indenture which governs the new 6.25% senior notes contains covenants that are substantially similar to the covenants in the indentures which govern our existing 9.75% senior notes and 7.0% senior notes.

On March 10, 2005, we used the proceeds from these transactions to repurchase pursuant to a tender offer and consent solicitation approximately \$276.8 million of our outstanding 9.75% senior notes due 2011. In connection with this tender offer and repurchase, we will report in the first quarter of fiscal 2005 a one time charge of approximately \$19.4 million for premiums, commissions and expenses associated with the tender offer and the write-off of existing offering costs associated with the 9.75% senior notes, net of the accretion of existing note premiums on the 9.75% senior notes and taxes. Approximately \$3.2 million of the 9.75% senior notes remain outstanding and subject to tender until March 23, 2005.

Obligations to pay principal and interest on the bank credit facility and senior notes are guaranteed by all of our subsidiaries (collectively, the Guarantor Subsidiaries), each of which is directly or indirectly 100% owned by Meritage Homes Corporation, other than certain minor subsidiaries (collectively, Non-Guarantor Subsidiaries). Such guarantees are full and unconditional, and joint and several. Separate financial statements of the Guarantor Subsidiaries are not provided because Meritage (the parent company) has no independent assets or operations, the guarantees are full and unconditional and joint and several, and the Non-Guarantor Subsidiaries are, individually and in the aggregate, minor. There are no significant restrictions on the ability of the parent company or any guarantor to obtain funds from its subsidiaries by dividend or loan.

Scheduled maturities of loans payable and other borrowings and senior notes as of December 31, 2004 follow (in thousands):

Years Ended December 31,	
2005	\$ 47,467
2006	5,196
2007	1,756
2008	—
2009	—
Thereafter	410,000
	<u>\$ 464,419</u>

NOTE 6 – ACQUISITIONS AND GOODWILL

Citation Homes of Southern California. Effective January 1, 2004, we purchased the homebuilding and related assets of Citation Homes of Southern California (“Citation”), which operates primarily in the Inland Empire region of the greater Los Angeles area. The purchase price was approximately \$24.2 million in cash, and we agreed to an earn-out of 20% of the pre-tax profits of the Southern California operations after capital charges as defined in the purchase agreement, payable in cash over three years.

Perma-Bilt Homes. Effective October 1, 2002, we purchased the homebuilding assets of Perma-Bilt Homes, a builder of single-family homes in the Las Vegas, Nevada metropolitan area. The purchase price was approximately \$46.6 million in cash including the repayment of existing debt in the amount of \$16.7 million. We also assumed accounts payable, accrued liabilities and home sale deposits totaling \$5.8 million. In addition, we agreed to an earn-out of 10% of the pre-tax profits of Perma-Bilt, payable in cash over three years.

Hammonds Homes. On July 1, 2002, we acquired substantially all of the homebuilding and related assets of a Texas homebuilder, Hammonds Homes. The purchase price was approximately \$83.4 million in cash plus the assumption of accounts payable, accrued liabilities, and home sale deposits totaling \$11.0 million and a note payable totaling \$1.1 million.

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The results of operations of the above acquisitions are included in our consolidated financial statements beginning as of the effective date of the respective acquisitions.

In February 2005 we completed the acquisition of substantially all of the homebuilding assets of Colonial Homes of Fort Myers/Naples, Florida (see Note 15).

Goodwill. Goodwill represents the excess of the purchase price of our acquisitions over the fair value of the assets acquired. The acquisitions of Citation, Hammonds and Perma-Bilt were recorded using the purchase method of accounting. The purchase prices were allocated based on estimated fair value of the assets and liabilities at the date of the acquisition. Intangible assets, equal to the excess purchase price over the fair value of the net assets, of \$11.2 million, \$21.3 million and \$17.2 million for Citation, Hammonds and Perma-Bilt, respectively, were recorded as goodwill, which is included on our consolidated balance sheets.

The changes in the carrying amount of goodwill for the years ended December 31, 2003 and 2004 were as follows (in thousands):

Balance at January 1, 2003	\$	73,785
Increase due to earn-out agreements		1,860
Balance at December 31, 2003		75,645
Goodwill acquired during the year		11,214
Increase due to earn-out agreements		2,147
Purchase accounting adjustment		2,469
Balance at December 31, 2004	\$	91,475

Prior to 2003, we acquired the assets of several companies, at which time the basis of goodwill for tax purposes was determined to be in excess of the book basis in goodwill. Current tax law provides for the amortization of purchased goodwill. Under this circumstance, SFAS No. 109 requires that the goodwill be separated into two components. The first component is equivalent to book goodwill and future tax amortization of this component is treated as a temporary difference, for which a deferred tax liability is established. The second component is the excess tax goodwill over the book goodwill, for which no deferred taxes are recognized. The tax benefit from the recognition on the tax return of the amortization of the second component is treated as a reduction in the book basis of goodwill.

Under the guidelines contained in SFAS No. 142, "Goodwill and Other Intangible Assets", management selected January 1 as the date of our annual goodwill impairment test. During 2004 and 2003, management performed an analysis of potential impairment of goodwill carried and determined that no impairment existed. During the first quarter of 2005, our analysis of potential impairment of goodwill carried on our balance sheet at December 31, 2004 was completed, and we determined that no impairment existed.

NOTE 7 – EARNINGS PER SHARE

Basic and diluted earnings per share for the years ended December 31, were calculated as follows (in thousands, except per share amounts):

	2004	2003	2002
Basic average number of shares outstanding	26,066	26,090	24,810
Effect of dilutive securities:			
Options to acquire common stock	1,544	1,530	1,532
Diluted average shares outstanding	27,610	27,620	26,342
Net earnings	\$ 138,968	\$ 94,406	\$ 69,937
Basic earnings per share	\$ 5.33	\$ 3.62	\$ 2.82
Diluted earnings per share	\$ 5.03	\$ 3.42	\$ 2.66
Antidilutive stock options not included in the calculation of diluted earnings per share	—	—	614

NOTE 8 – INCENTIVE AWARDS AND RETIREMENT PLAN

Stock Based Compensation

Our Board of Directors administers our current stock option plan, which has been approved by our stockholders. The plan authorizes grants of incentive stock options and non-qualified stock options to our officers, key employees, non-employee directors and consultants. The plan provides a means of performance-based compensation in order to attract and retain qualified employees. At December 31, 2004, a total of 3,907,170 shares of Meritage common stock were reserved for issuance upon exercise of stock options granted under this plan. The options vest over periods from one to five years from the grant date, are based on continued employment or service and expire five to ten years after the grant date.

We apply APB Opinion No. 25 and related interpretations in accounting for our plan. Under APB No. 25, if the exercise price of our stock options is at least equal to the market price of the underlying stock on the date of the grant, no compensation expense is recognized. The pro forma information regarding net earnings and earnings per share required by SFAS No. 148 is included in Note 1.

The fair value for these options was established at the grant date using a Black-Scholes option pricing model with the following weighted average assumptions for the years presented:

	2004	2003	2002
Expected dividend yield	0%	0%	0%
Risk-free interest rate	4.39%	3.33%	4.57%
Expected volatility	55.50%	54.66%	54.93%
Expected life (in years)	7	7	7
Weighted average fair value of options	\$ 19.37	\$ 9.56	\$ 11.74

Other Options

In connection with our merger and combination with Legacy Homes in 1998, our Co-CEO's Steven J. Hilton and John R. Landon each received 666,668 (adjusted

vesting periods. The exercise price of these options was \$1.3125 (adjusted for stock splits) per share, which was negotiated at the time of the transactions. All of these options were exercised by December 31, 2002.

*Summary of stock option * activity:*

	Years Ended December 31,					
	2004		2003		2002	
	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
Options outstanding at beginning of year:	2,693,024	\$ 11.37	2,636,700	\$ 8.99	3,241,452	\$ 4.53
Granted	880,500	\$ 31.86	698,000	\$ 16.33	640,000	\$ 19.38
Exercised	(500,974)	\$ 8.22	(504,196)	\$ 5.05	(1,201,912)	\$ 2.42
Canceled	(171,520)	\$ 18.21	(137,480)	\$ 14.08	(42,840)	\$ 8.63
Options outstanding at end of year	<u>2,901,030</u>	\$ 17.73	<u>2,693,024</u>	\$ 11.37	<u>2,636,700</u>	\$ 8.99
Options exercisable at end of year	855,708		717,710		571,380	
Price range of options exercised	\$2.50 - \$26.24		\$1.41 - \$19.30		\$1.31 - \$7.22	
Price range of options outstanding	\$1.41 - \$44.29		\$1.41 - \$26.24		\$1.41 - \$22.90	
Total shares reserved at end of year	3,907,170		2,808,104		3,312,300	

*Stock options outstanding * at December 31, 2004, were:*

Range of Exercise Prices	Stock Options Outstanding			Stock Options Exercisable	
	Number Outstanding	Weighted Average Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$1.41 - \$4.50	255,420	1.2 years	\$ 2.80	219,660	\$ 2.85
\$5.00 - \$8.00	794,880	2.4 years	\$ 7.57	404,720	\$ 7.64
\$15.00 - \$27.00	1,008,230	5.0 years	\$ 17.69	231,328	\$ 18.25
\$30.00 - \$34.50	802,500	6.3 years	\$ 31.45	—	\$ —
\$34.75 - \$45.00	40,000	6.8 years	\$ 40.60	—	\$ —
	<u>2,901,030</u>	4.3 years	\$ 17.73	<u>855,708</u>	\$ 9.28

* All prices and share amounts reflect a 2-for-1 stock split in the form of a stock dividend that occurred in January 2005.

401(k) Retirement Plan

We have a 401(k) plan for all full-time Meritage employees who have been with the Company for a period of six months or more. We match portions of employees' voluntary contributions, and made contributions to the plan of approximately \$1,153,000, \$621,000 and \$490,000 for the years ended 2004, 2003 and 2002, respectively.

NOTE 9 – INCOME TAXES

Components of income tax expense are (in thousands):

	Years Ended December 31,		
	2004	2003	2002
Current taxes:			
Federal	\$ 74,819	\$ 49,543	\$ 37,839
State	10,362	6,014	5,857
	<u>85,181</u>	<u>55,557</u>	<u>43,696</u>
Deferred taxes:			
Federal	524	1,265	(75)
State	85	232	(14)
	<u>609</u>	<u>1,497</u>	<u>(89)</u>
Total	<u>\$ 85,790</u>	<u>\$ 57,054</u>	<u>\$ 43,607</u>

Income taxes differ for the years ended December 31, 2004, 2003 and 2002, from the amounts computed using the expected federal statutory income tax rate of 35% as a result of the following (in thousands):

	Years Ended December 31,		
	2004	2003	2002
Expected taxes at current federal statutory income tax rate	\$ 78,665	\$ 53,011	\$ 39,740
State income taxes, net of Federal tax benefit	6,791	3,997	3,815
Non-deductible costs and other	334	46	52

Income tax expense	\$ 85,790	\$ 57,054	\$ 43,607
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Deferred tax assets and liabilities have been recognized in the consolidated balance sheets due to the following temporary differences at December 31 (in thousands):

	2004	2003
Deferred tax assets:		
Warranty reserve	\$ 5,014	\$ 2,866
Real estate and fixed asset basis differences	—	1,449
Wages payable	1,425	1,034
Accrued expenses	859	—
Reserves and allowances	211	492
Other	579	363
Total deferred tax assets	8,088	6,204
Deferred tax liabilities:		
Real estate and fixed asset basis differences	2,451	—
Goodwill	5,632	4,302
Prepays	1,029	684
Other	494	14
Total deferred tax liabilities	9,606	5,000
Net deferred tax (liability)/asset	\$ (1,518)	\$ 1,204

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On an annual basis, we review our deferred tax assets based on open tax years, the status of refund claims filed and other factors. Based on our review, we increased goodwill and decreased our deferred tax asset by \$2.1 million in 2004 as a result of an adjustment to the purchase price allocation of prior acquisitions.

NOTE 10 – SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

The 2004 acquisition of Citation Homes and the 2002 acquisitions of Hammonds and Perma-Bilt resulted in the following changes in assets and liabilities (in thousands):

	2004	2002
Increase in real estate	\$ (12,036)	\$ (99,836)
Increase in deposits on real estate under option or contract	(1,870)	(3,176)
Increase in receivables and other assets	(747)	(3,514)
Increase in goodwill	(11,214)	(38,479)
Increase in property and equipment	(89)	(2,481)
Increase in accounts payable and accrued liabilities	1,704	14,142
Increase in home sale deposits	87	2,692
Increase in notes payable	—	1,070
Net cash paid for acquisition	\$ (24,165)	\$ (129,582)

	2004	2003	2002
Cash paid during the year for:			
Interest	\$ 36,728	\$ 26,154	\$ 18,613
Income taxes	\$ 70,916	\$ 54,315	\$ 35,404
Non-cash distributions from unconsolidated entities	\$ 16,291	\$ 4,730	—

NOTE 11 – RELATED PARTY TRANSACTIONS

We have transacted business with related or affiliated companies and with certain officers and directors of the Company. We believe that the terms and fees negotiated for all transactions listed below are no less favorable than those that could be negotiated in arm's length transactions.

Since 1997, we have leased office space in Plano, Texas from Home Financial Services, a Texas partnership owned by John Landon, our co-chief executive officer, and his wife. The lease expires in May 2005. Rents paid to the partnership were approximately \$255,000, \$242,000 and \$225,000 in 2004, 2003 and 2002, respectively, and were included within general and administrative expenses on our consolidated statements of earnings.

During 2004, 2003 and 2002, we chartered an aircraft from a company in which Steven Hilton, our co-chief executive officer, has an ownership interest. The total amounts paid for the charter service were approximately \$246,000, \$202,000 and \$128,000, respectively, which were included within general and administrative expenses on our consolidated statements of earnings.

We paid legal fees of approximately \$783,000, \$1,032,000 and \$432,000 to law firms of which C. Timothy White, one of our directors, is a partner, in 2004, 2003 and 2002, respectively. Of these fees, approximately \$722,000, \$892,000 and \$324,000 were real estate project related and capitalized to real estate on our balance sheet in 2004, 2003 and 2002, respectively. The remaining amounts were recorded within general and administrative expenses on our consolidated statements of earnings.

One of our directors, Ray Oppel, has a 7.5% limited partnership interest in a joint venture that sells lots to Hammonds Homes, which arrangement was entered into prior to our acquisition of Hammonds. Mr. Oppel earned approximately \$36,600 in 2004 from this joint venture, in which his current investment is less than \$40,000. Mr. Oppel had also invested in various limited partnerships that entered into landbanking transactions with us. Currently, Mr.

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Oppel has no limited partnership ownership percentage in these entities and he received no income from them in 2004. By the end of 2001, Mr. Oppel had discontinued making new investments in landbanking transactions that involved sales to Meritage.

During 2004, we deposited \$360,000 for an option to acquire property in the Tucson, Arizona area over a three-year period. The total purchase price of the property is approximately \$3.4 million. One of our directors, Robert Sarver is an officer of one of the parties of the selling entity, in which he has a 3.8% interest.

During 2004 the Company entered into an advertising/sponsorship agreement with the National Basketball Association's Phoenix Suns organization. One of our directors, Robert Sarver is the Controlling Owner and Vice Chairman of the Phoenix Suns, and our Co-CEO's, Steven Hilton and John Landon, are minority owners of the team. In 2004 we paid approximately \$250,000 in advertising/sponsorship costs related to the agreement. These amounts were recorded as general and administrative expenses on our consolidated statement of earnings.

In connection with our 2001 acquisition of Hancock Communities, we assumed various existing transactions between Greg Hancock and that company. Greg Hancock was the founder of Hancock Communities and from June 2002 until February 2003 was a division president of Meritage. In March 2003, Mr. Hancock's employment with the company ceased. At December 31, 2003, the following agreements were in place:

Mr. Hancock is the majority owner of a venture that is developing a master planned community in Buckeye, Arizona. We have entered into an option contract to purchase approximately 586 acres of residential land in this community. At December 31, 2003, we have paid option deposits to the venture totaling \$3,594,110, which is included in deposits on real estate under option or contract on our accompanying balance sheet. In 2003 we purchased approximately 160 acres of this residential land from the venture at a cost of approximately \$4.3 million. In 2002 we purchased approximately 200 acres for approximately \$5.2 million. We also performed certain planning and construction supervision functions for the venture for which we were paid a management fee of 3% of the development costs. We received approximately \$260,500 and \$808,700 in 2003 and 2002, respectively, pursuant to this arrangement, which we recorded as other income on our statements of earnings.

In 2002 we purchased land from an independent third party to whom Mr. Hancock had loaned money for the purpose of making the underlying debt service payments on a parcel of land. In connection with our acquisition of this parcel, we assumed the seller's obligation to repay the loan to Mr. Hancock, and by December 31, 2003, we had paid the \$850,000 note in full.

NOTE 12 – OPERATING AND REPORTING SEGMENTS

The Company designs, constructs and sells a wide range of homes designed to meet the specific needs of each of its markets. Because each of the Company's geographic homebuilding regions has similar economic characteristics, housing products and class of prospective buyers, the geographic homebuilding regions have been aggregated into a single homebuilding segment.

All revenues are from external customers. There were no customers that contributed 10% or more of the Company's total revenues during the years ended December 31, 2004, 2003 and 2002.

NOTE 13 - COMMITMENTS AND CONTINGENCIES

We are involved in various routine legal proceedings incidental to our business, some of which are covered by insurance. With respect to all pending litigation matters, our ultimate legal and financial responsibility, if any, cannot be estimated with certainty and, in most cases, potential losses related to those matters are not considered probable. We have accrued approximately \$548,000 for losses related to litigation and asserted claims where our ultimate exposure is considered probable and the potential loss can be reasonably estimated, which is classified within accrued liabilities on our December 31, 2004 balance sheet. We believe that none of these matters will have a material adverse impact upon our consolidated financial condition, results of operations or cash flows.

In the normal course of business, we provide standby letters of credit and performance bonds issued to third parties to secure performance under various contracts. At December 31, 2004, we had outstanding letters of credit of \$50.0 million and performance bonds of \$184.9 million. We do not believe it is probable that these letters of credit or bonds will be drawn upon.

We lease office facilities, model homes and equipment under various operating lease agreements. Approximate minimum lease payments for non-cancelable operating leases as of December 31, 2004, are as follows (in thousands):

Years Ended December 31,	
2005*	5,483
2006*	4,013
2007	3,738
2008	2,940
2009	2,398
Thereafter	5,586
	<u>\$ 24,158</u>

* Excludes approximately \$1.9 million and \$0.2 million in 2005 and 2006, respectively, relating to our model lease program which is classified as interest.

Rent expense approximated \$8.7 million, \$8.1 million and \$3.4 million in 2004, 2003 and 2002, respectively, and is included within general and administrative expense or as commissions and other sales costs on our consolidated statements of earnings.

We have certain obligations related to post-construction warranties and defects related to homes closed. We have estimated these reserves based on historical data and trends with respect to similar product types and geographical areas. A summary of changes in our warranty reserve follows (in thousands):

	Years Ended December 31,	
	2004	2003
Warranty reserve, beginning of year	\$ 9,253	\$ 6,676
Additions to reserve	12,214	7,498
Warranty claims	(6,500)	(4,921)
Warranty reserve, end of year	<u>\$ 14,967</u>	<u>\$ 9,253</u>

Warranty reserves are included in accrued liabilities within the accompanying consolidated balance sheets. Additions to warranty reserves are included in cost of sales within the accompanying consolidated statements of earnings.

NOTE 14 - SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

Quarterly results for the years ended December 31, 2004 and 2003 follow (in thousands, except per share amounts):

	First	Second	Third	Fourth
2004				
Revenue	\$ 423,502	\$ 433,935	\$ 482,748	\$ 699,819
Gross profit	83,163	79,636	102,045	143,626

Earnings before income taxes	43,463	39,826	57,512	83,957
Net earnings	26,919	24,637	35,600	51,812
Per Share Data:				
Basic earnings per share	\$ 1.02	\$ 0.94	\$ 1.38	\$ 2.01
Diluted earnings per share	\$ 0.96	\$ 0.89	\$ 1.31	\$ 1.88
2003				
Revenue	\$ 283,410	\$ 333,833	\$ 380,752	\$ 473,006
Gross profit	56,354	66,605	76,739	92,819
Earnings before income taxes	25,606	34,064	40,714	51,076
Net earnings	15,773	21,312	25,755	31,566
Per Share Data:				
Basic earnings per share	\$ 0.61	\$ 0.82	\$ 0.99	\$ 1.21
Diluted earnings per share	\$ 0.58	\$ 0.78	\$ 0.93	\$ 1.13

Quarterly and year-to-date computations of per share amounts are made independently. Therefore, the sum of per share amounts for the quarters may not agree with per share amounts for the year. All share amounts reflect a 2-for-1 stock split in the form of a stock dividend that occurred in January 2005.

NOTE 15 – SUBSEQUENT EVENTS (UNAUDITED)

On February 11, 2005 we completed the purchase of the homebuilding assets of Colonial Homes of Fort Myers/Naples, Florida (“Colonial”). The cash purchase price to be paid for the acquisition is approximately \$64 million plus accrued liabilities of approximately \$9 million for the assets acquired at closing. In addition, Meritage has the right to acquire approximately 1,800 lots over a four-year period pursuant to an option agreement entered into between Meritage and Colonial.

In February 2005 we announced a series of refinancing transactions that we believe will enhance our liquidity and, in the long term, result in significant cash interest savings to the Company. On March 2, 2005, we completed the sale of 1,035,000 shares of our common stock in a registered public offering resulting in net proceeds to the Company of approximately \$69.5 million. On March 10, 2005, we completed the private placement of \$350 million in aggregate principal amount of 6.25% senior notes due 2015 which resulted in net proceeds to the Company, after commissions, discounts and fees of approximately \$344 million. We used the proceeds from these transactions to repurchase pursuant to a tender offer and consent solicitation approximately \$276.8 million of our outstanding 9.75% senior notes due 2011. In connection with this tender offer and repurchase, we will report in the first quarter of fiscal 2005 a one time charge of approximately \$19.4 million for premiums, commissions and expenses associated with the tender offer and the write-off of existing offering costs associated with the 9.75% senior notes, net of the accretion of existing note premiums on the 9.75% senior notes and taxes. Approximately \$3.2 million of the 9.75% senior notes remain outstanding and subject to tender until March 23, 2005.

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

On June 15, 2004, the Audit Committee of the Board of Directors of Meritage Homes Corporation (the “Company”) approved the appointment of Deloitte & Touche LLP (“Deloitte & Touche”) as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2004, and the dismissal of KPMG LLP (“KPMG”) as the Company’s independent registered public accounting firm. This action followed the decision by the Board of Directors of the Company on June 9, 2004, to accept the Audit Committee’s recommendation to change the Company’s auditors for the Company’s fiscal year ending December 31, 2004, effective upon selection of an alternative accounting firm, and to delegate to the audit committee the responsibility of selecting the Company’s auditors for such period from the accounting firms recommended by the audit committee to the Board of Directors.

KPMG’s audit reports on the Company’s financial statements for the two most recent fiscal years, which ended December 31, 2002 and 2003, respectively, did not contain an adverse opinion or a disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles, except that such reports contained an explanatory paragraph stating that the Company changed its method of accounting for goodwill in 2002.

During the Company’s two most recent fiscal years, which ended December 31, 2002 and 2003, respectively, and the subsequent interim period through June 15, 2004:

- (1) No reportable events (as defined in Item 304(a)(1)(v) of Regulation S-K) occurred (except as noted below).
- (2) The Company did not consult with Deloitte & Touche regarding any of the matters or events described in Item 304(a)(2)(i) and (ii) of Regulation S-K, although we did discuss with Deloitte & Touche (and other firms we interviewed) a number of issues pertaining to their expertise in the homebuilding industry, including their experience in implementing FIN 46R. The Company did not, however, discuss any particular transaction or the type of audit report that they might issue on our financial statements.

During the Company’s two most recent fiscal years, which ended December 31, 2002 and 2003, respectively, and the subsequent interim period through June 15, 2004, the Company does not believe that there were any

disagreements between the Company and KPMG on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to KPMG’s satisfaction, would have caused KPMG to make reference to the subject matter of the disagreement in connection with its report. However, we note the following:

During the first part of 2004, the Company (including its Audit Committee) and KPMG discussed the implementation of the provisions of Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003), “Consolidation of Variable Interest Entities” (FIN 46R). The Company and KPMG had several discussions at varying levels within KPMG about its interpretations of FIN 46R.

In connection with the Company’s audit for the year ended December 31, 2003, KPMG confirmed to the Company’s Audit Committee, in writing, that there were no disagreements with management on financial accounting and reporting matters that, if not satisfactorily resolved, would have caused a modification of its report on the Company’s consolidated financial statements. In addition, KPMG did not raise any disagreement with respect to the Company’s Form 10-Q for the quarter ended March 31, 2004, which it reviewed in accordance with SAS 100.

On June 21, 2004, approximately one week after the Company terminated KPMG, KPMG advised the Company that, in its view, the termination of its services, and cessation of discussions over certain issues that were under discussion with the Company at the time, resulted from a reportable disagreement. Specifically, those issues pertain to information about entity formation, the absorption of expected losses and residual returns that a registrant must obtain in order to enable it to perform appropriate evaluations under FIN 46R. To date, the Company believes that it has implemented FIN 46R in accordance with KPMG’s interpretations.

The Company's Audit Committee has discussed with KPMG the subject matter relating to the Company's adoption and implementation of FIN 46R, including the informational requirements necessary to enable the Company to perform appropriate evaluations. The Company has authorized KPMG to respond fully to the inquiries of Deloitte & Touche concerning all matters involving the Company, including our adoption and implementation of FIN 46R.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We are responsible for establishing and maintaining disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our Co-Chief Executive Officers and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. Our Co-CEO's and CFO concluded that our disclosure controls and procedures were not effective as of December 31, 2004 to ensure that required information is disclosed on a timely basis in our reports filed or furnished under the Securities Exchange Act of 1934. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Changes in Internal Control

As further discussed in Management's Annual Report on Internal Control Over Financial Reporting we concluded in February 2005 that there was a "material weakness" (as defined under Standard No. 2 by the Public Company Accounting Oversight Board) in our internal control over financial reporting relating to the balance sheet presentation of costs associated with models in our model home lease program.

Our management and the audit committee reviewed and analyzed our internal controls, policies and procedures in response to this material weakness. We believe that our model home lease program transactions are highly technical in nature. Meritage management has taken exhaustive efforts to document its assumptions and conclusions related to all complex transactions. Additionally, Meritage management has hired additional financial and accounting staff, enhanced the training of our finance and accounting staff and requires periodic review of a wider variety of current technical accounting literature.

Based on the foregoing, our management, including our Co-Chief Executive Officers and our Chief Financial Officer, concluded that the material weakness had been remediated.

Other than as described above, there has been no change in our internal control over financial reporting during the period ended December 31, 2004 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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Management's Annual Report on Internal Control Over Financial Reporting

Management of Meritage Homes Corporation is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our financial statements for external purposes in accordance with accounting principles generally accepted in the United States (GAAP). Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our management, including our Chief Executive Officers and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organization of the Treadway Commission. Based on our evaluation under the framework in *Internal Control – Integrated Framework*, our management concluded that our internal control over financial reporting was not effective as of December 31, 2004.

We periodically evaluate our internal control over financial reporting and discuss these matters with our audit committee. We concluded in February 2005 that there was a "material weakness" (as defined under Standard No. 2 by the Public Company Accounting Oversight Board) in our internal control over financial reporting relating to the selection and application of GAAP for our model home lease program. In January 2005, we determined that the construction costs and related debt associated with model homes which are owned and leased to us by others and that we use to market our communities are required to be included in the Company's balance sheet. We do not legally own the model homes, but we are reimbursed by the owner for our construction costs, and we have the right, but not the obligation, to purchase these homes. For accounting purposes, we are deemed to be the owner of the model homes, and due to our "continuing involvement" with these assets, we are unable to derecognize the model homes upon their completion and commencement of the lease. In addition, we have reclassified interest expense related to the lease program from commissions and other sales costs to cost of home closings commencing April 1, 2004. There was no material impact on earnings before income taxes and, therefore, net earnings and basic and diluted earnings per share did not change. The Company's financial statements as of and for the year ended December 31, 2004 include amounts to properly record the model home costs, related debt and other related amounts which resulted in (i) recording the assets and liabilities of \$53.8 million as of December 31, 2004, and (ii) a higher cost of homes closed and lower commissions and other sales costs of \$1.5 million due to the reclassification of interest from commissions and other sales costs to cost of home closings for the year ended December 31, 2004.

Our management's assessment of the effectiveness of our internal control over financial reporting as of December 31, 2004 has been audited by Deloitte & Touche LLP, our independent registered public accounting firm, as stated in their report which is included herein.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
Meritage Homes Corporation

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting, that Meritage Homes Corporation and subsidiaries (the "Company") did not maintain effective internal control over financial reporting as of December 31, 2004, because of the effect of the material weakness identified in management's assessment based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weakness has been identified

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and included in management's assessment. As of December 31, 2004, the Company did not maintain effective internal control over the application of accounting principles generally accepted in the United States of America related to the Company's accounting for its model home lease program, which resulted in a material adjustment to the Company's consolidated financial statements as of December 31, 2004. The adjustment increased real estate assets and loans payable and other borrowings in the balance sheet, and decreased commissions and other sales costs and increased cost of home closings in the Statement of Earnings. Additionally, the Company also restated its previously issued interim financial statements for the second and third quarter of 2004. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the December 31, 2004 consolidated financial statements, and this report does not affect our opinion on those consolidated financial statements.

In our opinion, management's assessment that the Company did not maintain effective internal control over financial reporting as of December 31, 2004, is fairly stated, in all material respects, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also in our opinion, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2004, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended December 31, 2004 of the Company and our report dated March 15, 2005 expressed an unqualified opinion on those financial statements.

DELOITTE & TOUCHE LLP

Phoenix, Arizona
March 15, 2005

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Item 9B. Other Information

Report of Triggering Events in Lieu of Current Report on Form 8-K

Pursuant to guidance provided by the SEC Division of Corporation Finance, the following information is provided pursuant to the following Items of Form 8-K: Item 1.01 Entry into a Material Definitive Agreement and Item 8.01 Other Events.

On March 10, 2005, we accepted the tender of approximately \$276.8 million of the \$280 million outstanding principal amount of our 9.75% senior notes due 2011 (the "Notes") following the expiration of the initial acceptance date of the tender offer, which the Company launched on February 23, 2005. The Company paid approximately \$309.3 million to purchase these Notes and make consent payments. Prior to expiration of the related consent solicitation on March 8, 2005, holders of most of the outstanding Notes tendered their securities and consented to the proposed amendments to the related indenture. Upon the Company's acceptance for purchase of the tendered Notes, the Eighth Supplemental Indenture (the "Supplemental Indenture"), dated March 10, 2005 among the Company and Wells Fargo Bank, National Association (the "Trustee"), which amends the original indenture to remove most of the restrictive covenants, became operative. These amendments are binding upon the holders of notes that were not tendered in the tender offer. This description of the Supplemental Indenture is not complete and is qualified in its entirety by the full text of such document, which is filed as Exhibit 4.2.8 to this Form 10-K.

Pursuant to guidance provided by the SEC Division of Corporation Finance, the following information is provided pursuant to the following Items of Form 8-K: Item 1.01 Entry into a Material Definitive Agreement and Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Agreement of the Registrant.

On March 10, 2005, we completed the private placement of \$350 million in aggregate principal amount of 6.25% senior notes due 2015 which resulted in net proceeds to the Company, after commissions, discounts and fees of approximately \$344 million. A copy of the Indenture which governs the new 6.25% senior notes and the registration rights agreement that we entered into with the initial purchasers are filed as Exhibits 4.4 and 4.5, respectively, to this Form 10-K.

PART III

Item 10. Directors and Executive Officers of the Registrant

Except as set forth herein, the information required by Item 10 regarding our directors is incorporated by reference from the information contained in our 2005 Proxy Statement (which will be filed with the Securities and Exchange Commission no later than 120 days following the Company's fiscal year end). The information

required by Item 10 regarding our executive officers appears under Item 4 of Part I of this Annual Report on Form 10-K as permitted by General Instruction G(3).

The Company has adopted a code of ethics that applies to all directors, officers and employees of the Company, including the Chief Executive Officers, Chief Financial Officer and Chief Accounting Officer. A copy of our Code of Ethics has been filed as an exhibit hereto.

Item 11. Executive Compensation

Information required in response to this item is incorporated by reference to our definitive proxy statement, which will be filed with the SEC within 120 days following the Company's fiscal year end.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Information required in response to Item 12 is incorporated by reference from our definitive proxy statement, which will be filed with the SEC within 120 days following the Company's fiscal year end.

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Item 13. Certain Relationships and Related Transactions

Information required in response to Item 13 is incorporated by reference from our definitive proxy statement, which will be filed with the SEC within 120 days following the Company's fiscal year end.

Item 14. Principal Accountant Fees and Services

The following table presents fees for professional audit services rendered by our principal accountant for the audit of our annual financial statements for 2004 and 2003, and fees billed for other services rendered.

	2004	2003
Audit fees (1)	\$ 1,451,866	\$ 459,089
Audit - related fees (2)	18,600	12,000
Audit and audit related fees	1,470,466	471,089
Tax fees (3)	201,797	528,491
Total fees	\$ 1,672,263	\$ 999,580

- (1) Audit fees consisted principally of fees for audit and review services, services related to various SEC filings and related research and the 2004 and 2003 senior note offerings. Audit fees in 2004 include \$907,843 of fees related to Management's Annual Report on Internal Control over Financial Reporting.
- (2) Audit related fees consisted of fees related to the audit of our 401(k) Plan.
- (3) Tax fees consisted of fees for income tax consulting and tax (including state and local tax procurement) compliance, including preparation of original and amended state and federal income tax returns, refund claims and IRS tax audit assistance.

Each year, the audit committee approves the annual audit engagement in advance. The committee has also established procedures to pre-approve all non-audit services provided by the principal independent accountants. All 2004 non-audit services listed above were pre-approved.

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PART IV

Item 15. Exhibits, Financial Statement Schedules, and Reports on Form 8-K

(a) Financial Statements and Schedules

(i) Financial Statements:

- (1) [Report of Deloitte & Touche LLP](#)
- (2) [Report of KPMG LLP](#)
- (3) [Consolidated Financial Statements and Notes to Consolidated Financial Statements of the Company, including Consolidated Balance Sheets as of December 31, 2004 and 2003 and related Consolidated Statements of Earnings, Stockholders' Equity and Cash Flows for each of the years in the three-year period ended December 31, 2004](#)

(ii) Financial Statement Schedules:

Schedules have been omitted because of the absence of conditions under which they are required or because the required material information is included in the Consolidated Financial Statements or Notes to the Consolidated Financial Statements included herein.

(b) Reports on Form 8-K

On October 6, 2004, we filed a Form 8-K for the purpose of furnishing a press release related to the announcement of our third quarter 2004 sales, closings and backlog.

On October 26, 2004, we filed a Form 8-K for the purpose of furnishing a press release related to the announcement of our third quarter 2004 earnings and other results.

On December 30, 2004, we filed a Form 8-K to report that we had executed the Fifth Amendment to our revolving credit facility.

On January 6, 2005, we filed a Form 8-K for the purpose of furnishing a press release related to the announcement of our fourth quarter 2004 sales, closings and backlog.

On January 12, 2005, we filed a Form 8-K for the purpose of reporting that the Board of Directors elected Gerald W. Haddock as a Class II director to serve until the 2005 annual meeting of stockholders.

On January 27, 2005, we filed a Form 8-K for the purpose of furnishing a press release related to the announcement of our fourth quarter and year ended 2004 earnings and other results.

On February 9, 2005, we filed a Form 8-K for the purpose of reporting that we entered into a definitive agreement to purchase the homebuilding assets of Fort Myers/Naples based Colonial Homes.

On February 9, 2005, we filed a Form 8-K/A for the purpose of reporting certain matters relating to our change in accounting procedures related to our model lease program.

On February 14, 2005, we filed a Form 8-K/A for the purpose of reporting that we completed the purchase of the homebuilding assets of Fort Myers/Naples-based Colonial Homes of Florida.

On February 22, 2005, we filed a Form 8-K/A to file the principal acquisition contract governing our acquisition of Fort Myers/Naples based Colonial Homes of Florida.

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On February 22, 2005, we filed a Form 8-K/A for the purpose of reporting that we had filed our Form 10-Q/A SEC filings for the quarters ended June 30, 2004 and September 30, 2004 to reflect the necessary accounting adjustments related to our model home lease program.

On February 28, 2005, we filed a Form 8-K for the purpose of disclosing our tender offer for our \$280 million senior notes, our public offering of additional shares of our common stock and our offering of \$350 million senior notes due 2015.

On March 2, 2005, we filed a Form 8-K/A for the purpose of disclosing the completion of our common stock offering.

On March 9, 2005, we filed a Form 8-K to report that we had received the requisite consents to the proposed amendments to the indenture that governs our 9.75% senior notes due 2011.

On March 11, 2005, we filed a Form 8-K to disclose that we had completed an offering of our 6.25% senior notes due 2015.

(c) Exhibits

<u>Exhibit Number</u>	<u>Description</u>	<u>Page or Method of Filing</u>
2.1	Agreement and Plan of Reorganization, dated as of September 13, 1996, by and among Homeplex, the Monterey Merging Companies and the Monterey Stockholders	Incorporated by reference to Exhibit 2 of Form S-4 Registration Statement No. 333-15937.
2.2	Master Transaction Agreement, dated June 12, 2002, by and among the Company, MTH Homes-Texas, L.P., Hammonds Homes Ltd., Crystal City Land & Cattle, Ltd., Hammonds Homes I, LLC, Crystal City I, LLC and Ronnie D. Hammonds	Incorporated by reference to Exhibit 10.1 of Form 8-K dated July 12, 2002.
2.2.1	Amendment No. 1 to Master Transaction Agreement, dated June 12, 2002, by and among the Company, MTH Homes-Texas, L.P., Hammonds Homes Ltd., Crystal City Land & Cattle, Ltd., Hammonds Homes I, LLC, Crystal City I, LLC and Ronnie D. Hammonds	Incorporated by reference to Exhibit 10.2 of Form 8-K dated July 12, 2002.
2.3	Master Transaction Agreement, dated October 7, 2002, by and among the Company, MTH-Homes Nevada, Inc., Perma-Bilt, A Nevada Corporation, and Zenith National Insurance Corp.	Incorporated by reference to Exhibit 10.1 of Form 8-K/A dated October 7, 2002.
2.4	Master Transaction Agreement, dated February 9, 2005, by and among the Company, Meritage Homes of Florida, Inc., Colonial Homes, Inc., Colonial Shores, LLC and The Colonial Company	Incorporated by reference to Exhibit 10.1 of Form 8-K/A dated February 22, 2005.
3.1	Amendment to Articles of Incorporation of Meritage Homes Corporation	Incorporated by reference to Exhibit 3.1 of Form 10-Q for the quarterly period ended September 30, 1998.
3.1.1	Restated Articles of Incorporation of Meritage Homes Corporation	Incorporated by reference to Exhibit 3 of Form 8-K dated June 20, 2002.
3.1.2	Articles of Amendment to Incorporation of Meritage Homes Corporation	Incorporated by reference to Exhibit 3.1 of Form 8-K dated September 15, 2004
3.2	Amended and Restated Bylaws of Meritage Homes Corporation	Incorporated by reference to Exhibit 3.3 of Form S-3 Registration Statement No. 333-58793.

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4.1	Form of Specimen of Common Stock Certificate	Incorporated by reference to Exhibit 4.2 of Form S-3 Registration Statement dated May 1, 2002.
4.2	Indenture, dated May 31, 2001, by and among the Company, the Guarantors named therein and Wells Fargo Bank, N.A.	Incorporated by reference to Exhibit 4.1 of Form 8-K dated June 6, 2001.
4.2.1	First Supplemental Indenture, dated September 20, 2001, by and among the Company, Hulen Park Venture, LLC, Meritage Holdings, L.L.C., the Guarantors named therein and Wells Fargo Bank, N.A.	Incorporated by reference to Exhibit 4.3.1 of Form 10-K dated March 31, 2003.
4.2.2	Second Supplemental Indenture, dated July 12, 2002, by and among the Company, MTH Homes-Texas, L.P., MTH-Texas GP II, Inc., MTH-Texas LP II, Inc., the Guarantors named therein and Wells Fargo Bank, N.A.	Incorporated by reference to Exhibit 4.3.2 of Form 10-K for the year ended December 31, 2002.

4.2.3	Third Supplemental Indenture, dated October 21, 2002, by and among the Company, MTH-Homes Nevada, Inc., the Guarantors named therein and Wells Fargo Bank, N.A.	Incorporated by reference to Exhibit 4.3.3 of Form 10-K for the year ended December 31, 2002.
4.2.4	Fourth Supplemental Indenture, dated February 19, 2003 by and among the Company, MTH-Cavalier, LLC, the Guarantors named therein and Wells Fargo Bank, N.A.	Incorporated by reference to Exhibit 4.3.4 of Form 10-K for the year ended December 31, 2002.
4.2.5	Fifth Supplemental Indenture, dated August 22, 2003, by and among the Company, MTH Golf, LLC (formally known as Mission Royale, LLC) Legacy-Hammonds Materials, L.P., the Guarantors named therein and Wells Fargo Bank, N.A.	Incorporated by reference to Exhibit 4.2.5 of Form S-4 Registration Statement, dated October 23, 2003.
4.2.6	Sixth Supplemental Indenture, dated May 14, 2004, by and among the Company, Meritage Homes of Colorado, Inc., the guarantors named therein and Wells Fargo Bank, N.A. and form of 7% Senior Notes due 2014.	Incorporated by reference to Exhibit 4.2.6 of Form S-4 Registration Statement 333-115610.
4.2.7	Seventh Supplemental Indenture, dated December 20, 2004, by and among the Company, Meritage Homes of Florida, Inc., the guarantors named therein and Wells Fargo Bank, N.A.	Filed herewith.
4.2.8	Eighth Supplemental Indenture, dated March 10, 2005, by and among the Company, the guarantors named therein and Wells Fargo Bank, N.A.	Filed herewith.
4.3	Indenture, dated April 21, 2004, by and among the Company, the guarantors named therein and Wells Fargo Bank, N.A. and form of 7% senior notes due 2014.	Incorporated by reference to Exhibit 4.1 of Form 10-Q for the quarterly period ended March 31, 2004.
4.3.1	First Supplemental Indenture, dated May 14, 2004, by and among the Company, Meritage Homes of Colorado, Inc., the guarantors named therein and Wells Fargo, N.A..	Incorporated by reference to Exhibit 4.3.1 of Form S-4 Registration Statement 333-115610.

4.3.2	Second Supplemental Indenture, dated December 20, 2004, by and among the Company, Meritage Homes of Florida, Inc., the guarantors named therein and Wells Fargo Bank, N.A.	Filed herewith.
4.4	Indenture dated March 10, 2005, by and among the Company, the guarantors named therein and Wells Fargo Bank, NA and form of 6.25% senior notes due 2015.	Filed herewith.
4.5	Registration Rights Agreement relating to 6.25% senior notes due 2015, dated March 10, 2005.	Filed herewith.
10.1	\$250 Million Credit Agreement, dated December 12, 2002, by and among the Company, Guaranty Bank, Fleet National Bank, Bank One, NA and the other lenders thereto	Incorporated by reference to Exhibit 10.1 of Form 10-K for the year ended December 31, 2002.
10.1.1	First Amendment to Credit Agreement, dated September 8, 2003, among the Company, Guaranty Bank, Fleet National Bank, Bank One, NA and the other lenders thereto	Incorporated by reference to Exhibit 10.1.1 of Form S-3 Registration Statement dated October 23, 2003.
10.1.2	Second Amendment to Credit Agreement, dated December 3, 2003, among the Company, Guaranty Bank, Bank One, NA, Fleet National Bank and the other lenders thereto	Incorporated by reference to Exhibit 10.1.2 of Form 10-K for the year ended December 31, 2003.
10.1.3	Third Amendment to Credit Agreement, dated April 20, 2004, by and among the Company, Guaranty Bank, Fleet National Bank, Bank One, NA and the other lenders thereto	Incorporated by reference to Exhibit 10.1 of Form 10-Q for the quarterly period ended March 31, 2004.
10.1.4	Fourth Amendment to Credit Agreement, dated October 28, 2004, among the Company, Guaranty Bank, Bank One, NA, Fleet National Bank and the other lenders thereto	Incorporated by reference to Exhibit 10.1 of Form 10-Q for the quarterly period ended September 30, 2004.
10.1.5	Fifth Amendment to Credit Agreement, dated December 23, 2004, among the Company, Guaranty Bank, Bank One, NA, Fleet National Bank and the other lenders thereto	Incorporated by reference to Exhibit 10.1 of Form 8-K dated December 30, 2004.
10.2	2001 Annual Incentive Plan*	Incorporated by reference to Exhibit 13 of the proxy statement for the 2001 annual meeting of stockholders
10.3	Amended Meritage Stock Option Plan *	Filed herewith.
10.3.1	Representative form of Meritage Qualified Stock Option Agreement *	Incorporated by reference to Exhibit 10.2 of Form 10-Q for the quarter ended September 30, 2004.
10.3.2	Representative form of Meritage Non-Qualified Stock Option Agreement *	Incorporated by reference to Exhibit 10.3 of Form 10-Q for the quarter ended September 30, 2004.

10.4	Representative Form of Employment Agreement between the Company and Steven J. Hilton and John R. Landon*	Incorporated by reference to Exhibit 10.1 of Form 8-K dated July 8, 2003.
10.4.1	Revised Amendment to Employment Agreements between the Company and Steven J. Hilton and John R. Landon	Incorporated by reference to Exhibit 10.1 of Form 10-Q for the quarterly period ended June 30, 2004.
10.5	Employment Agreement between the Company and Larry W. Seay*	Incorporated by reference to Exhibit 10.7 of Form S-4, Registration Statement No. 333-109933.
10.5.1	Amendment to Employment Agreement between the Company and Larry W. Sealy*	Incorporated by reference to Exhibit 10.5 of Form 10-Q for the quarterly period ended March 31, 2004.

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10.6	Representative Form of Change of Control Agreement between the Company and Steven J. Hilton and John R. Landon*	Incorporated by reference to Exhibit 10.2 of Form 8-K dated July 8, 2003.
10.7	Change of Control Agreement between the Company and Larry W. Seay*	Incorporated by reference to Exhibit 10.5 of Form S-4, Registration Statement No. 333-109933.
10.8	Change of Control Agreement between the Company and Richard T. Morgan*	Incorporated by reference to Exhibit 10.6 of Form 10-Q for the quarterly period ended March 31, 2000.
10.9	Deferred Bonus Agreement – 2002 Award Year – between the Company and Larry W. Seay*	Incorporated by reference to Exhibit 10.10 of Form 10-K dated March 31, 2003.
10.10	Deferred Bonus Agreement – 2003 Award Year – between the Company and Larry W. Seay *	Incorporated by reference to Exhibit 10.2 of Form 10-Q for the quarterly period dated March 31, 2002.
10.11	Deferred Bonus Agreement – 2002 Award Year – between the Company and Richard T. Morgan*	Incorporated by reference to Exhibit 10.12 of Form 10-K dated March 31, 2003.
10.12	Deferred Bonus Agreement – 2003 Award Year – between the Company and Richard T. Morgan *	Incorporated by reference to Exhibit 10.3 of Form 10-Q for the quarterly period ended March 31, 2004.
14	Code of Ethics	Incorporated by reference to Exhibit 14 of Form 10-K for the year ended December 31, 2002.
21	List of Subsidiaries	Filed herewith.
23.1	Consent of Deloitte & Touche LLP	Filed herewith.
23.2	Consent of KPMG LLP	Filed herewith.
24	Powers of Attorney	See signature page.
31.1	Rule 13a-14(a)/15d-14(a) Certificate of Steven J. Hilton, Co-Chief Executive Officer	Filed herewith.
31.2	Rule 13a-14(a)/15d-14(a) Certificate of John R.Landon, Co-Chief Executive Officer	Filed herewith.
31.3	Rule 13a-14(a)/15d-14(a) Certificate of Larry W. Seay, Chief Financial Officer	Filed herewith.
32.1	Section 1350 Certification of Co-Chief Executive Officers and Chief Financial Officer	Filed herewith.

*Indicates a management contract or compensation plan.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, this 16th day of March 2005.

MERITAGE HOMES CORPORATION,
a Maryland Corporation

By /s/ STEVEN J. HILTON

Steven J. Hilton

Co-Chairman and Chief Executive Officer

By /s/ JOHN R. LANDON

John R. Landon

Co-Chairman and Chief Executive Officer

By /s/ LARRY W. SEAY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John R. Landon, Steven J. Hilton and Larry W. Seay, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Form 10-K Annual Report, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, 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, as fully and to all intents and purposes as he might or could do in person hereby ratifying and confirming all that said attorneys-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to these requirements of the Securities Exchange Act of 1934, the following persons on behalf of the registrant and in the capacities and on the dates indicated have signed this report on Form 10-K below:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ JOHN R. LANDON</u> John R. Landon	Co-Chairman and Chief Executive Officer	March 16, 2005
<u>/s/ STEVEN J. HILTON</u> Steven J. Hilton	Co-Chairman and Chief Executive Officer	March 16, 2005
<u>/s/ LARRY W. SEAY</u> Larry W. Seay	Chief Financial Officer, Vice President-Finance, and Secretary (Principal Financial Officer)	March 16, 2005
<u>/s/ VICKI L. BIGGS</u> Vicki L. Biggs	Controller and Chief Accounting Officer (Principal Accounting Officer)	March 16, 2005
<u>/s/ PETER L. AX</u> Peter L. Ax	Director	March 16, 2005
<u>/s/ RAYMOND OPPEL</u> Raymond Opper	Director	March 16, 2005
<u>/s/ ROBERT G. SARVER</u> Robert G. Sarver	Director	March 16, 2005
<u>/s/ C. TIMOTHY WHITE</u> C. Timothy White	Director	March 16, 2005
<u>/s/ WILLIAM CAMPBELL</u> William Campbell	Director	March 16, 2005
<u>/s/ RICHARD T. BURKE, SR.</u> Richard T. Burke, Sr.	Director	March 16, 2005
<u>/s/ GERALD W. HADDOCK</u> Gerald W. Haddock	Director	March 16, 2005

SEVENTH SUPPLEMENTAL INDENTURE, dated as of December 20, 2004 (the "Seventh Supplemental Indenture") between Meritage Homes Corporation, a corporation organized under the laws of the State of Maryland (the "Issuer"), the Guarantors named therein, Meritage Homes of Florida, Inc., an Arizona corporation (the "Additional Guarantor") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), under the Indenture (as defined below). Capitalized terms used and not defined herein shall have the same meanings given in the Indenture unless otherwise indicated.

WHEREAS, the Issuer, the Guarantors thereto and the Trustee are parties to that certain Indenture dated as of May 30, 2001 (the "Indenture") pursuant to which the Company issued its 9 ¾% Senior Notes 2011 (the "Notes") and the Guarantors guaranteed the obligations of the Issuer under the Indenture and the Notes;

WHEREAS, pursuant to Section 4.13 of the Indenture, if the Issuer acquires or creates any additional subsidiary which is a Restricted Subsidiary, each such subsidiary shall execute and deliver a supplemental indenture pursuant to which such subsidiary shall unconditionally guaranty the Issuer's obligations under the Notes;

WHEREAS, the Issuer, the Guarantors thereto, Hulen Park Venture, LLC, Meritage Holdings, L.L.C. and the Trustee are parties to that First Supplemental Indenture, dated as of September 20, 2001 (the "First Supplemental Indenture") pursuant to which Hulen Park Venture, LLC and Meritage Holdings, L.L.C. were added as Guarantors;

WHEREAS, the Issuer, the Guarantors thereto, MTH Homes-Texas, L.P., MTH-Texas GP II, Inc., MTH-Texas LP II, Inc. and the Trustee are parties to that Second Supplemental Indenture, dated as of July 12, 2002 (the "Second Supplemental Indenture") pursuant to which MTH Homes-Texas, L.P., MTH-Texas GP II, Inc. and MTH-Texas LP II, Inc. were added as Guarantors;

WHEREAS, the Issuer, the Guarantors thereto, MTH-Homes Nevada, Inc. and the Trustee are parties to that Third Supplemental Indenture, dated as of October 21, 2002 (the "Third Supplemental Indenture") pursuant to which MTH-Homes Nevada, Inc. was added as a Guarantor;

WHEREAS, the Issuer, the Guarantors thereto, MTH Cavalier, LLC and the Trustee are parties to that Fourth Supplemental Indenture, dated as of February 19, 2003 (the "Fourth Supplemental Indenture") pursuant to which MTH Cavalier, LLC was added as a Guarantor;

WHEREAS, the Issuer, the Guarantors thereto, Mission Royale Golf Course, LLC, Legacy-Hammonds Materials, L.P. and the Trustee are parties to that Fifth Supplemental Indenture, dated as of August 22, 2003 (the "Fifth Supplemental Indenture") pursuant to which Mission Royale Golf Course, LLC and Legacy-Hammonds Materials, L.P. were added as Guarantors;

WHEREAS, the Issuer, the Guarantors thereof, Meritage Homes of Colorado, Inc. and the Trustee are parties to the Sixth Supplemental Indenture, dated as of May 14, 2004 (the "Sixth Supplemental Indenture") pursuant to which Meritage Homes of Colorado, Inc. was added as a Guarantor;

WHEREAS, the Additional Guarantor is a Restricted Subsidiary of the Issuer;

WHEREAS, the Issuer and the Trustee desire to have the Additional Guarantor enter into this Seventh Supplemental Indenture and agree to guaranty the obligations of the Issuer under the Indenture and the Notes and the Additional Guarantor desires to enter into this Seventh Supplemental Indenture and to guaranty the obligations of the Issuer under the Indenture and the Notes as of such date;

WHEREAS, Section 8.01 of the Indenture provides that the Issuer, the Guarantors and the Trustee may, without the written consent of the Holders of the outstanding Notes, amend the Indenture as provided herein;

WHEREAS, by entering into this Seventh Supplemental Indenture, the Issuer and the Trustee have consented to amend the Indenture in accordance with the terms and conditions herein;

WHEREAS, each Guarantor hereby acknowledges and consents to amend the Indenture in accordance with the terms and conditions herein; and

WHEREAS, all acts and things prescribed by the Articles of Incorporation and Bylaws (as now in effect) of the Additional Guarantor necessary to make this Seventh Supplemental Indenture a valid instrument legally binding on the Additional Guarantor for the purposes herein expressed, in accordance with its terms, have been duly done and performed.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuer, the Additional Guarantor and the Trustee hereby agree for the benefit of each other and the equal and ratable benefit of the Holders of the Notes as follows:

1. Additional Guarantor as Guarantor. As of the date hereof and pursuant to this Seventh Supplemental Indenture, the Additional Guarantor shall become a Guarantor under the definition of Guarantor in the Indenture in accordance with the terms and conditions of the Indenture and shall assume all rights and obligations of a Guarantor thereunder.
2. Compliance with and Fulfillment of Condition of Section 4.13. The execution and delivery of this Seventh Supplemental Indenture by the Additional Guarantor (along with such documentation relating thereto as the Trustee shall require) fulfills the obligations of the Issuer under Section 4.13 of the Indenture.
3. Construction. For all purposes of this Seventh Supplemental Indenture, except as otherwise herein expressly provided or unless the context otherwise requires: (i) the defined terms and expressions used herein shall have the same meanings as corresponding terms and expressions used in the Indenture; and (ii) the words "herein," "hereof" and "hereby" and other words of similar import used in this Seventh Supplemental Indenture refer to this Seventh Supplemental Indenture as a whole and not to any particular Section hereof.

4. Trustee Acceptance. The Trustee accepts the amendment of the Indenture effected by this Seventh Supplemental Indenture, as hereby amended, but only upon the terms and conditions set forth in the Indenture, as hereby amended, including the terms and provisions defining and limiting the liabilities and responsibilities of the Trustee in the performance of its duties and obligations under the Indenture, as hereby amended. Without limiting the generality of the foregoing, the Trustee has no responsibility for the correctness of the recitals of fact herein contained which shall be taken as the statements of each of the Issuer and the Additional Guarantor, respectively, and makes no representations as to the validity or enforceability against either the Issuer or the Additional Guarantor.

5. Indenture Ratified. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect.

6. Holder's Bound. This Seventh Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of the Notes heretofore or

hereafter authenticated and delivered shall be bound hereby.

7. Successors and Assigns. This Seventh Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. Counterparts. This Seventh Supplemental Indenture may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of such counterparts shall together constitute one and the same instrument.

9. Governing Law. This Seventh Supplemental Indenture shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of laws.

IN WITNESS WHEREOF, the Issuer, the Additional Guarantor and the Trustee have caused this Seventh Supplemental Indenture to be duly executed as of the date first above written.

ISSUER:

MERITAGE HOMES CORPORATION

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman, Co-President and
Co-Chief Executive Officer

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Chief Financial Officer, Vice
President-Finance and Secretary

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ADDITIONAL GUARANTOR:

MERITAGE HOMES OF FLORIDA, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

TRUSTEE:

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By: /s/ Jeanie Mar
Its: Vice President

GUARANTORS:

MONTEREY HOMES ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief
Executive Officer

MERITAGE PASEO CROSSING, LLC

By: Meritage Homes of Arizona, Inc., its Sole
Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Chairman

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ADDITIONAL GUARANTOR:

MERITAGE HOMES OF FLORIDA, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

TRUSTEE:

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By: /s/ Maddy Hall

Its: Trust Officer

GUARANTORS:

MONTEREY HOMES ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief
Executive Officer

MERITAGE PASEO CROSSING, LLC

By: Meritage Homes of Arizona, Inc., its Sole
Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Chairman

MONTEREY HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief
Executive Officer

MERITAGE PASEO CONSTRUCTION, LLC

By: Meritage Homes Construction, Inc., its Sole
Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

MERITAGE HOMES OF ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton

Title: Co-CEO and Co-Chairman

MERITAGE HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

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MTH-TEXAS GP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

MTH-TEXAS LP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

LEGACY/MONTEREY HOMES L.P.

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

MERITAGE HOMES OF CALIFORNIA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief Executive Officer

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LEGACY OPERATING COMPANY, L.P.

By: Meritage Holdings, L.L.C., its General Partner

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

HULEN PARK VENTURE, LLC

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE HOLDINGS, L.L.C.

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

MTH HOMES-TEXAS, L.P.

By: MTH-Texas GP II, Inc., its General Partner

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS GP II, INC.

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

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MTH-TEXAS LP II, INC.

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

MTH-HOMES NEVADA, INC.

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman and Chief Executive Officer

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

MTH-CAVALIER, LLC

By: Monterey Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief
Executive Officer

MTH GOLF, LLC

By: Hancock-MTH Builders, Inc., its Sole
Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and Co-CEO

LEGACY-HAMMONDS MATERIALS, L.P.

By: Meritage Holdings, L.L.C., its General
Partner

By: Legacy/Monterey Homes L.P., its Sole
Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF COLORADO, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and CEO

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

EIGHTH SUPPLEMENTAL INDENTURE

EIGHTH SUPPLEMENTAL INDENTURE, dated as of March 10, 2005 (the "Eighth Supplemental Indenture") between Meritage Homes Corporation, a corporation organized under the laws of the State of Maryland (the "Issuer"), the Guarantors named therein and Wells Fargo Bank, National Association, as trustee (the "Trustee") under the Indenture (as defined below). Capitalized terms used and not defined herein shall have the same meanings given in the Indenture unless otherwise indicated.

WHEREAS, the Issuer, the Guarantors thereto and the Trustee are parties to that certain Indenture dated as of May 30, 2001 (the "Indenture") pursuant to which the Issuer has issued its 9 3/4% Senior Notes due 2011 (the "Notes") and the Guarantors have guaranteed the obligations of the Issuer under the Indenture and the Notes;

WHEREAS, the Issuer, the Guarantors thereto, Hulen Park Venture, LLC, Meritage Holdings, L.L.C. and the Trustee are parties to that First Supplemental Indenture, dated as of September 20, 2001 pursuant to which Hulen Park Venture, LLC and Meritage Holdings, L.L.C. were added as Guarantors;

WHEREAS, the Issuer, the Guarantors thereto, MTH Homes-Texas, L.P., MTH-Texas GP II, Inc., MTH-Texas LP II, Inc. and the Trustee are parties to that Second Supplemental Indenture, dated as of July 12, 2002 pursuant to which MTH Homes-Texas, L.P., MTH-Texas GP II, Inc. and MTH-Texas LP II, Inc. were added as Guarantors;

WHEREAS, the Issuer, the Guarantors thereto, MTH-Homes Nevada, Inc. and the Trustee are parties to that Third Supplemental Indenture, dated as of October 21, 2002 pursuant to which MTH-Homes Nevada, Inc. was added as a Guarantor;

WHEREAS, the Issuer, the Guarantors thereto, MTH Cavalier, LLC and the Trustee are parties to that Fourth Supplemental Indenture, dated as of February 19, 2003 pursuant to which MTH Cavalier, LLC was added as a Guarantor;

WHEREAS, the Issuer, the Guarantors thereto, Mission Royale Golf Course, LLC, Legacy-Hammonds Materials, L.P. and the Trustee are parties to that Fifth Supplemental Indenture, dated as of August 22, 2003 pursuant to which Mission Royale Golf Course, LLC and Legacy-Hammonds Materials, L.P. were added as Guarantors;

WHEREAS, the Issuer, the Guarantors thereto, Meritage Homes of Colorado, Inc. and the Trustee are parties to the Sixth Supplemental Indenture, dated as of May 14, 2004 pursuant to which Meritage Homes of Colorado, Inc. was added as a Guarantor;

WHEREAS, the Issuer, the Guarantors thereto, Meritage Homes of Florida, Inc. and the Trustee are parties to the Seventh Supplemental Indenture, dated as of December 20, 2004 pursuant to which Meritage Homes of Florida, Inc. was added as a Guarantor;

WHEREAS, the Issuer is making an offer to purchase for cash all outstanding Notes upon the terms and subject to the conditions set forth in the Offer to Purchase and Consent Solicitation Statement and accompanying Consent and Letter of Transmittal dated February 23, 2005 (the "Tender Offer and Consent");

WHEREAS, pursuant to the Tender Offer and Consent, the Issuer has solicited from Holders of the Notes consents to certain amendments to the Indenture, which are contained in this Eighth Supplemental Indenture;

WHEREAS, Section 8.02 of the Indenture provides that the Issuer, upon written request accompanied by a Board Resolution, and the Trustee may, with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, enter into a supplemental indenture to provide for, among other things, the amendments set forth below, except with respect to Section 4.20 of the Indenture regarding changes of control which requires the consent of the Holders of at least two-thirds of the aggregate principal amount of the Notes then outstanding;

WHEREAS, the Tender Offer and Consent is conditioned upon, among other things, the proposed amendments (the "Proposed Amendments") to the Indenture set forth herein having been approved by at least a majority in aggregate principal amount of the Notes then outstanding, except with respect to the proposed amendments to Section 4.20 of the Indenture regarding changes of control which requires the consent of the Holders of at least two-thirds of the aggregate principal amount of the Notes then outstanding, with the effectiveness of such Proposed Amendments subject to the initial acceptance for payment by the Issuer pursuant to the Tender Offer and Consent of at least a majority in aggregate outstanding principal amount of the Notes;

WHEREAS, the Issuer has received and delivered to the Trustee the requisite consents to effect the Proposed Amendments under the Indenture and the Notes; and

WHEREAS, all other acts and proceedings required by law, by the Indenture and the articles of incorporation and by-laws of the Issuer to make this Eighth Supplemental Indenture a valid and binding agreement of the Issuer for the purposes expressed herein, in accordance with its terms, have been fully done and performed;

NOW, THEREFORE, each party hereto agrees as follows for the benefit of each other party and for the equal and ratable benefit of the Holders of the Notes:

1. Amendments.

(a) The Indenture is hereby amended by deleting Sections 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18 and 4.20 of the Indenture and all references thereto in the Indenture in their entirety.

(b) The Indenture is hereby amended by amending Section 4.02 to read in its entirety as follows:

"The Issuer shall at all times comply with TIA Section 314(a)."

(c) The Indenture is hereby amended by amending Section 5.01 to read in its entirety as follows:

"The Issuer shall not, directly or indirectly, in a single transaction or a series of related transactions, (a) consolidate or merge with or into (other than a merger that satisfies the requirements of clause (1) below with a Wholly-Owned

Restricted Subsidiary solely for the purpose of changing the Issuer's jurisdiction of incorporation to another State of the United States), or sell, lease, transfer, convey or otherwise dispose of or assign all or substantially all of the assets of the Issuer or the Issuer and the Restricted Subsidiaries (taken as a whole) or (b) adopt a Plan of Liquidation unless, in either case:

(1) either:

(a) the Issuer will be the surviving or continuing Person; or

(b) the Person formed by or surviving such consolidation or merger or to which such sale, lease, conveyance or other disposition shall be made (or, in the case of a Plan of Liquidation, any Person to which assets are transferred) (collectively, the “Successor”) is a corporation or limited liability company organized and existing under the laws of any State of the United States of America or the District of Columbia, and the Successor expressly assumes, by supplemental indenture in form and substance satisfactory to the Trustee, all of the obligations of the Issuer under the Notes, this Indenture and the Registration Rights Agreement; provided that at any time the Successor is a limited liability company, there shall be a co-issuer of the Notes that is a corporation; and

(2) immediately prior to and immediately after giving effect to such transaction and the assumption of the obligations as set forth in clause (1)(b) above and the incurrence of any Indebtedness to be incurred in connection therewith, no Default shall have occurred and be continuing.

Except as provided under Section 10.04 no Guarantor may consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, whether or not affiliated with such Guarantor, unless:

(1) either:

(a) such Guarantor will be the surviving or continuing Person; or

(b) the Person formed by or surviving any such consolidation or merger assumes, by supplemental indenture in form and substance satisfactory to the Trustee, all of the obligations of such Guarantor under the Note Guarantee of such Guarantor, this Indenture and the Registration Rights Agreement; and

(2) immediately after giving effect to such transaction, no Default shall have occurred and be continuing.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the assets of one or more Restricted Subsidiaries, the Equity Interests of which constitute all or substantially all of the assets of the Issuer, will be deemed to be the transfer of all or substantially all of the assets of the Issuer.

Upon any consolidation, combination or merger of the Issuer or a Guarantor, or any transfer of all or substantially all of the assets of the Issuer in accordance with the

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foregoing, in which the Issuer or such Guarantor is not the continuing obligor under the Notes or its Note Guarantee, the surviving entity formed by such consolidation or into which the Issuer or such Guarantor is merged or to which the conveyance, lease or transfer is made will succeed to, and be substituted for, and may exercise every right and power of, the Issuer or such Guarantor under this Indenture, the Notes and the Note Guarantees with the same effect as if such surviving entity had been named therein as the Issuer or such Guarantor and, except in the case of a conveyance, transfer or lease, the Issuer or such Guarantor, as the case may be, will be released from the obligation to pay the principal of and interest on the Notes or in respect of its Note Guarantee, as the case may be, and all of the Issuer’s or such Guarantor’s other obligations and covenants under the Notes, this Indenture and its Note Guarantee, if applicable.

Notwithstanding the foregoing, any Restricted Subsidiary may merge into the Issuer or another Restricted Subsidiary.”

(d) The Indenture is hereby amended by amending Section 6.01 to read in its entirety as follows:

“Each of the following is an “Event of Default”:

(1) failure by the Issuer to pay interest on any of the Notes when it becomes due and payable and the continuance of any such failure for 30 days;

(2) failure by the Issuer to pay the principal on any of the Notes when it becomes due and payable, whether at stated maturity, upon redemption, upon purchase, upon acceleration or otherwise;

(3) failure by the Issuer to comply with Section 5.01; and

(4) failure by the Issuer to comply with any other agreement or covenant in this Indenture and continuance of this failure for 30 days after notice of the failure has been given to the Issuer by the Trustee or by the Holders of at least 25% of the aggregate principal amount of the Notes then outstanding.

Subject to Section 7.01 and 7.02, the Trustee shall not be charged with knowledge of any Default, Change of Control or Asset Sale or the requirement for payment of Liquidated Damages unless written notice thereof shall have been given to a Responsible Officer at the Corporate Trust Office of the Trustee by the Issuer or any other Person.”

(e) All terms defined in Sections 4.06, 4.08, 4.09, 4.10, 4.15, 4.16 and 4.20 of the Indenture deleted pursuant to this Eighth Supplemental Indenture, but not used elsewhere in the Indenture or the Notes, are hereby deleted in their entirety.

2. Effectiveness. This Eighth Supplemental Indenture supplements the Indenture and shall be a part and subject to all of the terms thereof. Except as supplemented hereby, the Indenture shall continue in full force and effect.

The amendments effected by this Eighth Supplemental Indenture shall take effect on the date that each of the following conditions shall have been satisfied or waived:

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(a) each of the parties hereto shall have executed and delivered this Eighth Supplemental Indenture; and

(b) the Issuer shall have received written consent to these amendments from the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, except with respect to the amendments to Section 4.20 of the Indenture regarding changes of control which requires the consent of the Holders of at least two-thirds of the aggregate principal amount of Notes then outstanding;

provided, however, that the amendments set forth in Section 1 of this Eighth Supplemental Indenture shall become operative only upon and simultaneously with, and shall have no force and effect prior to, the Initial Payment Date as defined in the Tender Offer and Consent.

3. Trust Indenture Act Controls. If any provision of this Eighth Supplemental Indenture limits, qualifies or conflicts with another provision of this Eighth Supplemental Indenture or the Indenture that is required to be included by the Trust Indenture Act of 1939, as amended, as in force at the date of this Eighth Supplemental Indenture is executed, the provision required by the Trust Indenture Act shall control.

4. Effect of Recitals. The recitals contained herein shall be taken as statements of the Issuer and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Eighth Supplemental Indenture.

5. Governing Law. This Eighth Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York, as applied to contracts made and performed within the State of New York.

6. Multiple Counterparts. The parties may sign multiple counterparts of this Eighth Supplemental Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and the same agreement

7. Separability. Each provision of this Eighth Supplemental Indenture shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purpose of this Eighth Supplemental Indenture or the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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IN WITNESS WHEREOF, the parties have caused this Eighth Supplemental Indenture to be executed as of the date first written above.

ISSUER:

MERITAGE HOMES CORPORATION

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and CEO

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Chief Financial Officer

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TRUSTEE:

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By: /s/ Maddy Hall

Its: Trust Officer

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GUARANTORS:

MONTEREY HOMES ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief
Executive Officer

MERITAGE PASEO CROSSING, LLC

By: Meritage Homes of Arizona, Inc., its Sole
Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Chairman

MONTEREY HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton

MERITAGE PASEO CONSTRUCTION, LLC

By: Meritage Homes Construction, Inc., its Sole
Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

MERITAGE HOMES OF ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

MERITAGE HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

MTH-TEXAS GP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

MTH-TEXAS LP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

LEGACY/MONTEREY HOMES L.P.

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

MERITAGE HOMES OF CALIFORNIA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-CEO, President and Chief
Executive Officer

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LEGACY OPERATING COMPANY, L.P.

By: Meritage Holdings, L.L.C., its General
Partner

By: Legacy/Monterey Homes L.P., its Sole
Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

HULEN PARK VENTURE, LLC

By: Legacy/Monterey Homes L.P., its Sole
Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOLDINGS, L.L.C.

By: Legacy/Monterey Homes L.P., its Sole
Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MTH HOMES-TEXAS, L.P.

By: MTH-Texas GP II, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS GP II, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS LP II, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-HOMES NEVADA, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and Chief Executive Officer

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MTH-CAVALIER, LLC

By: Monterey Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief Executive Officer

MTH GOLF, LLC

By: Hancock-MTH Builders, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and Co-CEO

LEGACY-HAMMONDS MATERIALS, L.P.

By: Meritage Holdings, L.L.C., its General Partner

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE HOMES OF COLORADO, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and CEO

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF FLORIDA, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

SECOND SUPPLEMENTAL INDENTURE, dated as of December 20, 2004 (the "Second Supplemental Indenture") between Meritage Homes Corporation, a corporation organized under the laws of the State of Maryland (the "Issuer"), the Guarantors named therein, Meritage Homes of Florida, Inc. (the "Additional Guarantor") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), under the Indenture (as defined below). Capitalized terms used and not defined herein shall have the same meanings given in the Indenture unless otherwise indicated.

WHEREAS, the Issuer, the Guarantors thereto and the Trustee are parties to that certain Indenture dated as of April 21, 2004 (the "Indenture") pursuant to which the Company issued its 7% Senior Notes 2014 (the "Notes") and the Guarantors guaranteed the obligations of the Issuer under the Indenture and the Notes;

WHEREAS, the Issuer, the Guarantors thereto, Meritage Homes of Colorado, Inc. and the Trustee are parties to the First Supplemental Indenture, dated as of May 14, 2004 (the "First Supplemental Indenture") pursuant to which Meritage Homes of Colorado, Inc. was added as a Guarantor;

WHEREAS, pursuant to Section 4.13 of the Indenture, if the Issuer acquires or creates any additional subsidiary which is a Restricted Subsidiary, each such subsidiary shall execute and deliver a supplemental indenture pursuant to which such subsidiary shall unconditionally guaranty the Issuer's obligations under the Notes;

WHEREAS, the Additional Guarantor is a Restricted Subsidiary of the Issuer;

WHEREAS, the Issuer and the Trustee desire to have the Additional Guarantor enter into this Second Supplemental Indenture and agree to guaranty the obligations of the Issuer under the Indenture and the Notes and the Additional Guarantor desires to enter into this Second Supplemental Indenture and to guaranty the obligations of the Issuer under the Indenture and the Notes as of such date;

WHEREAS, Section 8.01 of the Indenture provides that the Issuer, the Guarantors and the Trustee may, without the written consent of the Holders of the outstanding Notes, amend the Indenture as provided herein;

WHEREAS, by entering into this Second Supplemental Indenture, the Issuer and the Trustee have consented to amend the Indenture in accordance with the terms and conditions herein;

WHEREAS, each Guarantor hereby acknowledges and consents to amend the Indenture in accordance with the terms and conditions herein; and

WHEREAS, all acts and things prescribed by the Articles of Incorporation and Bylaws of the Additional Guarantor (as now in effect) necessary to make this Second Supplemental Indenture a valid instrument legally binding on the Additional Guarantor for the purposes herein expressed, in accordance with its terms, have been duly done and performed.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuer, the Additional Guarantor and the Trustee hereby agree for the benefit of each other and the equal and ratable benefit of the Holders of the Notes as follows:

1. Additional Guarantor as Guarantor. As of the date hereof and pursuant to this Second Supplemental Indenture, the Additional Guarantor shall become a Guarantor under the definition of Guarantor in the Indenture in accordance with the terms and conditions of the Indenture and shall assume all rights and obligations of a Guarantor thereunder.
2. Compliance with and Fulfillment of Condition of Section 4.13. The execution and delivery of this Second Supplemental Indenture by the Additional Guarantor (along with such documentation relating thereto as the Trustee shall require) fulfills the obligations of the Issuer under Section 4.13 of the Indenture.
3. Construction. For all purposes of this Second Supplemental Indenture, except as otherwise herein expressly provided or unless the context otherwise requires: (i) the defined terms and expressions used herein shall have the same meanings as corresponding terms and expressions used in the Indenture; and (ii) the words "herein," "hereof" and "hereby" and other words of similar import used in this Second Supplemental Indenture refer to this Second Supplemental Indenture as a whole and not to any particular Section hereof.
4. Trustee Acceptance. The Trustee accepts the amendment of the Indenture effected by this Second Supplemental Indenture, as hereby amended, but only upon the terms and conditions set forth in the Indenture, as hereby amended, including the terms and provisions defining and limiting the liabilities and responsibilities of the Trustee in the performance of its duties and obligations under the Indenture, as hereby amended. Without limiting the generality of the foregoing, the Trustee has no responsibility for the correctness of the recitals of fact herein contained which shall be taken as the statements of each of the Issuer and the Additional Guarantor, respectively, and makes no representations as to the validity or enforceability against either the Issuer or the Additional Guarantor.
5. Indenture Ratified. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect.
6. Holders Bound. This Second Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of the Notes heretofore or hereafter authenticated and delivered shall be bound hereby.
7. Successors and Assigns. This Second Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
8. Counterparts. This Second Supplemental Indenture may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of such counterparts shall together constitute one and the same instrument.

9. Governing Law. This Second Supplemental Indenture shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of laws.

IN WITNESS WHEREOF, the Issuer, the Additional Guarantor and the Trustee have caused this Second Supplemental Indenture to be duly executed as of the date Second above written.

ISSUER:

MERITAGE HOMES CORPORATION

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman, Co-President and Co-Chief Executive Officer

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Chief Financial Officer, Vice President-Finance and Secretary

ADDITIONAL GUARANTOR:

MERITAGE HOMES OF FLORIDA, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

TRUSTEE:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Jeanie Mar

Its: Vice President

GUARANTORS:

MONTEREY HOMES ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief Executive Officer

MERITAGE PASEO CROSSING, LLC

By: Meritage Homes of Arizona, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Chairman

MONTEREY HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief Executive Officer

MERITAGE PASEO CONSTRUCTION, LLC

By: Meritage Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

MERITAGE HOMES OF ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

MERITAGE HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO and Co-Chairman

MTH-TEXAS GP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

MTH-TEXAS LP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

LEGACY/MONTEREY HOMES L.P.

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

MERITAGE HOMES OF CALIFORNIA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief
Executive Officer

By: Meritage Holdings, L.L.C., its General Partner

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

HULEN PARK VENTURE, LLC

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE HOLDINGS, L.L.C.

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

MTH HOMES-TEXAS, L.P.

By: MTH-Texas GP II, Inc., its General Partner

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS GP II, INC.

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS LP II, INC.

By: /s/ Steven J. Hilton

Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay

Name: Larry W. Seay
Title: Vice President-Secretary

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MTH-HOMES NEVADA, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and Chief Executive Officer

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-CAVALIER, LLC

By: Monterey Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-CEO, President and Chief Executive Officer

MTH GOLF

By: Hancock-MTH Builders, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and Co-CEO

LEGACY-HAMMONDS MATERIALS, L.P.

By: Meritage Holdings, L.L.C., its General Partner

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF COLORADO, INC.

By: /s/ Steven J. Hilton
Name: Steven J. Hilton
Title: Co-Chairman and CEO

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES CORPORATION,

THE GUARANTORS
named herein

and

WELLS FARGO BANK, National Association, as Trustee

INDENTURE

Dated as of March 10, 2005

6¼% Senior Notes due 2015

CROSS-REFERENCE TABLE

TIA Section	Indenture Section
310 (a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	7.08; 7.10; 12.02
(b)(1)	7.10
(c)	N.A.
311 (a)	7.11
(b)	7.11
(c)	N.A.
312 (a)	2.06
(b)	12.03
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(b)(1)	N.A.
(b)(2)	7.06
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(d)	7.06
314 (a)	4.02; 4.04; 12.02
(b)	N.A.
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(c)(2)	12.04
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
(f)	N.A.
315 (a)	7.01(b)
(b)	7.05; 12.02
(c)	7.01(a)
(d)	7.01(c)
(e)	6.12
316 (a) (last sentence)	2.10
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.08
(c)	8.04
317 (a)(1)	6.09
(a)(2)	6.10
(b)	2.05; 7.12
318 (a)	12.01

N.A. means Not Applicable

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be a part of the Indenture

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INDENTURE, dated as of March 10, 2005, among MERITAGE HOMES CORPORATION, a Maryland corporation, as issuer (the “Issuer”), the Guarantors (as hereinafter defined) and WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders.

ARTICLE ONE

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

“Acquired Indebtedness” means (1) with respect to any Person that becomes a Restricted Subsidiary after the Issue Date, Indebtedness of such Person and its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary that was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary and (2) with respect to the Issuer or any Restricted Subsidiary, any Indebtedness of a Person (other than the Issuer or a Restricted Subsidiary) existing at the time such Person is merged with or into the Issuer or a Restricted Subsidiary, or Indebtedness expressly assumed by the Issuer or any Restricted Subsidiary in connection with the acquisition of an asset or assets from another Person, which Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition.

“Additional Notes” shall mean an unlimited principal amount of Notes having identical terms and conditions to the Notes issued pursuant to Article Two and in compliance with Section 4.06.

“Adjusted Net Assets” of a Guarantor at any date shall mean the lesser of the amount by which (x) the fair value of the property of such Guarantor exceeds the total amount of liabilities, including, without limitation, contingent liabilities (after giving effect to all other fixed and contingent liabilities), but excluding liabilities under the Guarantee, of such Guarantor at such date and (y) the present fair salable value of the assets of such Guarantor at such date exceeds the amount that will be required to pay the probable liability of such Guarantor on its debts and all other fixed and contingent liabilities (after giving effect to all other fixed and contingent liabilities and after giving effect to any collection from any Subsidiary of such Guarantor in respect of the obligations of such Guarantor under the Guarantee), excluding Indebtedness in respect of the Guarantee, as they become absolute and matured.

“Affiliate” of any Person means any other Person which directly or indirectly controls or is controlled by, or is under direct or indirect common control with, the referent Person.

For purposes of Section 4.10, Affiliates shall be deemed to include, with respect to any Person, any other Person (1) which beneficially owns or holds, directly or indirectly, 10% or more of any class of the Voting Stock of the referent Person, (2) of which 10% or more of the Voting Stock is beneficially owned or held, directly or indirectly, by the referent Person or (3) with respect to an individual, any immediate family member of such Person. For purposes of this definition, “control” of a Person shall mean 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.

“Agent” means any Registrar, Paying Agent or agent for service or notices and demands.

“amend” means to amend, supplement, restate, amend and restate or otherwise modify; and “amendment” shall have a correlative meaning.

“asset” means any asset or property.

“Asset Acquisition” means

(1) an Investment by the Issuer or any Restricted Subsidiary of the Issuer in any other Person if, as a result of such Investment, such Person shall become a Restricted Subsidiary of the Issuer, or shall be merged with or into the Issuer or any Restricted Subsidiary of the Issuer, or

(2) the acquisition by the Issuer or any Restricted Subsidiary of the Issuer of all or substantially all of the assets of any other Person or any division or line of business of any other Person.

“Asset Sale” means any sale, issuance, conveyance, transfer, lease, assignment or other disposition by the Issuer or any Restricted Subsidiary to any Person other than the Issuer or any Restricted Subsidiary (including by means of a Sale and Leaseback Transaction or a merger or consolidation) (collectively, for purposes of this definition, a “transfer”), in one transaction or a series of related transactions, of any assets (including Equity Interests) of the Issuer or any of its Restricted Subsidiaries other than in the ordinary course of business. For purposes of this definition, the term “Asset Sale” shall not include:

- (1) transfers of cash or Cash Equivalents;
- (2) transfers of assets (including Equity Interests) that are governed by, and made in accordance with, Section 5.01;
- (3) Permitted Investments and Restricted Payments permitted under Section 4.08;

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(4) the creation or realization of any Permitted Lien;

(5) transactions in the ordinary course of business, including, without limitation, sales (directly or indirectly), dedications and other donations to governmental authorities, leases and sales and leasebacks of (A) homes, improved land and unimproved land and (B) real estate (including related amenities and improvements);

(6) dispositions of mortgage loans and related assets and mortgage-backed securities in the ordinary course of a mortgage lending business; and

(7) any transfer or series of related transfers that, but for this clause, would be Asset Sales, if after giving effect to such transfers, the aggregate Fair Market Value of the assets transferred in such transaction or any such series of related transactions does not exceed \$1.0 million.

“Attributable Indebtedness”, when used with respect to any Sale and Leaseback Transaction, means, as at the time of determination, the present value (discounted at a rate equivalent to the Issuer’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of any Capitalized Lease included in any such Sale and Leaseback Transaction.

“Bankruptcy Event” means the commencement of any case under the Bankruptcy Code (Title 11 of the United States Code) or the commencement of any other bankruptcy, reorganization, receivership, or similar proceeding under any federal, state or foreign law or by or against any Person for whom the Company or a Restricted Subsidiary has executed a Springing Guarantee for the benefit of such Person; provided, however, that the filing of an involuntary case against such Person shall only be a Bankruptcy Event if: (i) such involuntary case is filed in whole or in part by the Company or a Restricted Subsidiary, any member in such Person which is an affiliate of the Company or a Restricted Subsidiary, or any other affiliate of the Company or a Restricted Subsidiary, or (ii) the Company or a Restricted Subsidiary, any member in such Person which is an affiliate of the Company or a Restricted Subsidiary, or any other affiliate of the Company or a Restricted Subsidiary shall in any way induce or participate in the filing, whether directly or indirectly, of an involuntary bankruptcy case against such Person or any other Person, and such involuntary case or proceeding is not dismissed with prejudice within 120 days of the filing thereof.

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

“Board of Directors” means, with respect to any Person, the board of directors or comparable governing body of such Person.

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“Board Resolution” means a copy of a resolution certified pursuant to an Officers’ Certificate to have been duly adopted by the Board of Directors of the Issuer and to be in full force and effect, and delivered to the Trustee.

“Borrowing Base” means, at any time of determination, the sum of the following without duplication:

- (1) 100% of all cash and Cash Equivalents held by the Issuer or any Restricted Subsidiary;
- (2) 75% of the book value of Developed Land for which no construction has occurred;
- (3) 95% of the cost of the land and construction costs including capitalized interest (as reasonably allocated by the Issuer) for all Units for which there is an executed purchase contract with a buyer not Affiliated with the Issuer, less any deposits, down payments or earnest money;
- (4) 80% of the cost of the land and construction costs including capitalized interest (as reasonably allocated by the Issuer) for all Units for which construction has begun and for which there is not an executed purchase agreement with a buyer not Affiliated with the Issuer; and
- (5) 50% of the costs of Entitled Land (other than Developed Land) on which improvements have not commenced, less mortgage Indebtedness (other than under a Credit Facility) applicable to such land.

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

“Capitalized Lease” means a lease required to be capitalized for financial reporting purposes in accordance with GAAP.

“Capitalized Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under a Capitalized Lease, and the amount of such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Equivalents” means:

- (1) marketable obligations with a maturity of 360 days or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof;

(2) demand and time deposits and certificates of deposit or acceptances with a maturity of 180 days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$500 million and is assigned at least a "B" rating by Thomson Financial BankWatch;

(3) commercial paper maturing no more than 180 days from the date of creation thereof issued by a corporation that is not the Issuer or an Affiliate of the Issuer, and is organized under the laws of any state of the United States of America or the District of Columbia and rated at least A-1 by S&P or at least P-1 by Moody's;

(4) repurchase obligations with a term of not more than ten days for underlying securities of the types described in clause (1) above entered into with any commercial bank meeting the specifications of clause (2) above; and

(5) investments in money market or other mutual funds substantially all of whose assets comprise securities of the types described in clauses (1) through (4) above.

"Change of Control" means the occurrence of any of the following events:

(1) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause that person or group shall be deemed to have "beneficial ownership" of all securities that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock representing more than 50% of the voting power of the total outstanding Voting Stock of the Issuer;

(2) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Issuer (together with any new directors whose election to such Board of Directors or whose nomination for election by the stockholders of the Issuer was approved by a vote of the majority of the directors of the Issuer then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Issuer;

(3) (a) all or substantially all of the assets of the Issuer and the Restricted Subsidiaries are sold or otherwise transferred to any Person other than a Wholly-Owned Restricted Subsidiary or one or more Permitted Holders or (b) the Issuer consolidates or merges with or into another Person other than a Permitted Holder or any Person other than a Permitted Holder consolidates or merges with or into the Issuer, in either case under this clause (3), in one transaction or a series of related transactions in which immediately

after the consummation thereof Persons owning Voting Stock representing in the aggregate 100% of the total voting power of the Voting Stock of the Issuer immediately prior to such consummation do not own Voting Stock representing a majority of the total voting power of the Voting Stock of the Issuer or the surviving or transferee Person; or

(4) the Issuer shall adopt a plan of liquidation or dissolution or any such plan shall be approved by the stockholders of the Issuer.

"Change of Control Triggering Event" means the occurrence of both a Change of Control and a Rating Decline.

"Consolidated Amortization Expense" for any period means the amortization expense of the Issuer and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Consolidated Cash Flow Available for Fixed Charges" for any period means, without duplication, the sum of the amounts for such period of

(1) Consolidated Net Income, plus

(2) in each case only to the extent (and in the same proportion) deducted in determining Consolidated Net Income and with respect to the portion of Consolidated Net Income attributable to any Restricted Subsidiary only if a corresponding amount would be permitted at the date of determination to be distributed to the Issuer by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its stockholders,

(a) Consolidated Income Tax Expense,

(b) Consolidated Amortization Expense (but only to the extent not included in Consolidated Interest Expense),

(c) Consolidated Depreciation Expense,

(d) Consolidated Interest Expense and interest and other charges amortized to cost of home sales and cost of land sales, and

(e) all other non-cash items reducing the Consolidated Net Income (excluding any non-cash charge that results in an accrual of a reserve for cash charges in any future period) for such period,

in each case determined on a consolidated basis in accordance with GAAP, minus

(3) the aggregate amount of all non-cash items, determined on a consolidated basis, to the extent such items increased Consolidated Net Income for such period.

"Consolidated Depreciation Expense" for any period means the depreciation expense of the Issuer and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" means the ratio of Consolidated Cash Flow Available for Fixed Charges during the most recent four

consecutive full fiscal quarters for which financial statements are available (the “Four-Quarter Period”) ending on or prior to the date of the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (the “Transaction Date”) to Consolidated Interest Incurred for the Four-Quarter Period. For purposes of this definition, Consolidated Cash Flow Available for Fixed Charges and Consolidated Interest Incurred shall be calculated after giving effect on a pro forma basis for the period of such calculation to:

- (1) the incurrence of any Indebtedness or the issuance of any Preferred Stock of the Issuer or any Restricted Subsidiary (and the application of the proceeds thereof) and any repayment of other Indebtedness or redemption of other Preferred Stock (and the application of the proceeds therefrom) (other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to any revolving credit arrangement) occurring during the Four-Quarter Period or at any time subsequent to the last day of the Four-Quarter Period and on or prior to the Transaction Date, as if such incurrence, repayment, issuance or redemption, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four-Quarter Period; and
- (2) any Asset Sale or Asset Acquisition (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of the Issuer or any Restricted Subsidiary (including any Person who becomes a Restricted Subsidiary as a result of such Asset Acquisition) incurring Acquired Indebtedness and also including any Consolidated Cash Flow Available for Fixed Charges (including any pro forma expense and cost reductions calculated on a basis consistent with Regulation S-X under the Exchange Act) associated with any such Asset Acquisition) occurring during the Four-Quarter Period or at any time subsequent to the last day of the Four-Quarter Period and on or prior to the Transaction Date, as if such Asset Sale or Asset Acquisition or other disposition (including the incurrence of, or assumption or liability for, any such Indebtedness or Acquired Indebtedness) occurred on the first day of the Four-Quarter Period.

If the Issuer or any Restricted Subsidiary directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed Indebtedness as if the Issuer or such Restricted Subsidiary had directly incurred or otherwise assumed such guaranteed Indebtedness.

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In calculating Consolidated Interest Incurred for purposes of determining the denominator (but not the numerator) of the Consolidated Fixed Charge Coverage Ratio:

- (1) interest on outstanding Indebtedness determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on this Indebtedness in effect on the Transaction Date;
- (2) if interest on any Indebtedness actually incurred on the Transaction Date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the Transaction Date will be deemed to have been in effect during the Four-Quarter Period; and
- (3) notwithstanding clause (1) or (2) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements with a term of at least one year after the Transaction Date relating to Hedging Obligations, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of these agreements.

“Consolidated Income Tax Expense” for any period means the provision for taxes of the Issuer and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Consolidated Indebtedness” means, as of any date, the total Indebtedness of the Issuer and the Restricted Subsidiaries as of such date, determined on a consolidated basis.

“Consolidated Interest Expense” for any period means the sum, without duplication, of the total interest expense (other than interest and other charges amortized to cost of home sales and cost of land sales) of the Issuer and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP and including, without duplication,

- (1) imputed interest on Capitalized Lease Obligations and Attributable Indebtedness,
- (2) commissions, discounts and other fees and charges owed with respect to letters of credit securing financial obligations, bankers’ acceptance financing and receivables financings,
- (3) the net costs associated with Hedging Obligations,
- (4) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses,

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- (5) the interest portion of any deferred payment obligations,
- (6) all other non-cash interest expense,
- (7) the product of (a) all dividend payments on any series of Disqualified Equity Interests of the Issuer or any Preferred Stock of any Restricted Subsidiary (other than any such Disqualified Equity Interests or any Preferred Stock held by the Issuer or a Wholly-Owned Restricted Subsidiary), multiplied by (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of the Issuer and the Restricted Subsidiaries, expressed as a decimal,
- (8) all interest payable with respect to discontinued operations, and
- (9) all interest on any Indebtedness of any other Person guaranteed by the Issuer or any Restricted Subsidiary.

“Consolidated Interest Incurred” for any period means the sum, without duplication, of (1) Consolidated Interest Expense and (2) interest capitalized for such period (including interest capitalized with respect to discontinued operations but not including interest or other charges amortized to cost of home sales and cost of land sales).

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

- (1) the net income (or loss) of any Person (other than a Restricted Subsidiary) in which any Person other than the Issuer and the Restricted Subsidiaries has an ownership interest, except to the extent that cash in an amount equal to any such income has actually been received by the Issuer or any of its Restricted

Subsidiaries during such period;

(2) except to the extent includible in the consolidated net income of the Issuer pursuant to the foregoing clause (1), the net income (or loss) of any Person that accrued prior to the date that (a) such Person becomes a Restricted Subsidiary or is merged into or consolidated with the Issuer or any Restricted Subsidiary or (b) the assets of such Person are acquired by the Issuer or any Restricted Subsidiary;

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

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(4) for the purposes of calculating the Restricted Payments Basket only, in the case of a successor to the Issuer by consolidation, merger or transfer of its assets, any income (or loss) of the successor prior to such merger, consolidation or transfer of assets;

(5) other than for purposes of calculating the Restricted Payments Basket, any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized during such period by the Issuer or any Restricted Subsidiary upon (a) the acquisition of any securities, or the extinguishment of any Indebtedness, of the Issuer or any Restricted Subsidiary or (b) any Asset Sale by the Issuer or any Restricted Subsidiary; and

(6) other than for purposes of calculating the Restricted Payments Basket, any extraordinary gain (or extraordinary loss), together with any related provision for taxes on any such extraordinary gain (or the tax effect of any such extraordinary loss), realized by the Issuer or any Restricted Subsidiary during such period.

In addition, any return of capital with respect to an Investment that increased the Restricted Payments Basket pursuant to clause (3)(d) of the first paragraph of Section 4.08 or decreased the amount of Investments outstanding pursuant to clause (14) of the definition of "Permitted Investments" shall be excluded from Consolidated Net Income for purposes of calculating the Restricted Payments Basket.

"Consolidated Net Worth" means, with respect to any Person as of any date, the consolidated stockholders' equity of such Person, determined on a consolidated basis in accordance with GAAP, less (without duplication) (1) any amounts thereof attributable to Disqualified Equity Interests of such Person or its Subsidiaries or any amount attributable to Unrestricted Subsidiaries and (2) all write-ups (other than write-ups resulting from foreign currency translations and write-ups of tangible assets of a going concern business made within twelve months after the acquisition of such business) subsequent to the Issue Date in the book value of any asset owned by such Person or a Subsidiary of such Person.

"Consolidated Tangible Assets" means, as of any date, the total amount of assets of the Issuer and the Restricted Subsidiaries on a consolidated basis at the end of the fiscal quarter immediately preceding such date, as determined in accordance with GAAP, less (1) Intangible Assets and (2) any assets securing Non-Recourse Indebtedness.

"Consolidated Tangible Net Worth" means, with respect to any Person as of any date, the Consolidated Net Worth of such Person as of such date less (without duplication) all Intangible Assets of such Person as of such date.

"Corporate Trust Office" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of

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execution is located at Wells Fargo Bank, National Association, Corporate Trust Department, 707 Wilshire Boulevard, 17th Floor, Los Angeles, California 90017.

"Credit Facilities" means the Credit Agreement, dated as of December 12, 2002, as amended, among the Issuer, Guaranty Bank, as administrative agent and swingline lender, Bank One, NA, as syndication agent, Fleet National Bank, as documentation agent, and the other lenders party thereto, including any notes, guarantees, collateral and security documents, instruments and agreements executed in connection therewith (including Hedging Obligations related to the Indebtedness incurred thereunder), and in each case as amended or refinanced from time to time, including any agreement extending the maturity of, refinancing, replacing or otherwise restructuring (including increasing the amount of borrowings or other Indebtedness outstanding or available to be borrowed thereunder) all or any portion of the Indebtedness under such agreements, and any successor or replacement agreement or agreements with the same or any other agents, creditor, lender or group of creditors or lenders.

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

"Default" means (1) any Event of Default or (2) any event, act or condition that, after notice or the passage of time or both, would be an Event of Default.

"Depository" means, with respect to the Notes issued in the form of one or more Global Notes, The Depository Trust Company or another Person designated as Depository by the Issuer, which Person must be a clearing agency registered under the Exchange Act.

"Designation" has the meaning given to this term in Section 4.15.

"Designation Amount" has the meaning given to this term in Section 4.15.

"Developed Land" means all Entitled Land of the Issuer and its Restricted Subsidiaries which is undergoing active development or is ready for vertical construction.

"Disposition" means, with respect to any Person, any merger, consolidation or other business combination involving such Person (whether or not such Person is the Surviving Person) or the sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of such Person's assets.

"Disqualified Equity Interests" of any Person means any Equity Interests of such Person that, by their terms, or by the terms of any related agreement or of any security into which they are convertible, puttable or exchangeable, are, or upon the happening of any event or the passage of time would be, required to be redeemed by such Person, whether or not at the option of the holder thereof, or mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, in whole or in part, on or prior to the date which is 91 days after the final

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maturity date of the Notes; provided, however, that any class of Equity Interests of such Person that, by its terms, authorizes such Person to satisfy in full its obligations with respect to the payment of dividends or upon maturity, redemption (pursuant to a sinking fund or otherwise) or repurchase thereof or otherwise by the delivery of Equity Interests that are not Disqualified Equity Interests, and that are not convertible, puttable or exchangeable for Disqualified Equity Interests or Indebtedness, will not be deemed to be Disqualified Equity Interests so long as such Person satisfies its obligations with respect thereto solely by the delivery of Equity Interests that are not Disqualified Equity Interests; provided, further, however, that any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the Issuer to redeem such Equity Interests upon the occurrence of a change in control occurring prior to the final maturity date of the Notes shall not constitute Disqualified Equity Interests if the change in control provisions applicable to such Equity Interests are no more favorable to such holders than the provisions of Section 4.20 and such Equity Interests specifically provide that the Issuer will not redeem any such Equity Interests pursuant to such provisions prior to the Issuer's purchase of the Notes as required pursuant to the provisions of Section 4.20.

"Entitled Land" means all land of the Issuer and its Restricted Subsidiaries (a) on which Units may be constructed or which may be utilized for commercial, retail or industrial uses, in each case, under applicable laws and regulations and (b) the intended use by the Issuer for which is permissible under the applicable regional plan, development agreement or applicable zoning ordinance.

"Equity Interests" of any Person means (1) any and all shares or other equity interests (including common stock, preferred stock, limited liability company interests and partnership interests) in such Person and (2) all rights to purchase, warrants or options (whether or not currently exercisable), participations or other equivalents of or interests in (however designated) such shares or other interests in such Person.

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended.

"Exchange Notes" has the meaning provided in the Registration Rights Agreement.

"Fair Market Value" means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) that would be negotiated in an arm's-length transaction for cash between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as such price is determined in good faith by the Board of Directors of the Issuer or a duly authorized committee thereof, as evidenced by a resolution of such Board or committee.

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"Financing Documents" means this Indenture, the Registration Rights Agreement, the Notes and the Guarantees.

"GAAP" means 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 may be approved by a significant segment of the accounting profession of the United States, as in effect on the Measurement Date.

"guarantee" means a direct or indirect guarantee by any Person of any Indebtedness of any other Person and includes any obligation, direct or indirect, contingent or otherwise, of such Person: (1) to purchase or pay (or advance or supply funds for the purchase or payment of) Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services (unless such purchase arrangements are on arm's-length terms and are entered into in the ordinary course of business), to take-or-pay, or to maintain financial statement conditions or otherwise); or (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part). "guarantee," when used as a verb, and "guaranteed" have correlative meanings.

"Guarantors" means each Restricted Subsidiary of the Issuer on the Issue Date, and each other Person that is required to become a Guarantor by the terms of this Indenture after the Issue Date, in each case, until such Person is released from its Note Guarantee.

"Hedging Obligations" of any Person means the obligations of such Person pursuant to (1) any interest rate swap agreement, interest rate collar agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in interest rates, (2) agreements or arrangements designed to protect such Person against fluctuations in foreign currency exchange rates in the conduct of its operations, or (3) any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in commodity prices, in each case entered into in the ordinary course of business for bona fide hedging purposes and not for the purpose of speculation.

"Holder" means any registered holder, from time to time, of the Notes.

"incur" means, with respect to any Indebtedness or Obligation, incur, create, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to such Indebtedness or Obligation; provided that (1) the Indebtedness of a Person existing at the time such Person became a Restricted Subsidiary or at the time such Person merged with or into the Issuer or a Restricted Subsidiary shall be deemed to have been incurred at such time and (2) neither the accrual of interest nor the accretion of original issue discount shall be deemed to be an incurrence of Indebtedness.

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

- (1) all liabilities, contingent or otherwise, of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof);
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto);
- (4) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except trade payables and accrued expenses incurred by such Person in the ordinary course of business in connection with obtaining goods, materials or services;
- (5) the maximum fixed redemption or repurchase price of all Disqualified Equity Interests of such Person;
- (6) all Capitalized Lease Obligations of such Person;
- (7) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;
- (8) all Indebtedness of others guaranteed by such Person to the extent of such guarantee; provided that (i) Indebtedness of the Issuer or its Subsidiaries that is guaranteed by the Issuer or the Issuer's Subsidiaries shall be counted only once in the calculation of the amount of Indebtedness of the Issuer and its Subsidiaries on a consolidated basis and (ii) that a Springing Guarantee shall not be deemed to be Indebtedness under this clause (8) until the earliest to occur of (a) the demand by

a lender for payment under such Springing Guarantee, (b) the occurrence or failure to occur of any event, act or circumstance that, with or without the giving of notice and/or passage of time, entitles a lender to make a demand for payment thereunder or (c) a Bankruptcy Event;

- (9) all Attributable Indebtedness;
- (10) to the extent not otherwise included in this definition, Hedging Obligations of such Person;
- (11) all obligations of such Person under conditional sale or other title retention agreements relating to assets purchased by such Person; and

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(12) the liquidation value of Preferred Stock of a Subsidiary of such Person issued and outstanding and held by any Person other than such Person (or one of its Wholly-Owned Restricted Subsidiaries).

Notwithstanding the foregoing, (a) earn-outs or similar profit sharing arrangements provided for in acquisition agreements which are determined on the basis of future operating earnings or other similar performance criteria (which are not determinable at the time of acquisition) of the acquired assets or entities and (b) accrued expenses, trade payables, model home leases (to the extent similar in structure to the model home leases in existence on the Issue Date), customer deposits or deferred income taxes arising in the ordinary course of business shall not be considered Indebtedness. Any Indebtedness which is incurred at a discount to the principal amount at maturity thereof shall be deemed to have been incurred in the amount of the full principal amount at maturity thereof. The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above, the maximum liability of such Person for any such contingent obligations at such date and, in the case of clause (7), the lesser of (a) the Fair Market Value of any asset subject to a Lien securing the Indebtedness of others on the date that the Lien attaches and (b) the amount of the Indebtedness secured. For purposes of clause (5), the "maximum fixed redemption or repurchase price" of any Disqualified Equity Interests that do not have a fixed redemption or repurchase price shall be calculated in accordance with the terms of such Disqualified Equity Interests as if such Disqualified Equity Interests were redeemed on any date on which an amount of Indebtedness outstanding shall be required to be determined pursuant to this Indenture.

Notwithstanding the above, this Indenture does not restrict any Unrestricted Subsidiary from incurring Indebtedness nor will Indebtedness of any Unrestricted Subsidiaries be included in the Consolidated Fixed Charge Coverage Ratio or the ratio of Consolidated Indebtedness to Consolidated Tangible Net Worth hereunder, as long as the Unrestricted Subsidiary incurring such Indebtedness remains an Unrestricted Subsidiary.

"Indenture" means this Indenture as amended, restated or supplemented from time to time.

"Independent Director" means a director of the Issuer who

- (1) is independent with respect to the transaction at issue;
- (2) does not have any material financial interest in the Issuer or any of its Affiliates (other than as a result of holding securities of the Issuer); and
- (3) has not and whose Affiliates or affiliated firm has not, at any time during the twelve months prior to the taking of any action hereunder, directly or indirectly, received, or entered into any understanding or agreement to receive, compensation, payment or other benefit, of any type or form, from the Issuer or any of its Affiliates in excess

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of \$60,000, other than customary directors' fees for serving on the Board of Directors of the Issuer or any Affiliate and reimbursement of out-of-pocket expenses for attendance at the Issuer's or Affiliate's board and board committee meetings.

"Independent Financial Advisor" means an accounting, appraisal or investment banking firm of nationally recognized standing that is, in the reasonable judgment of the Issuer's Board of Directors, qualified to perform the task for which it has been engaged and disinterested and independent with respect to the Issuer and its Affiliates; provided, however, that the prior rendering of service to the Issuer or an Affiliate of the Issuer shall not, by itself, disqualify the advisor.

"Initial Purchasers" means UBS Securities LLC, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc.

"Institutional Accredited Investor" means an institution that is an "accredited investor" as that term is defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the Securities Act.

"Intangible Assets" means, with respect to any Person, all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, write-ups of assets over their carrying value (other than write-ups which occurred prior to the Measurement Date and other than, in connection with the acquisition of an asset, the write-up of the value of such asset to its Fair Market Value in accordance with GAAP on the date of acquisition) and all other items which would be treated as intangibles on the consolidated balance sheet of such Person prepared in accordance with GAAP.

"interest" means, with respect to the Notes, interest and Liquidated Damages, if any, on the Notes.

"Interest Payment Dates" means each March 15 and September 15, commencing September 15, 2005.

"Investment Grade Rating" means (1) with respect to S&P, any of the rating categories from and including AAA to and including BBB- and (2) with respect to Moody's, any of the rating categories from and including Aaa to and including Baa3.

"Investments" of any Person means:

- (1) all direct or indirect investments by such Person in any other Person in the form of loans, advances or capital contributions or other credit extensions constituting Indebtedness of such other Person, and any guarantee of Indebtedness of any other Person; provided that a Springing Guarantee shall not be deemed to be a guarantee of Indebtedness under clause (1) of this definition until the earliest to occur of (a) a demand by

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a lender for payment under such Springing Guarantee, (b) the occurrence or failure to occur of any event, act or circumstance that, with or without the giving of notice and/or passage of time, entitles a lender to make a demand for payment thereunder or (c) a Bankruptcy Event;

- (2) all purchases (or other acquisitions for consideration) by such Person of Indebtedness, Equity Interests or other securities of any other Person;
- (3) all other items that would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP; and
- (4) the Designation of any Subsidiary as an Unrestricted Subsidiary.

Except as otherwise expressly specified in this definition, the amount of any Investment (other than an Investment made in cash) shall be the Fair Market Value thereof on the date such Investment is made. The amount of Investment pursuant to clause (4) shall be the Designation Amount determined in accordance with Section 4.15. If the Issuer or any Subsidiary sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary, the Issuer shall be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Equity Interests of and all other Investments in such Subsidiary not sold or disposed of, which amount shall be determined by the Board of Directors of the Issuer. Notwithstanding the foregoing, redemptions of Equity Interests of the Issuer shall be deemed not to be Investments.

“Issue Date” means March 10, 2005.

“Issuer” means the party named as such in the first paragraph of this Indenture until a successor replaces such party pursuant to Article Five and thereafter means the successor.

“Issuer Request” means any written request signed in the name of the Issuer by the Chairman of the Board of Directors, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer or the Treasurer of the Issuer and attested to by the Secretary or any Assistant Secretary of the Issuer.

“Lien” means, with respect to any asset, any mortgage, deed of trust, lien (statutory or other), pledge, lease, easement, restriction, covenant, charge, security interest or other encumbrance of any kind or nature in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, and any lease in the nature thereof, any option or other agreement to sell, and any filing of, or agreement to give, any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction (other than cautionary filings in respect of operating leases).

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“Liquidated Damages” has the meaning set forth in the Registration Rights Agreement.

“Measurement Date” means May 30, 2001.

“Moody’s” means Moody’s Investors Service, Inc., and its successors.

“Net Available Proceeds” means, with respect to any Asset Sale, the proceeds thereof in the form of cash or Cash Equivalents, net of

- (1) brokerage commissions and other fees and expenses (including fees and expenses of legal counsel, accountants and investment banks) of such Asset Sale;
- (2) provisions for taxes payable as a result of such Asset Sale (after taking into account any available tax credits or deductions and any tax sharing arrangements);
- (3) amounts required to be paid to any Person (other than the Issuer or any Restricted Subsidiary) owning a beneficial interest in the assets subject to the Asset Sale or having a Lien thereon;
- (4) payments of unassumed liabilities (not constituting Indebtedness) relating to the assets sold at the time of, or within 30 days after the date of, such Asset Sale; and
- (5) appropriate amounts to be provided by the Issuer or any Restricted Subsidiary, as the case may be, as a reserve required in accordance with GAAP against any liabilities associated with such Asset Sale and retained by the Issuer or any Restricted Subsidiary, as the case may be, after such Asset Sale, including pensions and other postemployment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as reflected in an Officers’ Certificate delivered to the Trustee; provided, however, that any amounts remaining after adjustments, revaluations or liquidations of such reserves shall constitute Net Available Proceeds.

“Non-Recourse Indebtedness” with respect to any Person means Indebtedness of such Person for which (1) the sole legal recourse for collection of principal and interest on such Indebtedness is against the specific property identified in the instruments evidencing or securing such Indebtedness and such property was acquired with the proceeds of such Indebtedness or such Indebtedness was incurred within 90 days after the acquisition of such property and (2) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness.

“Non-U.S. Person” means a Person who is not a U.S. person, as defined in Regulation S.

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“Notes” means the 6¼% Senior Notes due 2015 issued by the Issuer, including, without limitation, the Private Exchange Notes, if any, and the Exchange Notes, treated as a single class of securities, as amended from time to time in accordance with the terms hereof, that are issued pursuant to this Indenture.

“Obligation” means any principal, interest, penalties, fees, indemnification, reimbursements, costs, expenses, damages and other liabilities payable under the documentation governing any Indebtedness.

“Offer” has the meaning set forth in the definition of “Offer to Purchase.”

“Offer Expiration Date” has the meaning set forth in the definition of “Offer to Purchase.”

“Offer to Purchase” means a written offer (the “Offer”) sent by or on behalf of the Issuer by first-class mail, postage prepaid, to each Holder at its address appearing in the register for the Notes on the date of the Offer offering to purchase up to the principal amount of Notes specified in such Offer at the purchase price specified in such Offer (as determined pursuant to this Indenture). Unless otherwise required by applicable law, the Offer shall specify an expiration date (the “Offer Expiration Date”) of the Offer to Purchase, which shall be not less than 30 Business Days nor more than 60 days after the date of such Offer, and a settlement date (the “Purchase Date”) for purchase of Notes to occur no later than three Business Days after the Offer Expiration Date. The Offer shall contain all the information required by applicable law to be included therein. The Offer shall also contain information concerning the business of the Issuer and its Subsidiaries which the Issuer in good faith believes will enable such Holders to make an informed decision with respect to the Offer to Purchase. Such information shall include, at a minimum, (i) the most recent annual and quarterly financial

statements and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in the document required to be delivered to Holders pursuant to Section 4.02 (which requirements may be satisfied by delivery of such documents together with the Offer), (ii) a description of material developments in the Issuer’s business subsequent to the date of the latest of such financial statements referred to in clause (i) (including a description of the events requiring the Issuer to make the Offer to Purchase), (iii) if applicable, appropriate pro forma financial information concerning the Offer to Purchase and the events requiring the Issuer to make the Offer to Purchase and (iv) any other information required by applicable law to be included therein. The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase. The Offer shall also state:

- (1) the Section of this Indenture pursuant to which the Offer to Purchase is being made;
- (2) the Offer Expiration Date and the Purchase Date;

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- (3) the aggregate principal amount of the outstanding Notes offered to be purchased by the Issuer pursuant to the Offer to Purchase (including, if less than 100%, the manner by which such amount has been determined pursuant to the Section of this Indenture requiring the Offer to Purchase) (the “Purchase Amount”);
- (4) the purchase price to be paid by the Issuer for each \$1,000 aggregate principal amount of Notes accepted for payment (the “Purchase Price”);
- (5) that the Holder may tender all or any portion of the Notes registered in the name of such Holder and that any portion of a Note tendered must be tendered in an integral multiple of \$1,000 principal amount;
- (6) the place or places where Notes are to be surrendered for tender pursuant to the Offer to Purchase;
- (7) that interest on any Note not tendered or tendered but not purchased by the Issuer pursuant to the Offer to Purchase will continue to accrue;
- (8) that on the Purchase Date the Purchase Price will become due and payable upon each Note being accepted for payment pursuant to the Offer to Purchase and that interest thereon shall cease to accrue on and after the Purchase Date;
- (9) that each Holder electing to tender all or any portion of a Note pursuant to the Offer to Purchase will be required to surrender such Note, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Note completed, at the place or places specified in the Offer prior to the close of business on the Offer Expiration Date (such Note being, if the Issuer so requires, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Issuer duly executed by, the Holder thereof or its attorney duly authorized in writing);
- (10) that Holders will be entitled to withdraw all or any portion of Notes tendered if the Issuer receives, not later than the close of business on the fifth Business Day preceding the Offer Expiration Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder tendered, the certificate number of the Note the holder tendered and a statement that such Holder is withdrawing all or a portion of its tender;
- (11) that (a) if Notes in an aggregate principal amount less than or equal to the Purchase Amount are duly tendered and not withdrawn pursuant to the Offer to Purchase, the Issuer shall purchase all such Notes and (b) if Notes in an aggregate principal amount in excess of the Purchase Amount are tendered and not withdrawn pursuant to the Offer to Purchase, the Issuer shall purchase Notes having an aggregate principal amount equal to the Purchase Amount on a pro rata basis (with such adjustments as may be deemed

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appropriate so that only Notes in denominations of \$1,000 principal amount or integral multiples thereof shall be purchased); and

- (12) that in the case of any Holder whose Note is purchased only in part, the Issuer shall execute and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unpurchased portion of the Note so tendered.

An Offer to Purchase shall be governed by and effected in accordance with the provisions above pertaining to any Offer.

On or before the Purchase Date, the Issuer shall (i) accept for payment Notes or portions thereof tendered and not withdrawn pursuant to the Offer, (ii) deposit with the Trustee U.S. Dollars sufficient to pay the Purchase Price, plus accrued interest, if any, of all Notes to be purchased and (iii) deliver to the Trustee Notes so accepted together with an Officers’ Certificate stating the Notes or portions thereof being purchased by the Issuer. The Trustee shall promptly mail to the Holders of Notes so accepted payment in an amount equal to the Purchase Price, plus accrued interest, if any, thereon.

“Offering” means the offering of the Notes as described in the Offering Memorandum.

“Offering Memorandum” means the Offering Memorandum dated February 24, 2005 pursuant to which the Notes were offered.

“Officer” means any of the following of the Issuer: the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Treasurer, the Secretary, the Controller or the Chief Accounting Officer.

“Officers’ Certificate” means a certificate signed by two Officers.

“Opinion of Counsel” means a written opinion reasonably satisfactory in form and substance to the Trustee from legal counsel, which counsel is reasonably acceptable to the Trustee, stating the matters required by Section 12.05 and delivered to the Trustee.

“Pari Passu Indebtedness” means any Indebtedness of the Issuer or any Guarantor that ranks pari passu as to payment with the Notes or the Note Guarantees, as applicable.

“Permitted Business” means the businesses engaged in by the Issuer and its Subsidiaries on the Issue Date as described in the Offering Memorandum and businesses that are reasonably related thereto or reasonable extensions thereof (including, without limitation, land development, home alarm, pest control, title and other ancillary businesses).

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“Permitted Holders” means Steven J. Hilton and John R. Landon, their respective wives and children, any corporation, limited liability company or partnership in which either of them has voting control and is the direct and beneficial owner of a majority of the Equity Interests and any trust for the benefit of either of them or their wives or children.

“Permitted Investment” means:

- (1) Investments by the Issuer or any Restricted Subsidiary in (a) any Restricted Subsidiary or (b) any Person that is or will become immediately after such Investment a Restricted Subsidiary or that will merge or consolidate into the Issuer or a Restricted Subsidiary;
- (2) Investments in the Issuer by any Restricted Subsidiary;
- (3) loans and advances to directors, employees and officers of the Issuer and the Restricted Subsidiaries for bona fide business purposes and to purchase Equity Interests of the Issuer not in excess of \$2.0 million at any one time outstanding;
- (4) Hedging Obligations incurred pursuant to clause (4) of the second paragraph of Section 4.06;
- (5) Cash Equivalents;
- (6) receivables owing to the Issuer or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Issuer or any such Restricted Subsidiary deems reasonable under the circumstances;
- (7) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;
- (8) Investments made by the Issuer or any Restricted Subsidiary as a result of consideration received in connection with an Asset Sale made in compliance with Section 4.09;
- (9) lease, utility and other similar deposits in the ordinary course of business;
- (10) Investments made by the Issuer or a Restricted Subsidiary for consideration consisting only of Qualified Equity Interests of the Issuer;

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- (11) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Issuer or any Restricted Subsidiary or in satisfaction of judgments;
- (12) Investments in existence on the Issue Date or any Reversion Date;
- (13) Investments made by the Issuer or any Restricted Subsidiary in joint ventures in a Permitted Business with unaffiliated third parties in an aggregate amount at any one time outstanding not to exceed 30% of the Issuer’s Consolidated Tangible Net Worth at such time (with each Investment being valued as of the date made and without regard to subsequent changes in value); and
- (14) other Investments in an aggregate amount not to exceed \$25.0 million at any one time outstanding (with each Investment being valued as of the date made and without regard to subsequent changes in value).

The amount of Investments outstanding at any time pursuant to clause (14) above shall be deemed to be reduced:

- (a) upon the disposition or repayment of or return on any Investment made pursuant to clause (14) above, by an amount equal to the return of capital with respect to such Investment to the Issuer or any Restricted Subsidiary (to the extent not included in the computation of Consolidated Net Income), less the cost of the disposition of such Investment and net of taxes; and
- (b) upon a Redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, by an amount equal to the lesser of (x) the Fair Market Value of the Issuer’s proportionate interest in such Subsidiary immediately following such Redesignation, and (y) the aggregate amount of Investments in such Subsidiary that increased (and did not previously decrease) the amount of Investments outstanding pursuant to clause (14) above.

“Permitted Liens” means the following types of Liens:

- (1) (a) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen and other Liens imposed by law incurred in the ordinary course of business and (b) Liens for taxes, assessments or governmental charges or claims, in either case, for sums not yet delinquent or being contested in good faith, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;
- (2) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal

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bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

- (3) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (4) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other assets relating to such letters of credit and products and proceeds thereof;
- (5) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of the Issuer or any Restricted Subsidiary, including rights of offset and setoff;
- (6) bankers’ Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts

maintained by the Issuer or any Restricted Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

- (7) leases or subleases (or any Liens related thereto) granted to others that do not materially interfere with the ordinary course of business of the Issuer or any Restricted Subsidiary;
- (8) Liens arising from filing Uniform Commercial Code financing statements regarding leases;
- (9) Liens securing all of the Notes and Liens securing any Note Guarantee;
- (10) Liens existing on the Issue Date or any Reversion Date securing Indebtedness outstanding on the Issue Date or any Reversion Date and Liens securing Refinancing Indebtedness with respect to Indebtedness incurred pursuant to clause (2) of the second paragraph of Section 4.06;
- (11) Liens in favor of the Issuer or a Guarantor;
- (12) Liens securing Indebtedness under the Credit Facilities;

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(13) without limiting any other clause in this definition of "Permitted Liens," Liens securing Indebtedness of the Issuer or any Restricted Subsidiary permitted to be incurred under this Indenture; provided that the aggregate amount of all consolidated Indebtedness of the Issuer and the Restricted Subsidiaries secured by Liens (including all Indebtedness permitted to be secured by the other provisions of this definition, but excluding Non-Recourse Indebtedness) shall not exceed 40% of Consolidated Tangible Assets at any one time outstanding (after giving effect to the incurrence of such Indebtedness and the use of the proceeds thereof);

(14) Liens securing Non-Recourse Indebtedness of the Issuer or any Restricted Subsidiary permitted to be incurred under this Indenture; provided that such Liens apply only to the property financed out of the net proceeds of such Non-Recourse Indebtedness within 90 days after the incurrence of such Non-Recourse Indebtedness;

(15) Liens securing Purchase Money Indebtedness permitted to be incurred under this Indenture; provided that such Liens apply only to the property acquired, constructed or improved with the proceeds of such Purchase Money Indebtedness within 90 days after the incurrence of such Purchase Money Indebtedness;

(16) Liens securing Acquired Indebtedness permitted to be incurred under this Indenture; provided that the Liens do not extend to assets not subject to such Lien at the time of acquisition (other than improvements thereon) and are no more favorable to the lienholders than those securing such Acquired Indebtedness prior to the incurrence of such Acquired Indebtedness by the Issuer or a Restricted Subsidiary;

(17) Liens on assets of a Person existing at the time such Person is acquired or merged with or into or consolidated with the Issuer or any such Restricted Subsidiary (and not created in anticipation or contemplation thereof);

(18) Liens to secure Attributable Indebtedness permitted to be incurred under this Indenture; provided that any such Lien shall not extend to or cover any assets of the Issuer or any Restricted Subsidiary other than the assets which are the subject of the Sale and Leaseback Transaction in which the Attributable Indebtedness is incurred;

(19) attachment or judgment Liens not giving rise to a Default and which are being contested in good faith by appropriate proceedings;

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

(21) zoning restrictions, licenses, restrictions on the use of real property or minor irregularities in title thereto, which do not materially impair the use of such real property

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in the ordinary course of business of the Issuer and its Subsidiaries or the value of such real property for the purpose of such business;

(22) any option, contract or other agreement to sell an asset; provided such sale is not otherwise prohibited under this Indenture;

(23) Liens securing Hedging Obligations of the Issuer or any Restricted Subsidiary;

(24) any interest or title of a lessor under any Capitalized Lease Obligation of the Issuer or any Restricted Subsidiary; provided that such Liens do not extend to any property or asset which is not leased property subject to such Capitalized Lease Obligations;

(25) Liens for the benefit of holders of defeased Indebtedness of the Company or any Restricted Subsidiary on funds deposited in trust for the purpose of defeasing such Indebtedness to the extent such Indebtedness is permitted to be defeased pursuant to the terms of this Indenture; and

(26) Liens on mortgage loans and related assets of mortgage lending Subsidiaries securing Indebtedness incurred (i) pursuant to or (ii) during a suspension period that would have been permitted by, clause (14) of the second paragraph of Section 4.06.

"Permitted Unrestricted Subsidiary Debt" means Indebtedness of an Unrestricted Subsidiary:

(1) as to which neither the Issuer nor any Restricted Subsidiary (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (b) is directly or indirectly liable as a guarantor or otherwise, or (c) constitutes the lender;

(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the Notes) of the Issuer or any Restricted Subsidiary to declare a default on the other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity; and

(3) as to which the lenders have been notified in writing that they will not have any recourse to the Equity Interests or assets of the Issuer or any Restricted Subsidiary.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof or other entity of any kind.

“Physical Notes” means certificated Notes in registered form in substantially the form set forth in Exhibit A.

“Plan of Liquidation” with respect to any Person, means a plan that provides for, contemplates or the effectuation of which is preceded or accompanied by (whether or not substantially contemporaneously, in phases or otherwise): (1) the sale, lease, conveyance or other disposition of all or substantially all of the assets of such Person otherwise than as an entirety or substantially as an entirety; and (2) the distribution of all or substantially all of the proceeds of such sale, lease, conveyance or other disposition of all or substantially all of the remaining assets of such Person to creditors and holders of Equity Interests of such Person.

“Preferred Stock” means, with respect to any Person, any and all preferred or preference stock or other equity interests (however designated) of such Person whether now outstanding or issued after the Issue Date.

“principal” means, with respect to the Notes, the principal of, and premium, if any, on the Notes.

“Private Exchange” has the meaning set forth in the Registration Rights Agreement.

“Private Exchange Notes” has the meaning set forth in the Registration Rights Agreement.

“Private Placement Legend” means the legend initially set forth on the Rule 144A Notes and Other Notes that are Restricted Notes in the form set forth in Exhibit B.

“Purchase Amount” has the meaning set forth in the definition of “Offer to Purchase.”

“Purchase Date” has the meaning set forth in the definition of “Offer to Purchase.”

“Purchase Money Indebtedness” means Indebtedness, including Capitalized Lease Obligations, of the Issuer or any Restricted Subsidiary incurred for the purpose of financing all or any part of the purchase price of property, plant or equipment used in the business of the Issuer or any Restricted Subsidiary or the cost of installation, construction or improvement thereof; provided, however, that (1) the amount of such Indebtedness shall not exceed such purchase

price or cost, (2) such Indebtedness shall not be secured by any asset other than the specified asset being financed or, in the case of real property or fixtures, including additions and improvements, the real property to which such asset is attached and (3) such Indebtedness shall be incurred within 90 days after such acquisition of such asset by the Issuer or such Restricted Subsidiary or such installation, construction or improvement.

“Purchase Price” has the meaning set forth in the definition of “Offer to Purchase.”

“Qualified Equity Interests” means Equity Interests of the Issuer other than Disqualified Equity Interests; provided that such Equity Interests shall not be deemed Qualified Equity Interests to the extent sold or owed to a Subsidiary of the Issuer or financed, directly or indirectly, using funds (1) borrowed from the Issuer or any Subsidiary of the Issuer until and to the extent such borrowing is repaid or (2) contributed, extended, guaranteed or advanced by the Issuer or any Subsidiary of the Issuer (including, without limitation, in respect of any employee stock ownership or benefit plan).

“Qualified Equity Offering” means the issuance and sale of Qualified Equity Interests of the Issuer to Persons other than any Permitted Holder or any other Person who is not, prior to such issuance and sale, an Affiliate of the Issuer.

“Qualified Institutional Buyer” or “QIB” shall have the meaning specified in Rule 144A promulgated under the Securities Act.

“Rating Agency” means each of (a) S&P and (b) Moody’s.

“Rating Category” means:

- (1) with respect to S&P, any of the following categories: BB, B, CCC, CC, C and D (or equivalent successor categories); and
- (2) with respect to Moody’s, any of the following categories: Ba, B, Caa, Ca, C and D (or equivalent successor categories).

In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories (+ and - for S&P; or 1, 2 and 3 for Moody’s) will be taken into account (e.g., with respect to S&P a decline in rating from BB+ to BB, as well as from BB- to B+, will constitute a decrease of one gradation).

“Rating Date” means the date which is 90 days prior to the earlier of (1) a Change of Control and (2) public notice of the occurrence of a Change of Control or of the intention by the Issuer to effect a Change of Control.

“Rating Decline” means the decrease (as compared with the Rating Date) by one or more gradations within Rating Categories as well as between Rating Categories of the rating of the Notes by a Rating Agency on, or within 120 days after, the earlier of the date of public notice of the occurrence of a Change of Control or of the intention by the Issuer to effect a Change of Control (which period will be extended for so long as the rating of the Notes is under publicly announced consideration for possible downgrade by any of the Rating Agencies).

“Receivables” means an amount owed with respect to completed sales of housing units, lots and parcels sold to an unaffiliated purchaser.

“redeem” means to redeem, repurchase, purchase, defease, retire, discharge or otherwise acquire or retire for value; and “redemption” shall have a correlative meaning.

“Redemption Date” when used with respect to any Note to be redeemed means the date fixed for such redemption pursuant to the terms of the Notes.

“refinance” means to refinance, repay, prepay, replace, renew or refund.

“Refinancing Indebtedness” means Indebtedness of the Issuer or a Restricted Subsidiary issued in exchange for, or the proceeds from the issuance and sale or disbursement of which are used substantially concurrently to redeem or refinance in whole or in part, or constituting an amendment of, any Indebtedness of the Issuer or any Restricted Subsidiary (the “Refinanced Indebtedness”) in a principal amount not in excess of the principal amount of the Refinanced Indebtedness so repaid or amended (plus the amount of any premium paid and the amount of reasonable expenses incurred by the Issuer or any Restricted Subsidiary in connection with such repayment or amendment) (or, if such Refinancing Indebtedness refinances Indebtedness under a revolving credit facility or other agreement providing a commitment for subsequent borrowings, with a maximum commitment not to exceed the maximum commitment under such revolving credit facility or other agreement); provided that:

- (1) if the Refinanced Indebtedness was subordinated to or pari passu with the Notes or the Note Guarantees, as the case may be, then such Refinancing Indebtedness, by its terms, is expressly pari passu with (in the case of Refinanced Indebtedness that was pari passu with) or subordinate in right of payment to (in the case of Refinanced Indebtedness that was subordinated to) the Notes or the Note Guarantees, as the case may be, at least to the same extent as the Refinanced Indebtedness;
- (2) the Refinancing Indebtedness is scheduled to mature either (a) no earlier than the Refinanced Indebtedness being repaid or amended or (b) after the maturity date of the Notes;
- (3) the portion, if any, of the Refinancing Indebtedness that is scheduled to mature on or prior to the maturity date of the Notes has a Weighted Average Life to Maturity

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at the time such Refinancing Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the portion of the Refinanced Indebtedness being repaid that is scheduled to mature on or prior to the maturity date of the Notes; and

- (4) the Refinancing Indebtedness is secured only to the extent, if at all, and by the assets, that the Refinanced Indebtedness being repaid, extended or amended is secured.

“Registration Rights Agreement” means the registration rights agreement dated as of the Issue Date among the Issuer, the Guarantors and the Initial Purchasers.

“Regulation S” means Regulation S promulgated under the Securities Act.

“Responsible Officer” when used with respect to the Trustee, means an officer or assistant officer assigned to the corporate trust department of the Trustee (or any successor group of the Trustee) with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Restricted Note” has the same meaning as “Restricted Security” set forth in Rule 144(a)(3) promulgated under the Securities Act, provided, that the Trustee shall be entitled to request and conclusively rely upon an Opinion of Counsel with respect to whether any Note is a Restricted Note.

“Restricted Payment” means any of the following:

- (1) the declaration or payment of any dividend or any other distribution on Equity Interests of the Issuer or any Restricted Subsidiary or any payment made to the direct or indirect holders (in their capacities as such) of Equity Interests of the Issuer or any Restricted Subsidiary, including, without limitation, any payment in connection with any merger or consolidation involving the Issuer, but excluding (a) dividends or distributions payable solely in Qualified Equity Interests and (b) in the case of Restricted Subsidiaries, dividends or distributions payable to the Issuer or to a Restricted Subsidiary and pro rata dividends or distributions payable to minority stockholders of any Restricted Subsidiary;
- (2) the redemption of any Equity Interests of the Issuer or any Restricted Subsidiary, including, without limitation, any payment in connection with any merger or consolidation involving the Issuer, but excluding any such Equity Interests held by the Issuer or any Restricted Subsidiary;
- (3) any Investment other than a Permitted Investment; or

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- (4) any redemption prior to the scheduled maturity or prior to any scheduled repayment of principal or sinking fund payment, as the case may be, in respect of Subordinated Indebtedness.

“Restricted Payments Basket” has the meaning given to such term in clause (3) of the first paragraph of Section 4.08.

“Restricted Subsidiary” means any Subsidiary of the Issuer other than an Unrestricted Subsidiary.

“Reversion Date” has the meaning given to such term in the definition of “Suspension Period.”

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“S&P” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc., and its successors.

“Sale and Leaseback Transaction” means, with respect to any Person, an arrangement with any bank, insurance company or other lender or investor or to which such lender or investor is a party, providing for the leasing by such Person of any asset of such Person which has been or is being sold or transferred by such Person to such lender or investor or to any Person to whom funds have been or are to be advanced by such lender or investor on the security of such asset.

“SEC” means the U.S. Securities and Exchange Commission.

“Secretary’s Certificate” means a certificate signed by the Secretary of the Issuer.

“Securities Act” means the U.S. Securities Act of 1933, as amended.

“Significant Subsidiary” means (1) any Restricted Subsidiary that would be a “significant subsidiary” as defined in Regulation S-X promulgated pursuant to the Securities Act as such Regulation is in effect on the Issue Date and (2) any Restricted Subsidiary that, when aggregated with all other Restricted Subsidiaries that are not otherwise Significant Subsidiaries and as to which any event described in clause (7) or (8) of Section 6.01 has occurred and is continuing, would constitute a Significant Subsidiary under clause (1) of this definition.

“Springing Guarantee” means a guarantee by a Person which by its express terms does not become effective until the occurrence of a Bankruptcy Event.

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“Subordinated Indebtedness” means Indebtedness of the Issuer or any Restricted Subsidiary that is subordinated in right of payment to the Notes or the Note Guarantees, respectively.

“Subsidiary” means, with respect to any Person:

- (1) any corporation, limited liability company, association or other business entity of which more than 50% of the total voting power of the Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and
- (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or of one or more Subsidiaries of such Person (or any combination thereof).

Unless otherwise specified, “Subsidiary” refers to a Subsidiary of the Issuer.

“Surviving Person” means, with respect to any Person involved in or that makes any Disposition, the Person formed by or surviving such Disposition or the Person to which such Disposition is made.

“Suspension Period” means the period (a) beginning on the date that:

- (1) the Notes have Investment Grade Ratings by both Rating Agencies; provided that, prior to the assignment of the Investment Grade Ratings, the Issuer has advised the Rating Agencies that the Suspendable Covenants will not apply during the Suspension Period;
- (2) no Default has occurred and is continuing; and
- (3) the Issuer has delivered an Officers’ Certificate to the Trustee certifying that the conditions set forth in clauses (1) and (2) above are satisfied;

and (b) ending on the date (the “Reversion Date”) that either Rating Agency ceases to have Investment Grade Ratings on the Notes.

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

“Trustee” means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture and thereafter means the successor.

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“Unit” means a residence, whether single or part of a multifamily building, whether completed or under construction, held by the Issuer or any Restricted Subsidiary for sale or rental in the ordinary course of business; provided, however, that the number of Units that are rental Units at the time of determination shall not exceed 25% of the total Units sold or rented by the Issuer and its Restricted Subsidiaries during the immediately preceding twelve month period.

“Unrestricted Subsidiary” means (1) any Subsidiary that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Issuer in accordance with Section 4.15 and (2) any Subsidiary of an Unrestricted Subsidiary.

“U.S. Government Obligations” means direct non-callable obligations of, or obligations guaranteed by, the United States of America for the payment of which guarantee or obligations the full faith and credit of the United States is pledged.

“Voting Stock” with respect to any Person, means securities of any class of Equity Interests of such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock or other relevant equity interest has voting power by reason of any contingency) to vote in the election of members of the Board of Directors of such Person.

“Weighted Average Life to Maturity” when applied to any Indebtedness at any date, means the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (2) the then outstanding principal amount of such Indebtedness.

“Wholly-Owned Restricted Subsidiary” means a Restricted Subsidiary of which 100% of the Equity Interests (except for directors’ qualifying shares or certain minority interests owned by other Persons solely due to local law requirements that there be more than one stockholder, but which interest is not in excess of what is required for such purpose) are owned directly by the Issuer or through one or more Wholly-Owned Restricted Subsidiaries.

SECTION 1.02. Other Definitions.

The definitions of the following terms may be found in the sections indicated as follows:

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Term	Defined in Section
“Affiliate Transaction”	4.10
“Agent Members”	2.16(a)
“Business Day”	12.07
“Change of Control Date”	4.20
“Change of Control Offer”	4.20

“Change of Control Payment Date”	4.20
“Change of Control Purchase Price”	4.20
“Company Bankruptcy Proceeding”	11.02
“Covenant Defeasance”	9.03
“Custodian”	6.01
“Designation”	4.15 (a)
“Events of Default”	6.01
“Excess Proceeds”	4.09
“Global Notes”	2.16(a)
“Guarantor Bankruptcy Proceeding”	10.07
“Legal Defeasance”	9.02
“Legal Holiday”	12.07
“Note Portion of Excess Proceeds”	4.09
“Other Debt”	4.09
“Other Notes”	2.02
“Paying Agent”	2.04
“Ratio Exception”	4.06
“Redesignation”	4.15
“Registrar”	2.04
“Regulation S Global Notes”	2.16(a)
“Regulation S Notes”	2.02
“Replacement Assets”	4.09
“Restricted Global Note”	2.16(a)
“Restricted Payment”	4.08
“Revocation”	4.15 (c)
“Rule 144A Notes”	2.02

SECTION 1.03. Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the portion of such provision required to be incorporated herein in order for this Indenture to be qualified under the TIA is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“indenture securities” means the Notes.

“indenture securityholder” means a Holder or Noteholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor on the indenture securities” means the Issuer, the Guarantors or any other obligor on the Notes.

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

SECTION 1.04. Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein, whether defined expressly or by reference;
- (2) “or” is not exclusive;
- (3) words in the singular include the plural, and in the plural include the singular;
- (4) words used herein implying any gender shall apply to both genders;
- (5) “herein”, “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subsection;
- (6) unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP as in effect from time to time, applied on a basis consistent with the most recent audited consolidated financial statements of the Issuer;
- (7) “\$,” “U.S. Dollars” and “United States Dollars” each refer to United States dollars, or such other money of the United States that at the time of payment is legal tender for payment of public and private debts; and
- (8) whenever in this Indenture there is mentioned, in any context, principal, interest or any other amount payable under or with respect to any Note, such mention shall be deemed to include mention of the payment of Additional Interest to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof.

ARTICLE TWO

THE NOTES

SECTION 2.01. Amount of Notes.

The Trustee shall authenticate (i) Notes for original issue on the Issue Date in the aggregate principal amount not to exceed \$350,000,000 and (ii) subject to Section 4.06, Additional Notes in an unlimited principal amount, upon a written order of the Issuer in the form of an Officers' Certificate of the Issuer. The Officers' Certificate shall specify the amount of Notes to be authenticated and the date on which the Notes are to be authenticated.

Upon receipt of a written order of the Issuer in the form of an Officers' Certificate, the Trustee shall authenticate Notes in substitution for Notes originally issued to reflect any name change of the Issuer. Any Additional Notes shall be part of the same issue as the Notes being issued on the date hereof and will vote on all matters as one class with the Notes being issued on the date hereof, including, without limitation, waivers, amendments, redemptions and Offers to Purchase. For the purposes of this Indenture, except for Section 4.06, references to the Notes include Additional Notes, if any.

Upon receipt of an Issuer Request and an Officers' Certificate certifying that a registration statement relating to an exchange offer specified in the Registration Rights Agreement or any registration rights agreement relating to the Additional Notes is effective or that the conditions precedent to a private exchange thereunder have been met, the Trustee shall authenticate an additional series of Notes for issuance in exchange for the Notes tendered for exchange pursuant to such exchange offer registered under the Securities Act or pursuant to a Private Exchange. Exchange Notes or Private Exchange Notes may have such distinctive series designations and such changes in the form thereof as are specified in the Issuer Request referred to in the preceding sentence.

SECTION 2.02. Form and Dating.

The Notes and the Trustee's certificate of authentication with respect thereto shall be substantially in the form set forth in Exhibit A, which is incorporated in and forms a part of this Indenture. The Notes may have notations, legends or endorsements required by law, rule or usage to which the Issuer is subject. Without limiting the generality of the foregoing, Notes offered and sold to Qualified Institutional Buyers in reliance on Rule 144A ("Rule 144A Notes") shall bear the legend and include the form of assignment set forth in Exhibit B, Notes offered and sold in offshore transactions in reliance on Regulation S ("Regulation S Notes") shall bear the legend and include the form of assignment set forth in Exhibit C, and Notes offered and sold to Institutional Accredited Investors in transactions exempt from registration under the Securities Act not made in reliance on Rule 144A or Regulation S ("Other Notes") may be represented by a

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Restricted Global Note or, if such an investor may not hold an interest in the Restricted Global Note, a Physical Note, in each case, bearing the Private Placement Legend. Each Note shall be dated the date of its authentication.

The terms and provisions contained in the Notes shall constitute, and are expressly made, a part of this Indenture and, to the extent applicable, the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and agree to be bound thereby.

The Notes may be presented for registration of transfer and exchange at the offices of the Registrar.

SECTION 2.03. Execution and Authentication.

Two Officers shall sign, or one Officer shall sign and one Officer (each of whom shall, in each case, have been duly authorized by all requisite corporate actions) shall attest to, the Notes for the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note was an Officer at the time of such execution but no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Note shall have been authenticated and delivered hereunder but never issued and sold by the Issuer, and the Issuer shall deliver such Note to the Trustee for cancellation as provided in Section 2.12, for all purposes of this Indenture such Note shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuer to authenticate the Notes. Unless otherwise provided in the appointment, an authenticating agent may authenticate the Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Issuer and Affiliates of the Issuer. Each Paying Agent is designated as an authenticating agent for purposes of this Indenture.

The Notes shall be issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.

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SECTION 2.04. Registrar and Paying Agent.

The Issuer shall maintain an office or agency (which shall be located in the Borough of Manhattan in The City of New York, State of New York) where Notes may be presented for registration of transfer or for exchange (the "Registrar"), and an office or agency where Notes may be presented for payment (the "Paying Agent") and an office or agency where notices and demands to or upon the Issuer, if any, in respect of the Notes and this Indenture may be served. The Registrar shall keep a register of the Notes and of their transfer and exchange. The Issuer may have one or more additional Paying Agents. The term "Paying Agent" includes any additional Paying Agent. Neither the Issuer nor any Affiliate thereof may act as Paying Agent.

The Issuer shall enter into an appropriate agency agreement, which shall incorporate the provisions of the TIA, with any Agent that is not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Issuer shall notify the Trustee of the name and address of any such Agent. If the Issuer fails to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee shall act as such and shall be entitled to appropriate compensation in accordance with Section 7.07.

The Issuer initially appoints the Trustee as Registrar, Paying Agent and Agent for service of notices and demands in connection with the Notes and this Indenture.

SECTION 2.05. Paying Agent To Hold Money in Trust

Each Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal of or premium or interest on the Notes (whether such money has been paid to it by the Issuer or any other obligor on the Notes or the Guarantors), and the Issuer and the Paying Agent shall notify the Trustee of any default by the Issuer (or any other obligor on the Notes) in making any such payment. Money held in trust by the Paying Agent need not be segregated except as required by law and in no event shall the Paying Agent be liable for any interest on any money received by it hereunder. The Issuer at any time may require the Paying Agent to pay all money held by it to the Trustee and account for any funds disbursed and the Trustee may at any time during the continuance of any Event

of Default specified in Section 6.01 (1) or (2), upon written request to the Paying Agent, require such Paying Agent to pay forthwith all money so held by it to the Trustee and to account for any funds disbursed. Upon making such payment, the Paying Agent shall have no further liability for the money delivered to the Trustee.

SECTION 2.06. Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of the Holders. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least five Business Days before each Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form

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and as of such date as the Trustee may reasonably require of the names and addresses of the Holders.

SECTION 2.07. Transfer and Exchange.

Subject to Sections 2.16 and 2.17, when Notes are presented to the Registrar with a request from the Holder of such Notes to register a transfer or to exchange them for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer as requested. Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Registrar, duly executed by the Holder thereof or his attorneys duly authorized in writing. To permit registrations of transfers and exchanges, the Issuer shall issue and execute and the Trustee shall authenticate new Notes (and the Guarantors shall execute the guarantee thereon) evidencing such transfer or exchange at the Registrar's request. No service charge shall be made to the Holder for any registration of transfer or exchange. The Issuer may require from the Holder payment of a sum sufficient to cover any transfer taxes or other governmental charge that may be imposed in relation to a transfer or exchange, but this provision shall not apply to any exchange pursuant to Section 2.11, 3.06, 4.09, 4.20 or 8.05 (in which events the Issuer shall be responsible for the payment of such taxes). The Registrar shall not be required to exchange or register a transfer of any Note for a period of 15 days immediately preceding the mailing of notice of redemption of Notes to be redeemed or of any Note selected, called or being called for redemption except the unredeemed portion of any Note being redeemed in part.

Any Holder of the Global Note shall, by acceptance of such Global Note, agree that transfers of the beneficial interests in such Global Note may be effected only through a book entry system maintained by the Holder of such Global Note (or its agent), and that ownership of a beneficial interest in the Global Note shall be required to be reflected in a book entry.

Each Holder of a Note agrees to indemnify the Issuer and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable U.S. Federal or state securities law.

Except as expressly provided herein, neither the Trustee nor the Registrar shall have any duty to monitor the Issuer's compliance with or have any responsibility with respect to the Issuer's compliance with any Federal or state securities laws.

SECTION 2.08. Replacement Notes.

If a mutilated Note is surrendered to the Registrar or the Trustee, or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Note (and the Guarantors shall execute the guarantee thereon) if the Holder of such Note furnishes to the Issuer and the Trustee evidence reasonably

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acceptable to them of the ownership and the destruction, loss or theft of such Note and if the requirements of Section 8-405 of the New York Uniform Commercial Code as in effect on the date of this Indenture are met. If required by the Trustee or the Issuer, an indemnity bond shall be posted, sufficient in the judgment of both to protect the Issuer, the Guarantors, the Trustee or any Paying Agent from any loss that any of them may suffer if such Note is replaced. The Issuer may charge such Holder for the Issuer's reasonable out-of-pocket expenses in replacing such Note and the Trustee may charge the Issuer for the Trustee's expenses (including, without limitation, attorneys' fees and disbursements) in replacing such Note. Every replacement Note shall constitute a contractual obligation of the Issuer.

SECTION 2.09. Outstanding Notes.

The Notes outstanding at any time are all Notes that have been authenticated by the Trustee except for (a) those cancelled by it, (b) those delivered to it for cancellation, (c) to the extent set forth in Sections 9.01 and 9.02, on or after the date on which the conditions set forth in Section 9.01 or 9.02 have been satisfied, those Notes theretofore authenticated and delivered by the Trustee hereunder and (d) those described in this Section 2.09 as not outstanding. Subject to Section 2.10, a Note does not cease to be outstanding because the Issuer or one of its Affiliates holds the Note.

If a Note is replaced pursuant to Section 2.08, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser in whose hands such Note is a legal, valid and binding obligation of the Issuer.

If the Paying Agent holds, in its capacity as such, on any maturity date, money sufficient to pay all accrued interest and principal with respect to the Notes payable on that date and is not prohibited from paying such money to the Holders thereof pursuant to the terms of this Indenture, then on and after that date such Notes cease to be outstanding and interest on them ceases to accrue.

SECTION 2.10. Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any declaration of acceleration or notice of default or direction, waiver or consent or any amendment, modification or other change to this Indenture, Notes owned by the Issuer or any other Affiliate of the Issuer shall be disregarded as though they were not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent or any amendment, modification or other change to this Indenture, only Notes as to which a Responsible Officer of the Trustee has received an Officers' Certificate stating that such Notes are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee established to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes and that the pledgee is not the Issuer, a Guarantor, any other obligor on the Notes or any of their respective Affiliates.

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SECTION 2.11. Temporary Notes.

Until definitive Notes are prepared and ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes. Until such exchange, temporary Notes shall be entitled to the same rights, benefits and privileges as definitive Notes.

SECTION 2.12. Cancellation.

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall (subject to the record-retention requirements of the Exchange Act) destroy cancelled Notes. The Issuer may not reissue or resell, or issue new Notes to replace, Notes that the Issuer has redeemed or paid, or that have been delivered to the Trustee for cancellation.

SECTION 2.13. Defaulted Interest.

If the Issuer defaults on a payment of interest on the Notes, it shall pay the defaulted interest, plus (to the extent permitted by law) any interest payable on the defaulted interest, in accordance with the terms hereof, to the Persons who are Holders on a subsequent special record date, which date shall be at least five Business Days prior to the payment date. The Issuer shall fix such special record date and payment date in a manner satisfactory to the Trustee. At least 10 days before such special record date, the Issuer shall mail to each Holder a notice that states the special record date, the payment date and the amount of defaulted interest, and interest payable on defaulted interest, if any, to be paid. The Issuer may make payment of any defaulted interest in any other lawful manner not inconsistent with the requirements (if applicable) of any securities exchange on which the Notes may be listed and, upon such notice as may be required by such exchange, if, after written notice given by the Issuer to the Trustee of the proposed payment pursuant to this sentence, such manner of payment shall be deemed practicable by the Trustee.

SECTION 2.14. CUSIP Number.

The Issuer in issuing the Notes may use a "CUSIP" number, and if so, such CUSIP number shall be included in notices of redemption or exchange as a convenience to Holders; provided, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number printed in the notice or on the Notes, and that reliance may be placed only on the other identification numbers printed on the Notes. The Issuer shall

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promptly notify the Trustee of any such CUSIP number used by the Issuer in connection with the issuance of the Notes and of any change in the CUSIP number.

SECTION 2.15. Deposit of Moneys.

Prior to 10:00 a.m., New York City time, on each Interest Payment Date and maturity date, the Issuer shall have deposited with the Paying Agent in immediately available funds money sufficient to make cash payments, if any, due on such Interest Payment Date or maturity date, as the case may be, in a timely manner which permits the Trustee to remit payment to the Holders on such Interest Payment Date or maturity date, as the case may be. The principal and interest on Global Notes shall be payable to the Depository or its nominee, as the case may be, as the sole registered owner and the sole holder of the Global Notes represented thereby. The principal and interest on Physical Notes shall be payable, either in person or by mail, at the office of the Paying Agent.

SECTION 2.16. Book-Entry Provisions for Global Notes

(a) Rule 144A Notes initially shall be represented by one or more notes in registered, global form without interest coupons (collectively, the "Restricted Global Note"). Regulation S Notes initially shall be represented by one or more notes in registered, global form without interest coupons (collectively, the "Regulation S Global Note") and, together with the Restricted Global Note and any other global notes representing Notes, the "Global Notes"). The Global Notes shall bear legends as set forth in Exhibit D. The Global Notes initially shall (i) be registered in the name of the Depository or the nominee of such Depository, in each case for credit to an account of an Agent Member (or, in the case of the Regulation S Global Notes, of Euroclear System and Cedel Bank, S.A.), (ii) be delivered to the Trustee as custodian for such Depository and (iii) bear legends as set forth in Exhibit B with respect to Restricted Global Notes and Exhibit C with respect to Regulation S Global Notes.

Members of, or direct or indirect participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Notes, and the Depository may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of the Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

(b) Transfers of Global Notes shall be limited to transfer in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Notes may be transferred or exchanged for Physical Notes in accordance with the rules and procedures of the Depository and the provisions of Section 2.17. In addition, a

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Global Note shall be exchangeable for Physical Notes if (i) the Depository (x) notifies the Issuer that it is unwilling or unable to continue as depository for such Global Note and the Issuer thereupon fails to appoint a successor depository or (y) has ceased to be a clearing agency registered under the Exchange Act or (ii) there shall have occurred and be continuing an Event of Default with respect to the Notes. In all cases, Physical Notes delivered in exchange for any Global Note or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository (in accordance with its customary procedures).

(c) In connection with any transfer or exchange of a portion of the beneficial interest in any Global Note to beneficial owners pursuant to paragraph (b), the Registrar shall (if one or more Physical Notes are to be issued) reflect on its books and records the date and a decrease in the principal amount of the Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred, and the Issuer shall execute, and the Trustee shall upon receipt of a written order from the Issuer authenticate and make available for delivery, one or more Physical Notes of like tenor and amount.

(d) In connection with the transfer of Global Notes as an entirety to beneficial owners pursuant to paragraph (b), the Global Notes shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in the Global Notes, an equal aggregate principal amount of Physical Notes of authorized denominations.

(e) Any Physical Note constituting a Restricted Note delivered in exchange for an interest in a Global Note pursuant to paragraph (b), (c) or (d) shall, except as otherwise provided by paragraphs (a)(i)(x) and (c) of Section 2.17, bear the Private Placement Legend or, in the case of the Regulation S Global Note, the legend set forth in Exhibit C, in each case, unless the Issuer determines otherwise in compliance with applicable law.

(f) On or prior to the 40th day after the later of the commencement of the offering of the Notes represented by the Regulation S Global Note and the

issue date of such Notes (such period through and including such 40th day, the “Restricted Period”), a beneficial interest in a Regulation S Global Note may be transferred to a Person who takes delivery in the form of an interest in the corresponding Restricted Global Note only upon receipt by the Trustee of a written certification from the transferor to the effect that such transfer is being made (i)(a) to a Person whom the transferor reasonably believes is a Qualified Institutional Buyer in a transaction meeting the requirements of Rule 144A or (b) pursuant to another exemption from the registration requirements under the Securities Act which is accompanied by an Opinion of Counsel regarding the availability of such exemption and (ii) in accordance with all applicable securities laws of any state of the United States or any other jurisdiction.

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(g) Beneficial interests in the Restricted Global Note may be transferred to a Person who takes delivery in the form of an interest in the Regulation S Global Note, whether before or after the expiration of the Restricted Period, only if the transferor first delivers to the Trustee a written certificate to the effect that such transfer is being made in accordance with Rule 903 or 904 of Regulation S or Rule 144 (if available).

(h) Any beneficial interest in one of the Global Notes that is transferred to a Person who takes delivery in the form of an interest in another Global Note shall, upon transfer, cease to be an interest in such Global Note and become an interest in such other Global Note and, accordingly, shall thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interests in such other Global Note for as long as it remains such an interest.

(i) The Holder of any Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

SECTION 2.17. Special Transfer Provisions.

(a) Transfers to Non-QIB Institutional Accredited Investors and Non-U.S. Persons. The following provisions shall apply with respect to the registration of any proposed transfer of a Note constituting a Restricted Note to any Institutional Accredited Investor which is not a QIB or to any Non-U.S. Person:

(i) the Registrar shall register the transfer of any Note constituting a Restricted Note, whether or not such Note bears the Private Placement Legend, if (x) the requested transfer is after March 10, 2007 or such other date as such Note shall be freely transferable under Rule 144 as certified in an Officers’ Certificate or (y) (1) in the case of a transfer to an Institutional Accredited Investor which is not a QIB (excluding Non-U.S. Persons), the proposed transferee has delivered to the Registrar a certificate substantially in the form of Exhibit E hereto or (2) in the case of a transfer to a Non-U.S. Person (including a QIB), the proposed transferor has delivered to the Registrar a certificate substantially in the form of Exhibit F hereto; provided that in the case of any transfer of a Note bearing the Private Placement Legend for a Note not bearing the Private Placement Legend, the Registrar has received an Officers’ Certificate authorizing such transfer; and

(ii) if the proposed transferor is an Agent Member holding a beneficial interest in a Global Note, upon receipt by the Registrar of (x) the certificate, if any, required by paragraph (i) above and (y) instructions given in accordance with the Depository’s and the Registrar’s procedures,

whereupon (a) the Registrar shall reflect on its books and records the date and (if the transfer does not involve a transfer of outstanding Physical Notes) a decrease in the principal amount of a

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Global Note in an amount equal to the principal amount of the beneficial interest in a Global Note to be transferred, and (b) the Registrar shall reflect on its books and records the date and an increase in the principal amount of a Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note transferred or the Issuer shall execute and the Trustee shall authenticate and make available for delivery one or more Physical Notes of like tenor and amount.

(b) Transfers to QIBs. The following provisions shall apply with respect to the registration or any proposed registration of transfer of a Note constituting a Restricted Note to a QIB (excluding transfers to Non-U.S. Persons):

(i) the Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on such Holder’s Note stating, or has otherwise advised the Issuer and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on such Holder’s Note stating, or has otherwise advised the Issuer and the Registrar in writing, that it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a QIB within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; and

(ii) if the proposed transferee is an Agent Member, and the Notes to be transferred consist of Physical Notes which after transfer are to be evidenced by an interest in the Global Note, upon receipt by the Registrar of instructions given in accordance with the Depository’s and the Registrar’s procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Note in an amount equal to the principal amount of the Physical Notes to be transferred, and the Trustee shall cancel the Physical Notes so transferred.

(c) Private Placement Legend. Upon the registration of transfer, exchange or replacement of Notes not bearing the Private Placement Legend, the Registrar shall deliver Notes that do not bear the Private Placement Legend. Upon the registration of transfer, exchange or replacement of Notes bearing the Private Placement Legend, the Registrar shall deliver only Notes that bear the Private Placement Legend unless (i) it has received the Officers’ Certificate required by paragraph (a)(i) (y) of this Section 2.17, (ii) there is delivered to the Registrar an Opinion of Counsel reasonably satisfactory to the Issuer and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act or (iii) such Note has been sold pursuant to an effective

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registration statement under the Securities Act and the Registrar has received an Officers’ Certificate from the Issuer to such effect.

(d) General. By its acceptance of any Note bearing the Private Placement Legend, each Holder of such Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Private Placement Legend and agrees that it will transfer such Note only as provided in this Indenture.

The Registrar shall retain for a period of two years copies of all letters, notices and other written communications received pursuant to Section 2.16 or this Section 2.17. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable notice to the Registrar.

SECTION 2.18. Computation of Interest.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE THREE

REDEMPTION

SECTION 3.01. Election To Redeem; Notices to Trustee

If the Issuer elects to redeem Notes pursuant to paragraph 6 of the Notes, at least 45 days prior to the Redemption Date (unless a shorter notice shall be agreed to in writing by the Trustee) but not more than 65 days before the Redemption Date, the Issuer shall notify the Trustee in writing of the Redemption Date, the principal amount of Notes to be redeemed and the redemption price, and deliver to the Trustee an Officers' Certificate stating that such redemption will comply with the conditions contained in paragraph 6 of the Notes. Notice given to the Trustee pursuant to this Section 3.01 may not be revoked after the time that notice is given to Holders pursuant to Section 3.03.

SECTION 3.02. Selection by Trustee of Notes To Be Redeemed

In the event that less than all of the Notes are to be redeemed pursuant to a redemption made pursuant to paragraph 6 of the Notes, selection of the Notes for redemption shall be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national security exchange, on a pro rata basis, by lot or by such method as the Trustee shall deem fair and appropriate; provided, however, that no Notes of a principal amount of \$1,000 or less shall

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be redeemed in part. If a partial redemption is made pursuant to the second paragraph of paragraph 6 of the Notes, selection of the Notes or portions thereof for redemption shall be made by the Trustee only on a pro rata basis or on as nearly a pro rata basis as is practicable (subject to the procedures of the Depository), unless that method is otherwise prohibited. The Trustee shall promptly notify the Issuer of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed. The Trustee may select for redemption portions of the principal of the Notes that have denominations larger than \$1,000. For all purposes of this Indenture unless the context otherwise requires, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Issuer may acquire Notes by means other than redemption, whether pursuant to an Issuer tender offer, open market purchase or otherwise provided such acquisition does not otherwise violate the other terms of this Indenture.

SECTION 3.03. Notice of Redemption.

At least 30 days, and no more than 60 days, before a Redemption Date, the Issuer shall mail, or cause to be mailed, a notice of redemption by first-class mail to each Holder of Notes to be redeemed at his or her last address as the same appears on the registry books maintained by the Registrar pursuant to Section 2.04.

The notice shall identify the Notes to be redeemed (including the CUSIP numbers thereof) and shall state:

- (1) the Redemption Date;
- (2) the redemption price and the amount of premium and accrued interest to be paid;
- (3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the Redemption Date and upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued;
- (4) the name and address of the Paying Agent;
- (5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (6) that unless the Issuer defaults in making the redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date;
- (7) the provision of paragraph 6 of the Notes, as the case may be, pursuant to which the Notes called for redemption are being redeemed; and

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- (8) the aggregate principal amount of Notes that are being redeemed.

At the Issuer's written request made at least five Business Days prior to the date on which notice is to be given, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's sole expense.

SECTION 3.04. Effect of Notice of Redemption.

Once the notice of redemption described in Section 3.03 is mailed, Notes called for redemption become due and payable on the Redemption Date and at the redemption price, including any premium, plus interest accrued to the Redemption Date. Upon surrender to the Paying Agent, such Notes shall be paid at the redemption price, including any premium, plus interest accrued to the Redemption Date, provided that if the Redemption Date is after a regular record date and on or prior to the Interest Payment Date, the accrued interest shall be payable to the Holder of the redeemed Notes registered on the relevant record date, and provided, further, that if a Redemption Date is a Legal Holiday, payment shall be made on the next succeeding Business Day and no interest shall accrue for the period from such Redemption Date to such succeeding Business Day.

SECTION 3.05. Deposit of Redemption Price.

On or prior to 10:00 A.M., New York City time, on each Redemption Date, the Issuer shall deposit with the Paying Agent in immediately available funds money sufficient to pay the redemption price of, including premium, if any, and accrued interest on all Notes to be redeemed on that date other than Notes or portions thereof called for redemption on that date which have been delivered by the Issuer to the Trustee for cancellation.

On and after any Redemption Date, if money sufficient to pay the redemption price of, including premium, if any, and accrued interest on Notes called for redemption shall have been made available in accordance with the preceding paragraph, the Notes called for redemption will cease to accrue interest and the only right of the Holders of such Notes will be to receive payment of the redemption price of and, subject to the first proviso in Section 3.04, accrued and unpaid interest on such Notes to the

Redemption Date. If any Note surrendered for redemption shall not be so paid, interest will be paid, from the Redemption Date until such redemption payment is made, on the unpaid principal of the Note and any interest not paid on such unpaid principal, in each case, at the rate and in the manner provided in the Notes.

SECTION 3.06. Notes Redeemed in Part.

Upon surrender of a Note that is redeemed in part, the Trustee shall authenticate for the Holder thereof a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

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ARTICLE FOUR

COVENANTS

SECTION 4.01. Payment of Notes.

The Issuer shall pay the principal of and interest (including all Additional Interest as provided in the Registration Rights Agreement) on the Notes on the dates and in the manner provided in the Notes and this Indenture. An installment of principal or interest shall be considered paid on the date it is due if the Trustee or Paying Agent holds on that date money designated for and sufficient to pay such installment.

The Issuer shall pay interest on overdue principal (including post-petition interest in a proceeding under any Bankruptcy Law), and overdue interest, to the extent lawful, at the rate specified in the Notes.

SECTION 4.02. Reports to Holders

Whether or not required by the SEC, so long as any Notes are outstanding, the Issuer shall furnish to the Holders of Notes, within the time periods specified in the SEC's rules and regulations (including any grace periods or extensions permitted by the SEC):

- (1) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Issuer were required to file these Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Issuer's independent registered public accounting firm; and
- (2) all current reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file these reports.

In addition, whether or not required by the SEC, the Issuer shall file a copy of all of the information and reports referred to in clauses (1) and (2) above with the SEC for public availability within the time periods specified in the SEC's rules and regulations (unless the SEC will not accept the filing) and make the information available to securities analysts and prospective investors upon request. For so long as any Notes remain outstanding, the Issuer shall furnish to the Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

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SECTION 4.03. Waiver of Stay, Extension or Usury Laws

Each of the Issuer and the Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law which would prohibit or forgive any of the Issuer and the Guarantors from paying all or any portion of the principal of, premium, if any, and/or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that they may lawfully do so) each of the Issuer and the Guarantors 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.

SECTION 4.04. Compliance Certificate.

(a) The Issuer shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Issuer and its Subsidiaries during such fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Issuer and the Guarantors have kept, observed, performed and fulfilled their obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge, the Issuer and the Guarantors have kept, observed, performed and fulfilled each and every covenant contained in this Indenture and are not in default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action they are taking or propose to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuer and the Guarantors is taking or propose to take with respect thereto.

(b) The Issuer and the Guarantors shall, so long as any of the Notes are outstanding, deliver to the Trustee, forthwith upon any Officer becoming aware of any Default, an Officers' Certificate specifying such Default and what action the Issuer and the Guarantors are taking or propose to take with respect thereto.

(c) The Issuer's fiscal year currently ends on December 31. The Issuer will provide written notice to the Trustee of any change in its fiscal year.

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SECTION 4.05. Taxes.

The Issuer and the Guarantors shall, and shall cause each of their Subsidiaries to, pay prior to delinquency all material taxes, assessments, and governmental levies except as contested in good faith and by appropriate proceedings.

SECTION 4.06. Limitations on Additional Indebtedness.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, incur any Indebtedness; provided that the Issuer or any Restricted Subsidiary may incur additional Indebtedness (including Acquired Indebtedness) if no Default shall have occurred and be continuing at the time of or as a consequence of the incurrence of the Indebtedness and if, after giving effect thereto, either (a) the Consolidated Fixed Charge Coverage Ratio would be at least 2.00 to 1.00 or

(b) the ratio of Consolidated Indebtedness to Consolidated Tangible Net Worth would be less than 3.00 to 1.00 (either (a) or (b), the “Ratio Exception”).

Notwithstanding the above, so long as no Default shall have occurred and be continuing at the time of or as a consequence of the incurrence of the following Indebtedness, each of the following shall be permitted (the “Permitted Indebtedness”):

- (1) Indebtedness of the Issuer and any Restricted Subsidiary under the Credit Facilities in an aggregate amount at any time outstanding (whether incurred under the Ratio Exception or as Permitted Indebtedness) not to exceed the greater of (x) \$600.0 million and (y) the amount of the Borrowing Base as of the date of such incurrence;
- (2) the Notes and the Note Guarantees issued on the Issue Date;
- (3) Indebtedness of the Issuer and the Restricted Subsidiaries to the extent outstanding on the Issue Date (other than Indebtedness referred to in clauses (1) and (2) above, and after giving effect to the intended use of proceeds of the Notes);
- (4) Indebtedness of the Issuer and the Restricted Subsidiaries under Hedging Obligations; provided that (a) such Hedging Obligations relate to payment obligations on Indebtedness otherwise permitted to be incurred by this Section 4.06, and (b) the notional principal amount of such Hedging Obligations at the time incurred does not exceed the principal amount of the Indebtedness to which such Hedging Obligations relate;
- (5) Indebtedness of the Issuer owed to a Restricted Subsidiary and Indebtedness of any Restricted Subsidiary owed to the Issuer or any other Restricted Subsidiary; provided, however, that (a) any Indebtedness of the Issuer owed to a Restricted Subsidiary is unsecured and subordinated, pursuant to a written agreement, to the Issuer’s obligation, under this Indenture and the Notes and (b) upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person

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other than the Issuer or a Restricted Subsidiary, the Issuer or such Restricted Subsidiary, as applicable, shall be deemed to have incurred Indebtedness not permitted by this clause (5);

(6) Indebtedness in respect of bid, performance or surety bonds issued for the account of the Issuer or any Restricted Subsidiary in the ordinary course of business, including guarantees or obligations of the Issuer or any Restricted Subsidiary with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed);

(7) Purchase Money Indebtedness incurred by the Issuer or any Restricted Subsidiary;

(8) Non-Recourse Indebtedness of the Issuer or any Restricted Subsidiary incurred for the acquisition, development and/or improvement of real property and secured by Liens only on such real property;

(9) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five Business Days of incurrence;

(10) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(11) Refinancing Indebtedness with respect to Indebtedness incurred pursuant to the Ratio Exception or clause (2) or (3) above;

(12) Indebtedness of the Issuer or any Restricted Subsidiary in an aggregate amount not to exceed \$25.0 million at any time outstanding;

(13) obligations for, pledge of assets in respect of, and guarantees of, bond financings of political subdivisions or enterprises thereof in the ordinary course of business; and

(14) Indebtedness of mortgage lending Subsidiaries under warehouse lines of credit, repurchase agreements and Indebtedness secured by mortgage loans and related assets of mortgage lending Subsidiaries in the ordinary course of a mortgage lending business.

For purposes of determining compliance with this Section 4.06, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (1) through (14) above or is entitled to be incurred pursuant to

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the Ratio Exception, the Issuer shall, in its sole discretion, classify such item of Indebtedness and may divide and classify such Indebtedness in more than one of the types of Indebtedness described, except that Indebtedness outstanding under the Credit Facilities on the Issue Date shall be deemed to have been incurred under clause (1) above.

SECTION 4.07. Intentionally Omitted.

SECTION 4.08. Limitations on Restricted Payments.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, make any Restricted Payment if at the time of such Restricted Payment:

- (1) a Default shall have occurred and be continuing or shall occur as a consequence thereof;
- (2) the Issuer cannot incur \$1.00 of additional Indebtedness pursuant to the Ratio Exception; or
- (3) the amount of such Restricted Payment, when added to the aggregate amount of all other Restricted Payments made after the Measurement Date (other than Restricted Payments made pursuant to clause (2), (3) or (5) of the next paragraph), exceeds the sum (the “Restricted Payments Basket”) of (without duplication):

(a) 50% of Consolidated Net Income for the period (taken as one accounting period) commencing on the first day of the first full fiscal quarter commencing after the Measurement Date to and including the last day of the fiscal quarter ended immediately prior to the date of such calculation for which consolidated financial statements are available (or, if such Consolidated Net Income shall be a deficit, minus 100% of such aggregate deficit), plus

(b) 100% of the aggregate net cash proceeds or the Fair Market Value of any assets to be used in a Permitted Business (other than securities) received by the Issuer either (x) as contributions to the common equity of the Issuer after the Measurement Date or (y) from the issuance and sale of Qualified Equity Interests after the Measurement Date, other than to the extent any such proceeds are used to redeem Notes in accordance with Section 6(b) of the Notes, plus

(c) the aggregate amount by which Indebtedness of the Issuer or any Restricted Subsidiary is reduced on the Issuer's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Issuer) subsequent to the Measurement Date into Qualified Equity Interests (less the amount of any cash, or the

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fair value of assets, distributed by the Issuer or any Restricted Subsidiary upon such conversion or exchange), plus

(d) in the case of the disposition or repayment of or return on any Investment that was treated as a Restricted Payment made after the Measurement Date, an amount (to the extent not included in the computation of Consolidated Net Income) equal to the lesser of (i) the return of capital with respect to such Investment and (ii) the amount of such Investment that was treated as a Restricted Payment, in either case, less the cost of the disposition of such Investment and net of taxes, plus

(e) upon a Redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the lesser of (i) the Fair Market Value of the Issuer's proportionate interest in such Subsidiary immediately following such Redesignation, and (ii) the aggregate amount of the Issuer's Investments in such Subsidiary to the extent such Investments reduced the amount available for subsequent Restricted Payments under this clause (3) and were not previously repaid or otherwise reduced, plus

(f) \$25.0 million.

The foregoing provisions will not prohibit:

(1) the payment by the Issuer or any Restricted Subsidiary of any dividend within 60 days after the date of declaration thereof, if on the date of declaration the payment would have complied with the provisions of this Indenture;

(2) so long as no Default shall have occurred and be continuing at the time of or as a consequence of such redemption, the redemption of any Equity Interests of the Issuer or any Restricted Subsidiary in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Equity Interests;

(3) so long as no Default shall have occurred and be continuing at the time of or as a consequence of such redemption, the redemption of Subordinated Indebtedness of the Issuer or any Restricted Subsidiary (a) in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Equity Interests or (b) in exchange for, or out of the proceeds of the substantially concurrent incurrence of, Refinancing Indebtedness permitted to be incurred under Section 4.06 and the other terms of this Indenture;

(4) so long as no Default shall have occurred and be continuing at the time of or as a consequence of such redemption, the redemption of Equity Interests of the Issuer held by officers, directors or employees or former officers, directors or employees (or

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their transferees, estates or beneficiaries under their estates), upon their death, disability, retirement, severance or termination of employment or service; provided that the aggregate cash consideration paid for all such redemptions shall not exceed \$2.0 million during any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of \$4.0 million in any calendar year); or

(5) repurchases of Equity Interests deemed to occur upon the exercise of stock options if the Equity Interests represents a portion of the exercise price thereof;

provided that no issuance and sale of Qualified Equity Interests pursuant to clause (2) or (3) above shall increase the Restricted Payments Basket, except to the extent the proceeds thereof exceed the amounts used to effect the transactions described therein.

SECTION 4.09. Limitations on Asset Sales

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Sale unless:

(1) the Issuer or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets included in such Asset Sale; and

(2) at least 75% of the total consideration received in such Asset Sale or series of related Asset Sales consists of cash or Cash Equivalents.

For purposes of clause (2), the following shall be deemed to be cash:

(a) the amount (without duplication) of any Indebtedness (other than Subordinated Indebtedness) of the Issuer or such Restricted Subsidiary that is expressly assumed by the transferee in such Asset Sale and with respect to which the Issuer or such Restricted Subsidiary, as the case may be, is unconditionally released by the holder of such Indebtedness,

(b) the amount of any obligations received from such transferee that are within 30 days converted by the Issuer or such Restricted Subsidiary to cash (to the extent of the cash actually so received), and

(c) the Fair Market Value of any assets (other than securities, unless such securities represent Equity Interests in an entity engaged solely in a Permitted Business, such entity becomes a Restricted Subsidiary and the Issuer or a Restricted Subsidiary acquires voting and management control of such entity) received by the Issuer or any Restricted Subsidiary to be used by it in the Permitted Business.

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If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary of the Issuer, as the case may be, in connection with any Asset Sale is repaid or converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then the date of such repayment, conversion or disposition shall be deemed to constitute the date of an Asset Sale hereunder and the Net Available Proceeds thereof shall be applied in accordance with this Section 4.09.

If the Issuer or any Restricted Subsidiary engages in an Asset Sale, the Issuer or such Restricted Subsidiary shall, no later than one year following the consummation thereof, apply all or any of the Net Available Proceeds therefrom to:

- (1) repay any Indebtedness under the Credit Facilities;
- (2) repay any Indebtedness which was secured by the assets sold in such Asset Sale; and/or
- (3) invest all or any part of the Net Available Proceeds thereof in the purchase of assets (other than securities, unless such securities represent Equity Interests in an entity engaged solely in a Permitted Business, such entity becomes a Restricted Subsidiary and the Issuer or a Restricted Subsidiary acquires voting and management control of such entity) to be used by the Issuer or any Restricted Subsidiary in the Permitted Business.

The amount of Net Available Proceeds not applied or invested as provided in this paragraph will constitute "Excess Proceeds."

When the aggregate amount of Excess Proceeds equals or exceeds \$25.0 million, the Issuer shall be required to make an Offer to Purchase from all Holders and, if applicable, redeem (or make an offer to do so) any Pari Passu Indebtedness of the Issuer the provisions of which require the Issuer to redeem such Indebtedness with the proceeds from any Asset Sales (or offer to do so), in an aggregate principal amount of Notes and such Pari Passu Indebtedness equal to the amount of such Excess Proceeds as follows:

- (1) the Issuer shall (a) make an Offer to Purchase (a "Net Proceeds Offer") to all Holders, and (b) redeem (or make an offer to do so) any such other Pari Passu Indebtedness, pro rata in proportion to the respective principal amounts of the Notes and such other Indebtedness required to be redeemed, the maximum principal amount of Notes and Pari Passu Indebtedness that may be redeemed out of the amount (the "Payment Amount") of such Excess Proceeds;
- (2) the offer price for the Notes shall be payable in cash in an amount equal to 100% of the principal amount of the Notes tendered pursuant to a Net Proceeds Offer, plus accrued and unpaid interest thereon, if any, to the date such Net Proceeds Offer is consummated (the "Offered Price"), and the redemption price for such Pari Passu Indebtedness

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(the "Pari Passu Indebtedness Price") shall be as set forth in the related documentation governing such Indebtedness;

- (3) if the aggregate Offered Price of Notes validly tendered and not withdrawn by Holders thereof exceeds the pro rata portion of the Payment Amount allocable to the Notes, Notes to be purchased shall be selected on a pro rata basis; and
- (4) upon completion of such Net Proceeds Offer in accordance with the foregoing provisions, the amount of Excess Proceeds with respect to which such Net Proceeds Offer was made shall be deemed to be zero.

To the extent that the sum of the aggregate Offered Price of Notes tendered pursuant to a Net Proceeds Offer and the aggregate Pari Passu Indebtedness Price paid to the holders of such Pari Passu Indebtedness is less than the Payment Amount relating thereto (such shortfall constituting a "Net Proceeds Deficiency"), the Issuer may use the Net Proceeds Deficiency, or a portion thereof, for general corporate purposes, subject to the provisions of this Indenture.

In the event of the transfer of substantially all (but not all) of the assets of the Issuer and the Restricted Subsidiaries as an entirety to a Person in a transaction covered by and effected in accordance with Section 5.01 the successor corporation shall be deemed to have sold for cash at Fair Market Value the assets of the Issuer and the Restricted Subsidiaries not so transferred for purposes of this covenant, and shall comply with the provisions of this covenant with respect to such deemed sale as if it were an Asset Sale (with such Fair Market Value being deemed to be Net Available Proceeds for such purpose).

The Issuer shall comply with applicable tender offer rules, including the requirements of Rule 14e-1 under the Exchange Act and any other applicable laws and regulations in connection with the purchase of Notes pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.09, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.09 by virtue of this compliance.

SECTION 4.10. Limitations on Transactions with Affiliates

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, in one transaction or a series of related transactions, sell, lease, transfer or otherwise dispose of any of its assets to, or purchase any assets from, or enter into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate involving aggregate consideration in excess of \$60,000 (an "Affiliate Transaction"), unless:

- (1) such Affiliate Transaction is on terms that are no less favorable to the Issuer or the relevant Restricted Subsidiary than those that may have been obtained in a comparable transaction at such time on an arm's-length basis by the Issuer or that Restricted

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Subsidiary from a Person that is not an Affiliate of the Issuer or that Restricted Subsidiary; and

- (2) the Issuer delivers to the Trustee:
 - (a) with respect to any Affiliate Transaction involving aggregate value of \$5.0 million or more, an Officers' Certificate certifying that such Affiliate Transaction complies with clause (1) above;
 - (b) with respect to any Affiliate Transaction involving aggregate value in excess of \$10.0 million, an Officers' Certificate certifying that such Affiliate Transaction complies with clause (1) above and a Secretary's Certificate which sets forth and authenticates a resolution that has been adopted by the Independent Directors approving such Affiliate Transaction; and
 - (c) with respect to any Affiliate Transaction involving aggregate value of \$25.0 million or more, the certificates described in the preceding clause (b) and (x) a written opinion as to the fairness of such Affiliate Transaction to the Issuer or such Restricted Subsidiary from a financial point of view or

(y) a written appraisal supporting the value of such Affiliate Transaction, in either case, issued by an Independent Financial Advisor.

The foregoing restrictions shall not apply to:

- (1) transactions exclusively between or among (a) the Issuer and one or more Restricted Subsidiaries or (b) Restricted Subsidiaries; provided, in each case, that no Affiliate of the Issuer (other than another Restricted Subsidiary) owns Equity Interests of any such Restricted Subsidiary;
- (2) reasonable director, officer, employee and consultant compensation (including bonuses) and other benefits (including retirement, health, stock and other benefit plans) and indemnification arrangements;
- (3) loans and advances permitted by clause (3) of the definition of “Permitted Investments”;
- (4) any agreement as in effect as of the Issue Date or any extension, amendment or modification thereto (so long as any such extension, amendment or modification satisfies the requirements set forth in clause (1) of the first paragraph of this Section 4.10) or any transaction contemplated thereby;

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(5) Restricted Payments of the type described in clause (1), (2) or (4) of the definition of “Restricted Payment” and which are made in accordance with Section 4.08; or

(6) sales of Qualified Equity Interests for cash by the Issuer to an Affiliate.

SECTION 4.11. Limitations on Liens.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or permit or suffer to exist any Lien of any nature whatsoever against (other than Permitted Liens) any assets of the Issuer or any Restricted Subsidiary (including Equity Interests of a Restricted Subsidiary), whether owned at the Issue Date or thereafter acquired, or any proceeds therefrom, or assign or otherwise convey any right to receive income or profits therefrom, which Lien secures Indebtedness or trade payables, unless contemporaneously therewith:

(1) in the case of any Lien securing an obligation that ranks pari passu with the Notes or a Note Guarantee, effective provision is made to secure the Notes or such Note Guarantee, as the case may be, at least equally and ratably with or prior to such obligation with a Lien on the same collateral; and

(2) in the case of any Lien securing an obligation that is subordinated in right of payment to the Notes or a Note Guarantee, effective provision is made to secure the Notes or such Note Guarantee, as the case may be, with a Lien on the same collateral that is prior to the Lien securing such subordinated obligation,

in each case, for so long as such obligation is secured by such Lien.

SECTION 4.12. Conduct of Business.

The Issuer will not, and will not permit any Restricted Subsidiary to, engage in any business other than the Permitted Business.

SECTION 4.13. Additional Note Guarantees.

If, after the Issue Date, (a) the Issuer or any Restricted Subsidiary shall acquire or create another Subsidiary (other than (i) a Subsidiary that has been designated an Unrestricted Subsidiary or (ii) during a Suspension Period, a Subsidiary exclusively engaged in mortgage origination, title or insurance businesses) or (b) any Unrestricted Subsidiary is redesignated a Restricted Subsidiary, then, in each such case, the Issuer shall cause such Restricted Subsidiary to:

(1) execute and deliver to the Trustee (a) a supplemental indenture in form and substance satisfactory to the Trustee pursuant to which such Restricted Subsidiary

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shall unconditionally guarantee all of the Issuer’s obligations under the Notes and this Indenture and (b) a notation of guarantee in respect of its Note Guarantee; and

(2) deliver to the Trustee one or more Opinions of Counsel that such supplemental indenture (a) has been duly authorized, executed and delivered by such Restricted Subsidiary and (b) constitutes a valid and legally binding obligation of such Restricted Subsidiary in accordance with its terms.

SECTION 4.14. Limitations on Dividend and Other Restrictions Affecting Restricted Subsidiaries.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

- (a) pay dividends or make any other distributions on or in respect of its Equity Interests;
- (b) make loans or advances or pay any Indebtedness or other obligation owed to the Issuer or any other Restricted Subsidiary; or
- (c) transfer any of its assets to the Issuer or any other Restricted Subsidiary;

except for:

- (1) encumbrances or restrictions existing under or by reason of applicable law;
- (2) encumbrances or restrictions existing under this Indenture, the Notes and the Note Guarantees;
- (3) non-assignment provisions of any contract or any lease entered into in the ordinary course of business;
- (4) encumbrances or restrictions existing under agreements existing on the date hereof (including, without limitation, the Credit Facilities) as in effect on the date hereof or on any Reversion Date as in effect on that date;
- (5) restrictions on the transfer of assets subject to any Lien permitted under this Indenture imposed by the holder of such Lien;

(6) restrictions on the transfer of assets imposed under any agreement to sell such assets permitted under this Indenture to any Person pending the closing of such sale;

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(7) any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the assets of any Person, other than the Person or the assets so acquired;

(8) encumbrances or restrictions arising in connection with Refinancing Indebtedness; provided, however, that any such encumbrances and restrictions are not materially more restrictive with respect to any Restricted Subsidiary than those in effect on the Issue Date with respect to that Restricted Subsidiary pursuant to the agreements creating or evidencing the Indebtedness being refinanced;

(9) customary provisions in leases, partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements entered into in the ordinary course of business that restrict the transfer of leasehold interests or ownership interests in such partnership, limited liability company, joint venture or similar Person;

(10) Purchase Money Indebtedness incurred in compliance with Section 4.06 that impose restrictions of the nature described in clause (c) above on the assets acquired; and

(11) any encumbrances or restrictions imposed by any amendments or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (10) above; provided that such amendments or refinancings are, in the good faith judgment of the Issuer's Board of Directors, no more materially restrictive with respect to such encumbrances and restrictions than those prior to such amendment or refinancing.

SECTION 4.15. Limitations on Designation of Unrestricted Subsidiaries.

The Issuer may designate any Subsidiary of the Issuer as an "Unrestricted Subsidiary" under this Indenture (a "Designation") only if:

(1) no Default shall have occurred and be continuing at the time of or after giving effect to such Designation; and

(2) the Issuer would be permitted to make, at the time of such Designation, (a) a Permitted Investment or (b) an Investment pursuant to the first paragraph of Section 4.08, in either case, in an amount (the "Designation Amount") equal to the Fair Market Value of the Issuer's proportionate interest in such Subsidiary on such date.

No Subsidiary shall be Designated as an "Unrestricted Subsidiary" unless such Subsidiary:

(1) has no Indebtedness other than Permitted Unrestricted Subsidiary Debt;

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(2) is not party to any agreement, contract, arrangement or understanding with the Issuer or any Restricted Subsidiary unless the terms of the agreement, contract, arrangement or understanding are no less favorable to the Issuer or the Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Issuer or such Restricted Subsidiary;

(3) is a Person with respect to which neither the Issuer nor any Restricted Subsidiary has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve the Person's financial condition or to cause the Person to achieve any specified levels of operating results; and

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Issuer or any Restricted Subsidiary, except for any guarantee given solely to support the pledge by the Issuer or any Restricted Subsidiary of the Equity Interests of such Unrestricted Subsidiary, which guarantee is not recourse to the Issuer or any Restricted Subsidiary, and except to the extent the amount thereof constitutes a Restricted Payment permitted pursuant to Section 4.08.

If, at any time, any Unrestricted Subsidiary fails to meet the preceding requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of the Subsidiary and any Liens on assets of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary as of the date and, if the Indebtedness is not permitted to be incurred under Section 4.06 or the Lien is not permitted under Section 4.11, the Issuer shall be in default of the applicable covenant.

As of the Issue Date, the Issuer shall be deemed to have Designated MTH Mortgage, LLC and Texas Home Mortgage Company as Unrestricted Subsidiaries.

The Issuer may redesignate an Unrestricted Subsidiary as a Restricted Subsidiary (a "Redesignation") only if:

(1) no Default shall have occurred and be continuing at the time of and after giving effect to such Redesignation; and

(2) all Liens, Indebtedness and Investments of such Unrestricted Subsidiary outstanding immediately following such Redesignation would, if incurred or made at such time, have been permitted to be incurred or made for all purposes of this Indenture.

All Designations and Redesignations must be evidenced by resolutions of the Board of Directors of the Issuer, delivered to the Trustee certifying compliance with the foregoing provisions.

SECTION 4.16. [Intentionally Omitted]

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SECTION 4.17. Maintenance of Properties; Insurance; Compliance with Law.

(a) The Issuer shall, and shall cause each of its Restricted Subsidiaries to, at all times cause all properties used or useful in the conduct of their business to be maintained and kept in good condition, repair and working order (reasonable wear and tear excepted) and supplied with all necessary equipment, and shall

cause to be made all necessary repairs, renewals, replacements, necessary betterments and necessary improvements thereto.

(b) The Issuer shall maintain, and shall cause to be maintained for each of its Restricted Subsidiaries, insurance covering such risks as are usually and customarily insured against by corporations similarly situated in the markets where the Issuer and the Restricted Subsidiaries conduct homebuilding operations, in such amounts as shall be customary for corporations similarly situated and with such deductibles and by such methods as shall be customary and reasonably consistent with past practice.

(c) The Issuer shall, and shall cause each of its Subsidiaries to, comply with all statutes, laws, ordinances or government rules and regulations to which they are subject, non-compliance with which would materially adversely affect the business, earnings, properties, assets or financial condition of the Issuer and their Subsidiaries taken as a whole.

SECTION 4.18. Payments for Consent.

The Issuer shall not, and shall not cause or permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid or agreed to be paid to all Holders which so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

SECTION 4.19. Legal Existence.

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

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SECTION 4.20. Change of Control Offer.

Upon the occurrence of a Change of Control Triggering Event, the Issuer shall be obligated to make an Offer to Purchase (the "Change of Control Offer"), and shall purchase, on a Business Day (the "Change of Control Payment Date") not more than 60 nor less than 30 days following the occurrence of the Change of Control, all of the then outstanding Notes at a purchase price (the "Change of Control Purchase Price") equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the Change of Control Payment Date. The Change of Control Offer shall remain open for at least 20 Business Days and until the close of business on the Change of Control Payment Date.

Within 30 days following the date upon which a Change of Control Triggering Event occurs (the "Change of Control Date"), the Issuer shall send, by first class mail, a notice to each Holder, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer. The notice to the Holders shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Change of Control Offer.

Any amounts remaining after the purchase of Notes pursuant to a Change of Control Offer shall be returned by the Trustee to the Issuer.

The Issuer's obligation to make a Change of Control Offer will be satisfied if a third party makes the Change of Control Offer in the manner and at the times and otherwise in compliance with the requirements applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer.

The Issuer shall comply with applicable tender rules, including the requirements of Rule 14e-1 under the Exchange Act and any other applicable laws and regulations in connection with the purchase of Notes pursuant to a Change of Control Offer. To the extent the provisions of any securities laws or regulations conflict with the provisions under this Section 4.20, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.20 by virtue thereof.

SECTION 4.21. Suspension Period.

During a Suspension Period, the provisions of the Indenture described under Sections 4.06, 4.08, 4.09, 4.10, 4.12, 4.14, 4.15 and 4.20 (collectively, the "Suspendable Covenants") will not apply. All other covenants and provisions of this Indenture will apply at all times so long as any Notes remain outstanding.

On the Reversion Date, all Indebtedness incurred during the Suspension Period will be classified to have been incurred pursuant to the Ratio Exception or one of the clauses set forth in the definition of Permitted Indebtedness (to the extent such Indebtedness would be permitted to be incurred thereunder as of the Reversion Date and after giving effect to Indebtedness

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incurred prior to the Suspension Period and outstanding on the Reversion Date). To the extent any Indebtedness would not so be permitted to be incurred pursuant to the Ratio Exception or any of the clauses set forth in the definition of Permitted Indebtedness, such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as Permitted Indebtedness under clause (3) of the second paragraph of Section 4.06 and permitted to be refinanced under clause (11) of the second paragraph of Section 4.06.

For purposes of calculating the amount available to be made as Restricted Payments under clause (3) of the first paragraph of Section 4.08, calculations under that clause will be made with reference to the Measurement Date as set forth in that clause. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under clause (3) and the items specified in subclauses (a) through (e) of clause (3) that occur during the Suspension Period will increase the amount available to be made as Restricted Payments under clause (3). Any Restricted Payments made during the Suspension Period that are of the type described in clause (4) under the second paragraph of Section 4.08 shall reduce the amounts permitted to be incurred under such clause (4) on the Reversion Date.

For purposes of Section 4.09, on the Reversion Date, the Net Proceeds Offer Amount will be reset to zero.

ARTICLE FIVE

SUCCESSOR CORPORATION

SECTION 5.01. Limitations on Mergers, Consolidations, Etc.

The Issuer shall not, directly or indirectly, in a single transaction or a series of related transactions, (a) consolidate or merge with or into (other than a merger that satisfies the requirements of clause (1) below with a Wholly-Owned Restricted Subsidiary solely for the purpose of changing the Issuer's jurisdiction of incorporation to another State of the United States), or sell, lease, transfer, convey or otherwise dispose of or assign all or substantially all of the assets of the Issuer or the Issuer and the Restricted Subsidiaries (taken as a whole) or (b) adopt a Plan of Liquidation unless, in either case:

- (1) either:
 - (a) the Issuer will be the surviving or continuing Person; or
 - (b) the Person formed by or surviving such consolidation or merger or to which such sale, lease, conveyance or other disposition shall be made
- (or, in

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the case of a Plan of Liquidation, any Person to which assets are transferred) (collectively, the "Successor") is a corporation or limited liability company organized and existing under the laws of any State of the United States of America or the District of Columbia, and the Successor expressly assumes, by supplemental indenture in form and substance satisfactory to the Trustee, all of the obligations of the Issuer under the Notes, this Indenture and the Registration Rights Agreement; provided that at any time the Successor is a limited liability company, there shall be a co-issuer of the Notes that is a corporation;

(2) immediately after giving effect to such transaction and the assumption of the obligations as set forth in clause (1)(b) above and the incurrence of any Indebtedness to be incurred in connection therewith, no Default shall have occurred and be continuing; and

(3) if such transaction or series of related transactions occurs other than during a Suspension Period, immediately after and giving effect to such transaction and the assumption of the obligations set forth in clause (1)(b) above and the incurrence of any Indebtedness to be incurred in connection therewith, and the use of any net proceeds therefrom on a pro forma basis, (a) the Consolidated Net Worth of the Issuer or the Successor, as the case may be, would be at least equal to the Consolidated Net Worth of the Issuer immediately prior to such transaction and (b) the Issuer or the Successor, as the case may be, could incur \$1.00 of additional Indebtedness pursuant to the Ratio Exception.

For purposes of this Section 5.01, any Indebtedness of the Successor which was not Indebtedness of the Issuer immediately prior to the transaction shall be deemed to have been incurred in connection with such transaction.

Except as provided under Section 10.04 no Guarantor may consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, whether or not affiliated with such Guarantor, unless:

- (1) either:
 - (a) such Guarantor will be the surviving or continuing Person; or
 - (b) the Person formed by or surviving any such consolidation or merger assumes, by supplemental indenture in form and substance satisfactory to the Trustee, all of the obligations of such Guarantor under the Note Guarantee of such Guarantor, this Indenture and the Registration Rights Agreement; and
- (2) immediately after giving effect to such transaction, no Default shall have occurred and be continuing.

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For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the assets of one or more Restricted Subsidiaries, the Equity Interests of which constitute all or substantially all of the assets of the Issuer, will be deemed to be the transfer of all or substantially all of the assets of the Issuer.

Upon any consolidation, combination or merger of the Issuer or a Guarantor, or any transfer of all or substantially all of the assets of the Issuer in accordance with the foregoing, in which the Issuer or such Guarantor is not the continuing obligor under the Notes or its Note Guarantee, the surviving entity formed by such consolidation or into which the Issuer or such Guarantor is merged or to which the conveyance, lease or transfer is made will succeed to, and be substituted for, and may exercise every right and power of, the Issuer or such Guarantor under this Indenture, the Notes and the Note Guarantees with the same effect as if such surviving entity had been named therein as the Issuer or such Guarantor and, except in the case of a conveyance, transfer or lease, the Issuer or such Guarantor, as the case may be, will be released from the obligation to pay the principal of and interest on the Notes or in respect of its Note Guarantee, as the case may be, and all of the Issuer's or such Guarantor's other obligations and covenants under the Notes, this Indenture and its Note Guarantee, if applicable.

Notwithstanding the foregoing, any Restricted Subsidiary may merge into the Issuer or another Restricted Subsidiary.

SECTION 5.02. Successor Person Substituted

Upon any consolidation or merger, or any transfer of all or substantially all of the assets of the Issuer or any Restricted Subsidiary in accordance with Section 5.01, the successor corporation formed by such consolidation or into which the Issuer is merged or to which such transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer or such Restricted Subsidiary under this Indenture with the same effect as if such successor corporation had been named as the Issuer or such Restricted Subsidiary herein, and thereafter the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Notes.

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ARTICLE SIX

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default.

Each of the following is an “Event of Default”:

- (1) failure by the Issuer to pay interest on any of the Notes when it becomes due and payable and the continuance of any such failure for 30 days;
- (2) failure by the Issuer to pay the principal on any of the Notes when it becomes due and payable, whether at stated maturity, upon redemption, upon purchase, upon acceleration or otherwise;
- (3) failure by the Issuer to comply with Section 5.01 or, except in a Suspension Period, in respect of its obligations to make a Change of Control Offer;
- (4) failure by the Issuer to comply with any other agreement or covenant in this Indenture and continuance of this failure for 30 days after notice of the failure has been given to the Issuer by the Trustee or by the Holders of at least 25% of the aggregate principal amount of the Notes then outstanding;
- (5) default under any mortgage, indenture or other instrument or agreement under which there may be issued or by which there may be secured or evidenced Indebtedness of the Issuer or any Restricted Subsidiary, whether such Indebtedness now exists or is incurred after the Issue Date, which default:
 - (a) is caused by a failure to pay when due principal on such Indebtedness within the applicable express grace period,
 - (b) results in the acceleration of such Indebtedness prior to its express final maturity or
 - (c) results in the commencement of judicial proceedings to foreclose upon, or to exercise remedies under applicable law or applicable security documents to take ownership of, the assets securing such Indebtedness, and

in each case, the principal amount of such Indebtedness, together with any other Indebtedness with respect to which an event described in clause (a), (b) or (c) has occurred and is continuing, aggregates \$10.0 million or more;

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- (6) one or more judgments or orders that exceed \$10.0 million in the aggregate (net of amounts covered by insurance or bonded) for the payment of money have been entered by a court or courts of competent jurisdiction against the Issuer or any Restricted Subsidiary and such judgment or judgments have not been satisfied, stayed, annulled or rescinded within 60 days of being entered;
- (7) the Issuer or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
 - (a) commences a voluntary case,
 - (b) consents to the entry of an order for relief against it in an involuntary case,
 - (c) consents to the appointment of a Custodian of it or for all or substantially all of its assets, or
 - (d) makes a general assignment for the benefit of its creditors;
- (8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
 - (a) is for relief against the Issuer or any Significant Subsidiary as debtor in an involuntary case,
 - (b) appoints a Custodian of the Issuer or any Significant Subsidiary or a Custodian for all or substantially all of the assets of the Issuer or any Significant Subsidiary, or
 - (c) orders the liquidation of the Issuer or any Significant Subsidiary,

and the order or decree remains unstayed and in effect for 60 days; or

- (9) any Note Guarantee of any Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Note Guarantee and this Indenture) or is declared null and void and unenforceable or found to be invalid or any Guarantor denies its liability under its Note Guarantee (other than by reason of release of a Guarantor from its Note Guarantee in accordance with the terms of this Indenture and the Note Guarantee).

Subject to Sections 7.01 and 7.02, the Trustee shall not be charged with knowledge of any Default, Event of Default, Change of Control or Asset Sale or the requirement for payment of Liquidated Damages unless written notice thereof shall have been given to a Responsible Officer at the Corporate Trust Office of the Trustee by the Issuer or any other Person.

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SECTION 6.02. Acceleration.

If an Event of Default (other than an Event of Default specified in clause (7) or (8) of Section 6.01 with respect to the Issuer), shall have occurred and be continuing, the Trustee, by written notice to the Issuer, or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding by written notice to the Issuer and the Trustee, may declare all amounts owing under the Notes to be due and payable immediately. Upon such declaration of acceleration, the aggregate principal of and accrued and unpaid interest on the outstanding Notes shall immediately become due and payable; provided, however, that after such acceleration, but before a judgment or decree based on acceleration, the Holders of a majority in aggregate principal amount of such outstanding Notes may rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal and interest, have been cured or waived as provided in this Indenture. If an Event of Default specified in clause (7) or (8) of Section 6.01 with respect to the Issuer occurs, all outstanding Notes shall become due and payable without any further action or notice.

SECTION 6.03. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture and may take any necessary action requested of it as Trustee to settle, compromise, adjust or otherwise conclude any proceedings to which it is a party.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative. Any costs associated with actions taken by the Trustee under this Section 6.03 shall be reimbursed to the Trustee by the Issuer.

SECTION 6.04. Waiver of Past Defaults and Events of Default

Subject to Sections 6.02, 6.08 and 8.02, the Holders of a majority in aggregate principal amount of the notes then outstanding have the right to waive any existing Default or compliance with any provision of this Indenture or the Notes. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto.

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SECTION 6.05. Control by Majority.

The Holders of a majority in aggregate principal amount of the Notes then outstanding may 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 by this Indenture. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines may be unduly prejudicial to the rights of another Holder not taking part in such direction, and the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or if the Trustee in good faith shall, by a Responsible Officer, determine that the proceedings so directed may involve it in personal liability; provided that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 6.06. Limitation on Suits.

No Holder will have any right to institute any proceeding with respect to this Indenture or for any remedy thereunder, unless the Trustee:

- (1) has failed to act for a period of 60 days after receiving written notice of a continuing Event of Default by such Holder and a request to act by Holders of at least 25% in aggregate principal amount of Notes outstanding;
- (2) has been offered indemnity satisfactory to it in its reasonable judgment; and
- (3) has not received from the Holders of a majority in aggregate principal amount of the outstanding Notes a direction inconsistent with such request.

However, such limitations do not apply to a suit instituted by a Holder of any Note for enforcement of payment of the principal of or interest on such Note on or after the due date therefor (after giving effect to the grace period specified in clause (1) of Section 6.01).

SECTION 6.07. No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, officer, employee, incorporator or stockholder of the Issuer will have any liability for any obligations of the Issuer under the Notes or this Indenture or of any Guarantor under its Note Guarantee or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes and the Note Guarantees.

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SECTION 6.08. Rights of Holders To Receive Payment

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

SECTION 6.09. Collection Suit by Trustee.

If an Event of Default in payment of principal, premium or interest specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any Guarantor (or any other obligor on the Notes) for the whole amount of unpaid principal and accrued interest remaining unpaid, together with interest on overdue principal and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate set forth in the Notes, and such further amounts 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.

SECTION 6.10. Trustee May File Proofs of Claim.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07) and the Holders allowed in any judicial proceedings relative to the Issuer or any Guarantor (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan or reorganization, arrangement, adjustment or composition affecting the Notes 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 proceedings.

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SECTION 6.11. Priorities.

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

FIRST: to the Trustee for amounts due under Section 7.07;

SECOND: to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest (including Additional Interest, if any) as to each, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes; and

THIRD: to the Issuer or, to the extent the Trustee collects any amount from any Guarantor, to such Guarantor.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.11.

SECTION 6.12. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.08 or a suit by Holders of more than 10% in principal amount of the Notes then outstanding.

SECTION 6.13. 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 case, subject to any determination in such proceeding, the Issuer, the Guarantors, 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.

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ARTICLE SEVEN

TRUSTEE

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default actually known to a Responsible Officer of the Trustee 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 same circumstances in the conduct of his or her own affairs.

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

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others.

(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 on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

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

(1) This paragraph does not limit the effect of paragraph (b) of this Section 7.01.

(2) The Trustee shall not be liable for any error of judgment made in good faith, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

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

(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 rights, powers or duties if it shall have reasonable grounds for believing that repayment

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of such funds or adequate indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, paragraphs (a), (b), (c) and (e) of this Section 7.01 shall govern every provision of this Indenture that in any way relates to the Trustee.

(e) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it in its sole discretion against any loss, liability, expense or fee.

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

SECTION 7.02. Rights of Trustee.

Subject to Section 7.01:

(1) The Trustee may rely on any document reasonably believed by it to be genuine and to have been signed or presented by the proper person. The

Trustee need not investigate any fact or matter stated in the document.

(2) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, or both, which shall conform to the provisions of Section 12.05. The Trustee shall be protected and shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

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

(4) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers; provided that the Trustee's conduct does not constitute gross negligence or willful misconduct.

(5) The Trustee may consult with counsel of its selection, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

SECTION 7.03. Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may make loans to, accept deposits from, perform services for or otherwise deal with the either of the Issuer or any Guarantor, or any Affiliates thereof, with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, shall be subject to Sections 7.10 and 7.11.

SECTION 7.04. Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes or any Guarantee, it shall not be accountable for the Issuer's or any Guarantor's use of the proceeds from the sale of Notes or any money paid to the Issuer or any Guarantor pursuant to the terms of this Indenture and it shall not be responsible for any statement in the Notes, Guarantee or this Indenture other than its certificate of authentication.

SECTION 7.05. Notice of Defaults.

The Trustee shall, within 30 days after the occurrence of any Default with respect to the Notes, give the Holders notice of all uncured Defaults thereunder known to it; provided, however, that, except in the case of an Event of Default in payment with respect to the Notes or a Default in complying with Section 5.01, the Trustee shall be protected in withholding such notice if and so long as a committee of its Responsible Officers in good faith determines that the withholding of such notice is in the interest of the Holders.

SECTION 7.06. Reports by Trustee to Holders

If required by TIA § 313(a), within 60 days after January 1 of any year, commencing January 1, 2000 the Trustee shall mail to each Holder a brief report dated as of such January 1 that complies with TIA § 313(a). The Trustee also shall comply with TIA § 313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA § 313(c) and TIA § 313(d).

Reports pursuant to this Section 7.06 shall be transmitted by mail:

- (1) to all Holders of Notes, as the names and addresses of such Holders appear on the Registrar's books; and
- (2) to such Holders of Notes as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose.

A copy of each report at the time of its mailing to Holders shall be filed with the SEC and each stock exchange on which the Notes are listed. The Issuer shall promptly notify the Trustee when the Notes are listed on any stock exchange.

SECTION 7.07. Compensation and Indemnity.

The Issuer and the Guarantors shall pay to the Trustee and Agents from time to time reasonable compensation for its services hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Issuer and the Guarantors shall reimburse the Trustee and Agents upon request for all reasonable disbursements, expenses and advances incurred or made by it in connection with its duties under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuer and the Guarantors shall indemnify each of the Trustee and any predecessor Trustee for, and hold each of them harmless against, any and all loss, damage, claim, liability or expense, including without limitation taxes (other than taxes based on the income of the Trustee or such Agent) and reasonable attorneys' fees and expenses incurred by each of them in connection with the acceptance or performance of its duties under this Indenture including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder (including, without limitation, settlement costs). The Trustee or Agent shall notify the Issuer and the Guarantors in writing promptly of any claim asserted against the Trustee or Agent for which it may seek indemnity. However, the failure by the Trustee or Agent to so notify the Issuer and the Guarantors shall not relieve the Issuer and Guarantors of their obligations hereunder except to the extent the Issuer and the Guarantors are prejudiced thereby.

Notwithstanding the foregoing, the Issuer and the Guarantors need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by the Trustee through its negligence or bad faith. To secure the payment obligations of the Issuer and the Guarantors in this Section 7.07, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee except such money or property held in trust to pay principal of and interest on particular Notes. The obligations of the Issuer and the Guarantors under this Section 7.07 to compensate and indemnify the Trustee, Agents and each predecessor Trustee and to pay or reimburse the Trustee, Agents and each predecessor Trustee for expenses, disbursements and advances shall be joint and several liabilities of the Issuer and each of the Guarantors and shall survive the resignation or removal of the Trustee and the satisfaction, discharge or other termination of this Indenture, including any termination or rejection hereof under any Bankruptcy Law.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(7) or (8) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

For purposes of this Section 7.07, the term "Trustee" shall include any trustee appointed pursuant to this Article Seven.

SECTION 7.08. Replacement of Trustee.

The Trustee may resign by so notifying the Issuer and the Guarantors in writing. The Holders of a majority in principal amount of the outstanding Notes may remove the Trustee by notifying the Issuer and the removed Trustee in writing and may appoint a successor Trustee with the Issuer's written consent, which consent shall not be unreasonably withheld. The Issuer may remove the Trustee at its election if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged a bankrupt or an insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Holders of a majority in principal amount of the outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Immediately following such delivery, the retiring Trustee shall, subject to its rights under Section 7.07, transfer all property held by it as Trustee to the successor Trustee, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Holder. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuer obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

SECTION 7.09. Successor Trustee by Consolidation, Merger, etc.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another entity, subject to Section 7.10, the successor entity without any further act shall be the successor Trustee; provided such entity shall be otherwise qualified and eligible under this Article Seven.

SECTION 7.10. Eligibility; Disqualification.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1) and (2) in every respect. The Trustee (together with its corporate parent) shall have a combined capital and surplus of at least \$100,000,000 as set forth in the most recent applicable published annual report of condition. The Trustee shall comply with TIA § 310(b), including the provision in § 310(b)(1).

SECTION 7.11. Preferential Collection of Claims Against Issuer.

The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311 (b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

SECTION 7.12. Paying Agents.

The Issuer shall cause each Paying Agent other than the Trustee to execute and deliver to it and the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 7.12:

- (A) that it will hold all sums held by it as agent for the payment of principal of, or premium, if any, or interest on, the Notes (whether such sums have been paid to it by the Issuer or by any obligor on the Notes) in trust for the benefit of Holders or the Trustee;
- (B) that it will at any time during the continuance of any Event of Default, upon written request from the Trustee, deliver to the Trustee all sums so held in trust by it together with a full accounting thereof; and
- (C) that it will give the Trustee written notice within three (3) Business Days of any failure of the Issuer (or by any obligor on the Notes) in the payment of any installment of the principal of, premium, if any, or interest on, the Notes when the same shall be due and payable.

ARTICLE EIGHT

AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 8.01. Without Consent of Holders.

The Issuer and the Trustee may amend, waive or supplement this Indenture, the Note Guarantees or the Notes without consent of any Holder:

- (1) to provide for the assumption of the Issuer's obligations to the Holders pursuant to Section 5.01;
- (2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

- (3) to cure any ambiguity, defect or inconsistency;
- (4) to release any Guarantor from any of its obligations under its Notes Guarantee or this Indenture (to the extent permitted by this Indenture);
- (5) to maintain the qualification of this Indenture under the TIA; or
- (6) to make any other change that does not materially adversely affect the rights of any Holder hereunder.

The Trustee is hereby authorized to join with the Issuer and the Guarantors in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects its own rights, duties or immunities under this Indenture.

SECTION 8.02. With Consent of Holders.

This Indenture or the Notes may be amended with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, and any existing Default under, or compliance with any provision of, this Indenture may be waived (other than any continuing Default in the payment of the principal or interest on the Notes) with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of a majority in aggregate principal amount of the Notes then outstanding; provided that:

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- (a) no such amendment may, without the consent of the Holders of two-thirds in aggregate principal amount of Notes then outstanding, amend the obligation of the Issuer under Section 4.20 or the related definitions that could adversely affect the rights of any Holder; and
- (b) without the consent of each Holder affected, the Issuer and the Trustee may not:
 - (1) change the maturity of any Note;
 - (2) reduce the amount, extend the due date or otherwise affect the terms of any scheduled payment of interest on or principal of the Notes;
 - (3) reduce any premium payable upon optional redemption of the Notes, change the date on which any Notes are subject to redemption or otherwise alter the provisions with respect to the redemption of the Notes;
 - (4) make any Note payable in money or currency other than that stated in the Notes;
 - (5) modify or change any provision of this Indenture or the related definitions to affect the ranking of the Notes or any Note Guarantee in a manner that adversely affects the Holders;
 - (6) reduce the percentage of Holders necessary to consent to an amendment or waiver to this Indenture or the Notes;
 - (7) impair the rights of Holders to receive payments of principal of or interest on the Notes;
 - (8) release any Guarantor from any of its obligations under its Note Guarantee or this Indenture, except as permitted by this Indenture; or
 - (9) make any change in this Section 8.02.

After an amendment, supplement or waiver under this Section 8.02 becomes effective, the Issuer shall mail to the Holders a notice briefly describing the amendment, supplement or waiver.

Upon the written request of the Issuer, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the receipt by the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Holders as aforesaid and upon receipt by the Trustee of the documents described in Section 8.06, the Trustee shall join with the Issuer and the Guarantors in the execution of such supplemental indenture unless such

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supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may, but shall not be obligated to, enter into such supplemental indenture.

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

SECTION 8.03. Compliance with Trust Indenture Act.

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

SECTION 8.04. Revocation and Effect of Consents.

Until an amendment, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Note is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Note or portion thereof, and of any Note issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Note. Any such Holder or subsequent Holder, however, may revoke the consent as to his Note or portion of a Note, if the Trustee receives the written notice of revocation before the date the amendment, supplement, waiver or other action becomes effective.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date unless the consent of the requisite number of Holders has been obtained.

After an amendment, supplement, waiver or other action becomes effective, it shall bind every Holder, unless it makes a change described in any of clauses (1) through (9) of Section 8.02. In that case the amendment, supplement, waiver or other action shall bind each Holder of a Note who has consented to it and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note.

SECTION 8.05. Notation on or Exchange of Notes

If an amendment, supplement, or waiver changes the terms of a Note, the Trustee (in accordance with the specific written direction of the Issuer) shall request the Holder of the Note (in accordance with the specific written direction of the Issuer) to deliver it to the Trustee.

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In such case, the Trustee shall place an appropriate notation on the Note about the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Note shall issue, the Guarantors shall endorse, and the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 8.06. Trustee To Sign Amendments, etc.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article Eight if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment, supplement or waiver the Trustee shall be entitled to receive and, subject to Section 7.01, shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating, in addition to the matters required by Section 12.04, that such amendment, supplement or waiver is authorized or permitted by this Indenture and is a legal, valid and binding obligation of the Issuer and Guarantors, enforceable against the Issuer and Guarantors in accordance with its terms (subject to customary exceptions).

ARTICLE NINE

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 9.01. Discharge of Indenture.

The Issuer may terminate its obligations and the obligations of the Guarantors under the Notes, the Guarantees and this Indenture, except the obligations referred to in the last paragraph of this Section 9.01, if

- (1) all the Notes that have been authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from this trust) have been delivered to the Trustee for cancellation, or
- (2) (a) all Notes not delivered to the Trustee for cancellation otherwise have become due and payable or have been called for redemption pursuant to paragraph 6 of the Notes, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee trust funds in trust in an amount of money sufficient to pay and discharge the entire Indebtedness (including all principal and accrued interest) on the Notes not theretofore delivered to the Trustee for cancellation,

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- (b) the Issuer has paid all sums payable by it under this Indenture,
- (c) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or on the date of redemption, as the case may be, and
- (d) the Trustee, for the benefit of the Holders, has a valid, perfected, exclusive security interest in this trust.

In addition, the Issuer must deliver an Officers' Certificate and an Opinion of Counsel (as to legal matters) stating that all conditions precedent to satisfaction and discharge have been complied with.

After such delivery, the Trustee shall acknowledge in writing the discharge of the Issuer's and the Guarantors' obligations under the Notes, the Guarantees and this Indenture except for those surviving obligations specified below.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer in Sections 7.07, 9.05 and 9.06 shall survive.

SECTION 9.02. Legal Defeasance.

The Issuer may at its option, by Board Resolution of the Board of Directors of the Issuer, be discharged from its obligations with respect to the Notes and the Guarantors discharged from their obligations under the Guarantees on the date the conditions set forth in Section 9.04 are satisfied (hereinafter, "Legal Defeasance"). For this purpose, such Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire indebtedness represented by the Notes and to have satisfied all its other obligations under such Notes and this Indenture insofar as such Notes are concerned (and the Trustee, at the expense of the Issuer, shall, subject to Section 9.06, execute instruments in form and substance reasonably satisfactory to the Trustee and Issuer acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of outstanding Notes to receive solely from the trust funds described in Section 9.04 and as more fully set forth in such Section, payments in respect of the principal of, premium, if any, and interest on such Notes when such payments are due, (B) the Issuer's obligations with respect to such Notes under Sections 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 2.11 and 4.19, (C) the rights, powers, trusts, duties, and immunities of the Trustee hereunder (including claims of, or payments to, the Trustee under or pursuant to Section 7.07) and (D) this Article Nine. Subject to compliance with this Article Nine, the Issuer may exercise its option under this Section 9.02 with respect to the Notes notwithstanding the prior exercise of its option under Section 9.03 with respect to the Notes.

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SECTION 9.03. Covenant Defeasance.

At the option of the Issuer, pursuant to a Board Resolution of the Board of Directors of the Issuer, (x) the Issuer and the Guarantors shall be released from their respective obligations under Sections 4.02 (except for obligations mandated by the TIA), 4.05 through 4.17, inclusive, and 4.20 and 4.21 and clause (3) of the first paragraph of Section 5.01 and (y) Section 6.01 (5) and (6) shall no longer apply with respect to the outstanding Notes on and after the date the conditions set forth in Section 9.04 are satisfied (hereinafter, "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that the Issuer and the Guarantors 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 or portion thereof, whether directly or indirectly by reason of any reference elsewhere herein to any such specified Section or portion thereof or by reason of any reference in any such specified Section or portion thereof to any other provision herein or in any other document, but the remainder of this Indenture and the Notes shall be unaffected thereby.

SECTION 9.04. Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions to application of Section 9.02 or Section 9.03 to the outstanding Notes:

- (1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, U.S. legal tender, U.S. Government Obligations or a combination thereof, in such amounts as will be sufficient (without reinvestment) in the opinion of a nationally recognized firm of independent public accountants selected by the Issuer, to pay the principal of and interest on the Notes on the stated date for payment or on the redemption date of the principal or installment of principal of or interest on the Notes, and the Trustee must have a valid, perfected, exclusive security interest in such trust,
- (2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that:
 - (a) the Issuer has received from, or there has been published by the Internal Revenue Service, a ruling, or
 - (b) since the date hereof, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon this Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred,

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- (3) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the Covenant Defeasance had not occurred,
- (4) no Default shall have occurred and be continuing on the date of such deposit (other than a Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowing),
- (5) the Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under this Indenture or any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound,
- (6) the Issuer shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by it with the intent of preferring the Holders over any other of its creditors or with the intent of defeating, hindering, delaying or defrauding any other of its creditors or others, and
- (7) the Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the conditions provided for in, in the case of the Officers' Certificate, clauses (1) through (6) and, in the case of the Opinion of Counsel, clauses (1) (with respect to the validity and perfection of the security interest), (2) and/or (3) and (5) of this paragraph have been complied with.

If the funds deposited with the Trustee to effect Covenant Defeasance are insufficient to pay the principal of and interest on the Notes when due, then the Issuer's obligations and the obligations of Guarantors under this Indenture will be revived and no such defeasance will be deemed to have occurred.

SECTION 9.05. Deposited Money and U.S. Government Obligations To Be Held in Trust; Other Miscellaneous Provisions

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 9.04 in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent, to the Holders of such Notes, of all sums due and to become due thereon in respect of principal, premium, if any, and accrued interest, but such money need not be segregated from other funds except to the extent required by law.

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The Issuer and the Guarantors shall (on a joint and several basis) 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 9.04 or the principal, premium, if any, 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 the outstanding Notes.

Anything in this Article Nine to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time any money or U.S. Government Obligations held by it as provided in Section 9.04 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 an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 9.06. Reinstatement.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 9.01, 9.02 or 9.03 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and each Guarantor's obligations under this Indenture, the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to this Article Nine until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with Section 9.01; provided that if the Issuer or the Guarantors have made any payment of principal of, premium, if any, or accrued interest on any Notes because of the reinstatement of their obligations, the Issuer or the Guarantors, as the case may be, shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

SECTION 9.07. Moneys Held by Paying Agent.

In connection with the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent under the provisions of this Indenture shall, upon written demand of the Issuer, be paid to the Trustee, or if sufficient moneys have been deposited pursuant to Section 9.04, to the Issuer (or, if such moneys had been deposited by the Guarantors, to such Guarantors), and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

SECTION 9.08. Moneys Held by Trustee.

Subject to applicable law, any moneys deposited with the Trustee or any Paying Agent or then held by the Issuer or the Guarantors in trust for the payment of the principal of, or premium, if any, or interest on any Note that are not applied but remain unclaimed by the Holder of such Note for two years after the date upon which the principal of, or premium, if any, or interest

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on such Note shall have respectively become due and payable shall be repaid to the Issuer (or, if appropriate, the Guarantors), or if such moneys are then held by the Issuer or the Guarantors in trust, such moneys shall be released from such trust; and the Holder of such Note entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Issuer and the Guarantors for the payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; provided, that the Trustee or any such Paying Agent, before being required to make any such repayment, may, at the expense of the Issuer and the Guarantors, either mail to each Holder affected, at the address shown in the register of the Notes maintained by the Registrar pursuant to Section 2.03, or cause to be published once a week for two successive weeks, in a newspaper published in the English language, customarily published each Business Day and of general circulation in the City of New York, New York, a 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 mailing or publication, any unclaimed balance of such moneys then remaining will be repaid to the Issuer. After payment to the Issuer or the Guarantors or the release of any money held in trust by the Issuer or any Guarantors, as the case may be, Holders entitled to the money must look only to the Issuer and the Guarantors for payment as general creditors unless applicable abandoned property law designates another Person.

ARTICLE TEN

GUARANTEE OF NOTES

SECTION 10.01. Guarantee.

Subject to the provisions of this Article Ten, each Guarantor, by execution of this Indenture, jointly and severally, unconditionally guarantees to each Holder (i) the due and punctual payment of the principal of and interest on each Note, when and as the same shall become due and payable, whether at maturity, by acceleration or otherwise, the due and punctual payment of interest on the overdue principal of and interest on the Notes, to the extent lawful, and the due and punctual payment of all other Obligations and due and punctual performance of all obligations of the Issuer to the Holders or the Trustee all in accordance with the terms of such Note, this Indenture and the Registration Rights Agreement, and (ii) in the case of any extension of time of payment or renewal of any Notes or any of such other Obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, at stated maturity, by acceleration or otherwise. Each Guarantor, by execution of this Indenture, agrees that its obligations hereunder shall be absolute and unconditional, irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of any such Note or this Indenture, any failure to enforce the provisions of any such Note, this Indenture or the Registration Rights Agreement, any waiver, modification or indulgence granted to the Issuer with respect thereto by the Holder of such Note, or any other circumstances which may otherwise constitute a legal or equitable discharge of a surety or such Guarantor.

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Each Guarantor hereby waives diligence, presentment, demand for payment, filing of claims with a court in the event of merger or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest or notice with respect to any such Note or the Indebtedness evidenced thereby and all demands whatsoever, and covenants that this Guarantee will not be discharged as to any such Note except by payment in full of the principal thereof and interest thereon. Each Guarantor hereby agrees that, as between such Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (i) the maturity of the Obligations guaranteed hereby may be accelerated as provided in Article Six for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Obligations as provided in Article Six, such Obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of this Guarantee.

SECTION 10.02. Execution and Delivery of Guarantee.

To further evidence the Guarantee set forth in Section 10.01, each Guarantor hereby agrees that a notation of such Guarantee, substantially in the form included in Exhibit G hereto, shall be endorsed on each Note authenticated and delivered by the Trustee and such Guarantee shall be executed by either manual or facsimile signature of an Officer or an Officer of a general partner, as the case may be, of each Guarantor. The validity and enforceability of any Guarantee shall not be affected by the fact that it is not affixed to any particular Note.

Each of the Guarantors hereby agrees that its Guarantee set forth in Section 10.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Guarantee.

If an officer of a Guarantor whose signature is on this Indenture or a Guarantee no longer holds that office at the time the Trustee authenticates the Note on which such Guarantee is endorsed or at any time thereafter, such Guarantor's Guarantee of such Note shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Indenture on behalf of the Guarantor.

SECTION 10.03. Limitation of Guarantee.

The obligations of each Guarantor are limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Guarantor under its Guarantee

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not constituting a fraudulent conveyance or fraudulent transfer under federal or state law. Each Guarantor that makes a payment or distribution under a Guarantee shall be entitled to a contribution from each other Guarantor in a pro rata amount based on the Adjusted Net Assets of each Guarantor.

SECTION 10.04. Release of Guarantor.

A Guarantor shall be released from all of its obligations under its Guarantee if:

(i) all of the assets of such Guarantor have been sold or otherwise disposed of in a transaction in compliance with the terms of this Indenture (including Sections 4.09, 4.20 and 5.01);

(ii) all of the Equity Interests held by the Issuer and the Restricted Subsidiaries of such Guarantor have been sold or otherwise disposed of in a transaction in compliance with the terms of this Indenture (including Sections 4.20 and 5.01);

(iii) the Guarantor is designated an Unrestricted Subsidiary in compliance with the terms of this Indenture (including Section 4.15);

and in each such case, the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to such transactions have been complied with and that such release is authorized and permitted hereunder.

The Trustee shall execute any documents reasonably requested by the Issuer or a Guarantor in order to evidence the release of such Guarantor from its obligations under its Guarantee endorsed on the Notes and under this Article Ten.

SECTION 10.05. Waiver of Subrogation.

Each Guarantor hereby irrevocably waives any claim or other rights which it may now or hereafter acquire against the Issuer that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under its Guarantee and this Indenture, including, without limitation, any right of subrogation, reimbursement, exoneration, indemnification, and any right to participate in any claim or remedy of any Holder of Notes against the Issuer, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including, without limitation, the right to take or receive from the Issuer, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or Note on account of such claim or other rights. If any amount shall be paid to any Guarantor in violation of the preceding sentence and the Notes shall not have been paid in full, such amount shall have been deemed to have been paid to such Guarantor for the benefit of, and held in trust for the benefit of, the Holders, and shall forthwith be paid to the Trustee for the benefit of such Holders to be

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credited and applied upon the Notes, whether matured or unmatured, in accordance with the terms of this Indenture. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the waiver set forth in this Section 10.05 is knowingly made in contemplation of such benefits.

ARTICLE ELEVEN

[INTENTIONALLY OMITTED]

ARTICLE TWELVE

MISCELLANEOUS

SECTION 12.01. Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control. If any provision of this Indenture modifies any TIA provision that may be so modified, such TIA provision shall be deemed to apply to this Indenture as so modified. If any provision of this Indenture excludes any TIA provision that may be so excluded, such TIA provision shall be excluded from this Indenture.

The provisions of TIA §§ 310 through 317 that impose duties on any Person (including the provisions automatically deemed included unless expressly excluded by this Indenture) are a part of and govern this Indenture, whether or not physically contained herein.

SECTION 12.02. Notices.

Except for notice or communications to Holders, any notice or communication shall be given in writing and delivered in person, sent by facsimile, delivered by commercial courier service or mailed by first-class mail, postage prepaid, addressed as follows:

If to the Issuer or any Guarantor:

MERITAGE HOMES CORPORATION
8501 E. Princess Drive
Suite 290
Scottsdale, AZ 85255

Attention: Chief Financial Officer

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Fax Number: (480) 998-9178

with, in the case of any notice furnished pursuant to Article Six, a copy to:

SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren St.
Phoenix, AZ 85004

Attention: Steven D. Pidgeon, Esq.

Fax Number: (602) 382-6070

If to the Trustee:

WELLS FARGO BANK, NATIONAL ASSOCIATION
707 Wilshire Blvd.

17th Floor
Los Angeles, CA 90017

Attention: Corporate Trust Department

Fax Number: (213) 614-3355

Such notices or communications shall be effective when received and shall be sufficiently given if so given within the time prescribed in this Indenture.

The Issuer, the Guarantors or the Trustee by written notice to the others may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to him by first-class mail, postage prepaid, at his address shown on the register kept by the Registrar.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication to a Holder is mailed in the manner provided above, it shall be deemed duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

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SECTION 12.03. Communications by Holders with Other Holders.

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

SECTION 12.04. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer or any Guarantor to the Trustee to take any action under this Indenture, the Issuer or such Guarantor shall furnish to the Trustee:

- (1) an Officers' Certificate (which shall include the statements set forth in Section 12.05) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel (which shall include the statements set forth in Section 12.05) stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.05. Statements Required in Certificate and Opinion.

Each certificate and opinion with respect to compliance by or on behalf of the Issuer or any Guarantor with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (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 such Person, it or he has made such examination or investigation as is necessary to enable it or 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 or not, in the opinion of such Person, such covenant or condition has been complied with.

SECTION 12.06. Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or meetings of Holders. The Registrar and Paying Agent may make reasonable rules for their functions.

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SECTION 12.07. Business Days: Legal Holidays.

A "Business Day" is a day that is not a Legal Holiday. A "Legal Holiday" is a Saturday, a Sunday or other day on which (i) commercial banks in the City of New York are authorized or required by law to close or (ii) the New York Stock Exchange is not open for trading. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

SECTION 12.08. Governing Law.

This Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York, as applied to contracts made and performed within the State of New York.

SECTION 12.09. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Issuer or any Subsidiary thereof. No such indenture, loan, security or debt agreement may be used to interpret this Indenture.

SECTION 12.10. No Recourse Against Others.

No recourse for the payment of the principal of or premium, if any, or interest, including Additional Interest, on any of the Notes, or for any claim based

thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer or any Guarantor in this Indenture or in any supplemental indenture, or in any of the Notes, or because of the creation of any Indebtedness represented thereby, shall be had against any stockholder, officer, director or employee, as such, past, present or future, of the Issuer or of any successor corporation or against the property or assets of any such stockholder, officer, employee or director, either directly or through the Issuer or any Guarantor, or any successor corporation thereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the Notes are solely obligations of the Issuer and the Guarantors, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any stockholder, officer, employee or director of the Issuer or any Guarantor, or any successor corporation thereof, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or the Notes or implied therefrom, and that any and all such personal liability of, and any and all claims against every stockholder, officer, employee and director, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Notes. It is understood that this limitation on recourse is made expressly for the benefit of any such shareholder, employee, officer or director and may be enforced by any of them.

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SECTION 12.11. Successors.

All agreements of the Issuer and the Guarantors in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee, any additional trustee and any Paying Agents in this Indenture shall bind its successor.

SECTION 12.12. Multiple Counterparts.

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and the same agreement.

SECTION 12.13. Table of Contents, Headings, etc.

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

SECTION 12.14. Separability.

Each provision of this Indenture shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purpose of this Indenture or the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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

MERITAGE HOMES CORPORATION

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Chief Financial Officer

MONTEREY HOMES ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE PASEO CROSSING, LLC

By: Meritage Homes of Arizona, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MONTEREY HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE PASEO CONSTRUCTION, LLC

By: Meritage Homes Construction, Inc.,
its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS GP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS LP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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LEGACY/MONTEREY HOMES L.P.

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF CALIFORNIA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

LEGACY OPERATING COMPANY, L.P.

By: Meritage Holdings, L.L.C., its General
Partner

By: Legacy/Monterey Homes L.P., its Sole
Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

HULEN PARK VENTURE, LLC

By: Legacy/Monterey Homes L.P., its Sole
Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE HOLDINGS, L.L.C.

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS GP II, Inc.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH HOMES-TEXAS, L.P.

By: MTH-Texas GP II, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS LP II, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-HOMES NEVADA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MTH-CAVALIER, LLC

By: Monterey Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH GOLF, LLC

By: Meritage Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

LEGACY-HAMMONDS MATERIALS, L.P.

By: Meritage Holdings, L.L.C., its General Partner

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF COLORADO, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE HOMES OF FLORIDA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Maddy Hall
Name: Maddy Hall
Title: Trust Officer

By: /s/ Jeanie Mar
Name: Jeanie Mar
Title: Vice President

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EXHIBIT A

CUSIP

MERITAGE HOMES CORPORATION

No. _____ \$

6¼% SENIOR NOTE DUE 2015

MERITAGE HOMES CORPORATION, a Maryland corporation (the "Company"), for value received, promises to pay to CEDE & CO. or registered assigns the principal sum of \$ _____ dollars on March 15, 2015.

Interest Payment Dates: March 15 and September 15.

Record Dates: March 1 and September 1.

Reference is made to the further provisions of this Note contained herein, which will for all purposes have the same effect as if set forth at this place.

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IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officers.

MERITAGE HOMES CORPORATION

By: _____
Name:

Title:

By:

Name:
Title:

Dated:

Certificate of Authentication

This is one of the 6¼% Senior Notes due 2015 referred to in the within-mentioned Indenture.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By:

Dated:

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[FORM OF REVERSE OF NOTE]

MERITAGE HOMES CORPORATION

6¼% SENIOR NOTE DUE 2015

1. **Interest.** MERITAGE HOMES CORPORATION, a Maryland corporation (the "Company"), promises to pay, until the principal hereof is paid or made available for payment, interest on the principal amount set forth on the face hereof at a rate of 6¼% per annum. Interest hereon will accrue from and including the most recent date to which interest has been paid or, if no interest has been paid, from and including [insert applicable issue date] to but excluding the date on which interest is paid. Interest shall be payable in arrears on each March 15 and September 15 commencing on [insert first payment date]. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay interest on overdue principal and on overdue interest (to the full extent permitted by law) at a rate of 6¼% per annum.

2. **Method of Payment.** The Company will pay interest hereon (except defaulted interest) to the Persons who are registered Holders at the close of business on March 1 or September 1 next preceding the interest payment date (whether or not a Business Day). Holders must surrender Notes to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States of America that at the time of payment is legal tender for payment of public and private debts. Interest may be paid by check mailed to the Holder entitled thereto at the address indicated on the register maintained by the Registrar for the Notes.

3. **Paying Agent and Registrar.** Initially, Wells Fargo Bank, National Association (the "Trustee") will act as a Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice. Neither the Company nor any of its Affiliates may act as Paying Agent or Registrar.

4. **Indenture.** The Company issued the Notes under an Indenture dated as of March 10, 2005 (the "Indenture") among the Company, the Guarantors (as defined in the Indenture) and the Trustee. This is one of an issue of Notes of the Company issued, or to be issued, under the Indenture. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb), as amended from time to time. The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of them. Capitalized and certain other terms used herein and not otherwise defined have the meanings set forth in the Indenture.

5. [Intentionally Omitted]

6. **Optional Redemption.** (a) The Company, at its option, may redeem the Notes, in whole or in part, at any time on or after March 15, 2010 upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount), set forth below, together, in each case, with accrued and unpaid interest thereon, if any, to the Redemption

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Date, if redeemed during the twelve month period beginning on March 15 of each year listed below:

Year	Redemption Price
2010	103.125 %
2011	102.083 %
2012	101.042 %
2013 and thereafter	100.000 %

(b) Notwithstanding the foregoing, at any time prior to March 15, 2008, the Issuer may redeem up to 35% of the aggregate principal amount of the Notes with the net cash proceeds of one or more Qualified Equity Offerings at a redemption price equal to 106.250% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon, if any, to the Redemption Date; provided that (1) at least 65% of the aggregate principal amount of Notes issued under the Indenture remains outstanding immediately after the occurrence of such redemption and (2) the redemption occurs within 90 days of the date of the closing of any such Qualified Equity Offering.

(c) In the event of a redemption of fewer than all of the Notes, the Trustee shall select the Notes to be redeemed in compliance with the requirements of the principal national securities exchange, if any, while such Notes are listed, or if such Notes are not then listed on a national securities exchange, on a pro rata basis, by lot or in such other manner as the Trustee shall deem fair and equitable. The Notes will be redeemable in whole or in part upon not less than 30 nor more than 60 days' prior written notice, mailed by first class mail to a Holder's last address as it shall appear on the register maintained by the Registrar of the Notes. On and after any redemption date, interest will cease to accrue on the Notes or portions thereof called for redemption unless the Company shall fail to redeem any such Note.

7. **Notice of Redemption.** Notice of redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each

Holder of Notes to be redeemed at his registered address. On and after the Redemption Date, unless the Company defaults in making the redemption payment, interest ceases to accrue on Notes or portions thereof called for redemption.

8. Offers To Purchase. The Indenture provides that upon the occurrence of a Change of Control or an Asset Sale and subject to further limitations contained therein, the Company shall make an offer to purchase outstanding Notes in accordance with the procedures set forth in the Indenture.
9. Registration Rights. Pursuant to a Registration Rights Agreement among the Company, the Guarantors and the Initial Purchasers, the Company will be obligated to consummate an exchange offer pursuant to which the Holder of this Note shall have the right to exchange this Note for notes of a separate series issued under the Indenture (or a trust indenture substantially identical to the Indenture in accordance with the terms of the Registration Rights Agreement) which have been registered under the Securities Act, in like principal amount and having substantially identical terms as the Notes. The Holders shall be entitled to receive certain

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additional interest payments in the event such exchange offer is not consummated and upon certain other conditions, all pursuant to and in accordance with the terms of the Registration Rights Agreement.

10. Denominations, Transfer, Exchange. The Notes are in registered form without coupons in denominations of \$1,000 and integral multiples of \$1,000. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay to it any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes or portion of a Note selected for redemption, or register the transfer of or exchange any Notes for a period of 15 days before a mailing of notice of redemption.
11. Persons Deemed Owners. The registered Holder of this Note may be treated as the owner of this Note for all purposes.
12. Unclaimed Money. If money for the payment of principal or interest remains unclaimed for two years, the Trustee will pay the money back to the Company at its written request. After that, Holders entitled to the money must look to the Company for payment as general creditors unless an “abandoned property” law designates another Person.
13. Amendment, Supplement, Waiver, Etc. The Company, the Guarantors and the Trustee (if a party thereto) may, without the consent of the Holders of any outstanding Notes, amend, waive or supplement the Indenture or the Notes for certain specified purposes, including, among other things, curing ambiguities, defects or inconsistencies, maintaining the qualification of the Indenture under the Trust Indenture Act of 1939, as amended, and making any change that does not materially and adversely affect the rights of any Holder. Other amendments and modifications of the Indenture or the Notes may be made by the Company, the Guarantors and the Trustee with the consent of the Holders of not less than a majority of the aggregate principal amount of the outstanding Notes, subject to certain exceptions requiring the consent of the Holders of the particular Notes to be affected.
14. Successor Corporation. When a successor corporation assumes all the obligations of its predecessor under the Notes and the Indenture and the transaction complies with the terms of Article Five of the Indenture, the predecessor corporation will, except as provided in Article Five, be released from those obligations.
15. Defaults and Remedies. Events of Default are set forth in the Indenture. Subject to certain limitations in the Indenture, if an Event of Default (other than an Event of Default specified in Section 6.01(7) or (8) with respect to the Company) occurs and is continuing, the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may, by written notice to the Trustee and the Company, and the Trustee upon the request of the Holders of not less than 25% in aggregate principal amount of the outstanding Notes shall, declare all principal of and accrued interest on all Notes to be immediately due and payable and such amounts shall become immediately due and payable. If an Event of Default specified in Section 6.01(7) or (8) occurs with respect to the Company, the principal amount of and interest on, all Notes shall ipso facto become and be immediately due and payable without any declaration

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or other act on the part of the Trustee or any Holder. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal, premium, if any, or interest on the Notes or a default in the observance or performance of any of the obligations of the Company under Article Five of the Indenture) if it determines that withholding notice is in their best interests.

16. Trustee Dealings with Company. The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not Trustee.
17. Discharge. The Company’s obligations pursuant to the Indenture will be discharged, except for obligations pursuant to certain sections thereof, subject to the terms of the Indenture, upon the payment of all the Notes or upon the irrevocable deposit with the Trustee of United States dollars or U.S. Government Obligations sufficient to pay when due principal of and interest on the Notes to maturity or redemption, as the case may be.
18. Guarantees. The Note will be entitled to the benefits of certain Guarantees made for the benefit of the Holders. Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and obligations thereunder of the Guarantors, the Trustee and the Holders.
19. Authentication. This Note shall not be valid until the Trustee signs the certificate of authentication on the other side of this Note.
20. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of New York, as applied to contracts made and performed within the State of New York. The Trustee, the Company, the Guarantor and the Holders agree to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or relating to the Indenture or the Notes.
21. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TENANT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

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The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

MERITAGE HOMES CORPORATION

8501 E. Princess Drive
Suite 290
Scottsdale, AZ 85255

Attention: Chief Financial Officer

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ASSIGNMENT

I or we assign and transfer this Note to:

(Insert assignee's social security or tax I.D. number)

(Print or type name, address and zip code of assignee)

and irrevocably appoint:

Agent to transfer this Note on the books of the Company. The Agent may substitute another to act for him.

Date: _____

Your Signature: _____

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

Signature Guarantee: _____

SIGNATURE GUARANTEE

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

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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have all or any part of this Note purchased by the Company pursuant to Section 4.09 or Section 4.20 of the Indenture, check the appropriate box:

Section 4.09

Section 4.20

If you want to have only part of the Note purchased by the Company pursuant to Section 4.09 or Section 4.20 of the Indenture, state the amount you elect to have purchased:

\$ _____
(multiple of \$1,000)

Date: _____

Your Signature: _____

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

Signature Guaranteed

SIGNATURE GUARANTEE

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

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[FORM OF LEGEND FOR 144A NOTES AND OTHER NOTES
THAT ARE RESTRICTED NOTES]

The Note (or its predecessor) evidenced hereby was originally issued in a transaction exempt from registration under Section 5 of the United States Securities Act of 1933, and the Note evidenced hereby may not be offered, sold or otherwise transferred in the absence of such registration or an applicable exemption therefrom. Each purchaser of the Note evidenced hereby is hereby notified that the seller may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A thereunder or another exemption under the Securities Act. The holder of the Note evidenced hereby agrees for the benefit of Meritage Homes Corporation that (a) such Note may be resold, pledged or otherwise transferred only (1)(a) to a person who the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act), purchasing for its own account in a transaction meeting the requirements of Rule 144A under the Securities Act, (b) in a transaction meeting the requirements of Rule 144 of the Securities Act, (c) outside the United States to a foreign person in a transaction meeting the requirements of Rule 904 of Regulation S under the Securities Act, (d) to an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor") that is purchasing at least \$100,000 of Notes for its own account or for the account of an institutional accredited investor (and based upon an opinion of counsel if Meritage Homes Corporation so requests) or (e) in accordance with another exemption from the registration requirements of the Securities Act provided that in the case of a transfer under clause (e) such transfer is subject to the receipt by the Trustee (and Meritage Homes Corporation, if it so requests) of a certification of the Transferor and an opinion of counsel to the effect that such transfer is in compliance with the Securities Act, (2) to Meritage Homes Corporation or any of its subsidiaries or (3) under an effective registration statement under the Securities Act and, in each case, in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction and the indenture governing the Notes and (b) the holder will, and each subsequent holder is required to, notify any purchaser from it of the Note evidenced hereby of the resale restrictions set forth in (a) above. If any resale or other transfer of any Note is proposed to be made under clause (a)(1)(d) above while these transfer restrictions are in force then the transferor shall deliver a letter from the transferee to Meritage Homes Corporation and the Trustee which shall provide, among other things, that the transferee is an institutional accredited investor and that it is acquiring the Securities for investment purposes and not for distribution in violation of the Securities Act.

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[FORM OF ASSIGNMENT FOR 144A NOTES AND OTHER NOTES
THAT ARE RESTRICTED NOTES]

I or we assign and transfer this Note to:

(Insert assignee's social security or tax I.D. number)

(Print or type name, address and zip code of assignee)

and irrevocably appoint:

Agent to transfer this Note on the books of the Company. The Agent may substitute another to act for him.

[Check One]

(a) this Note is being transferred in compliance with the exemption from registration under the Securities Act provided by Rule 144A thereunder.

or

(b) this Note is being transferred other than in accordance with (a) above and documents are being furnished which comply with the conditions of transfer set forth in this Note and the Indenture.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Sections 2.16 and 2.17 of the Indenture shall have been satisfied.

Date: _____

Your Signature: _____

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

Signature Guarantee: _____

SIGNATURE GUARANTEE

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

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TO BE COMPLETED BY PURCHASER IF (a) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

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[FORM OF LEGEND FOR REGULATION S NOTE]

This Note has not been registered under the U.S. Securities Act of 1933, as amended (the "Act"), and, unless so registered, may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons unless registered under the Act or except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Act.

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[FORM OF ASSIGNMENT FOR REGULATION S NOTE]

I or we assign and transfer this Note to:

(Insert assignee's social security or tax I.D. number)

(Print or type name, address and zip code of assignee)

and irrevocably appoint:

Agent to transfer this Note on the books of the Company. The Agent may substitute another to act for him.

[Check One]

(a) this Note is being transferred in compliance with the exemption from registration under the Securities Act provided by Rule 144A thereunder.

or

(b) this Note is being transferred other than in accordance with (a) above and documents are being furnished which comply with the conditions of transfer set forth in this Note and the Indenture.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Sections 2.16 and 2.17 of the Indenture shall have been satisfied.

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee: _____

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be

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determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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TO BE COMPLETED BY PURCHASER IF (a) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

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Any Global Note authenticated and delivered hereunder shall bear a legend (which would be in addition to any other legends required in the case of a Restricted Note) in substantially the following form:

This Note is a Global Note within the meaning of the indenture hereinafter referred to and is registered in the name of a depository or a nominee of a depository. This Note is not exchangeable for Notes registered in the name of a person other than the depository or its nominee except in the limited circumstances described in the indenture, and no transfer of this Note (other than a transfer of this Note as a whole by the depository to a nominee of the depository or by a nominee of the depository to the depository or another nominee of the depository) may be registered except in the limited circumstances described in the Indenture.

Unless this certificate is presented by an authorized representative of the Depository Trust Company (a New York corporation) ("DTC") to the issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of CEDE & CO. or in such other name as it requested by an authorized representative of DTC (and any payment is made to CEDE & CO. or such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, CEDE & CO., has an interest herein.

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EXHIBIT E

Form of Certificate To Be
Delivered in Connection with
Transfers to Non-QIB Accredited Investors

Wells Fargo Bank, National Association
Meritage Homes Corporation
c/o Wells Fargo Bank, National Association
707 Wilshire Boulevard, 17th Floor
Los Angeles, CA 90017

Attention: Corporate Trust Department

Ladies and Gentlemen:

In connection with our proposed purchase of 6¼% Senior Notes due 2015 (the "Notes") of Meritage Homes Corporation, a Maryland Corporation (the "Company"), we confirm that:

1. We understand that any subsequent transfer of the Notes is subject to certain restrictions and conditions set forth in the Indenture dated as of March 10, 2005 relating to the Notes and we agree to be bound by, and not to resell, pledge or otherwise transfer the Notes except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "Securities Act").
2. We understand that the Notes have not been registered under the Securities Act or any other applicable securities laws, have not been and will not be qualified for sale under the securities laws of any non-U.S. jurisdiction and that the Notes may not be offered, sold, pledged or otherwise transferred except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell any Notes, we will do so only (i) to the Company or any subsidiary thereof, (ii) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined in Rule 144A), (iii) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Notes, (iv) outside the United States to persons other than U.S. persons in offshore transactions meeting the requirements of Rule 904 of Regulation S under the Securities Act, (v) pursuant to the exemption from registration provided by Rule 144 under the Securities Act (if applicable) or (vi) pursuant to an effective registration statement, and we further agree to provide to any person purchasing any of the Notes from us a notice advising such purchaser that resales of the Notes are restricted as stated herein.

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3. We understand that, on any proposed resale of any Notes, we will be required to furnish to you and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.
4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting each are able to bear the economic risk of our or their investment, as the case may be.
5. We are acquiring the Notes purchased by us for our account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.
6. We are not acquiring the Notes with a view toward the distribution thereof in a transaction that would violate the Securities Act or the securities laws of any state of the United States or any other applicable jurisdiction.

You are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferee]

By: _____

Name:

Title:

Date: _____

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Form of Certificate To Be Delivered
in Connection with Transfers
Pursuant to Regulation S

Wells Fargo Bank, National Association
Meritage Homes Corporation
c/o Wells Fargo Bank, National Association
707 Wilshire Boulevard, 17th Floor
Los Angeles, CA 90017

Attention: Corporate Trust Department

Re: Meritage Homes Corporation, a Maryland corporation (the "Company")
6¼% Senior Notes due 2015 (the "Notes")

Dear Sirs:

In connection with our proposed sale of \$ _____ aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

- (1) the offer of the Notes was not made to a U.S. person or to a person in the United States;
- (2) either (a) at the time the buy offer was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States, or (b) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;
- (3) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 904(a) of Regulation S;
- (4) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and
- (5) we have advised the transferee of the transfer restrictions applicable to the Notes.

You are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or

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official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferee]

By: _____

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NOTATION OF GUARANTEE

Each of the undersigned (the "Guarantors") hereby jointly and severally unconditionally guarantees, to the extent set forth in the Indenture dated as of March 10, 2005 by and among Meritage Homes Corporation, as issuer, the Guarantors, as guarantors, and Wells Fargo Bank, National Association, as Trustee (as amended, restated or supplemented from time to time, the "Indenture"), and subject to the provisions of the Indenture, (a) the due and punctual payment of the principal of, and premium, if any, and interest on the Notes, when and as the same shall become due and payable, whether at maturity, by acceleration or otherwise, the due and punctual payment of interest on overdue principal of, and premium and, to the extent permitted by law, interest, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee, all in accordance with the terms set forth in Article Ten of the Indenture, and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

The obligations of the Guarantors to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article Ten of the Indenture, and reference is hereby made to the Indenture for the precise terms and limitations of this Guarantee. Each Holder of the Note to which this Guarantee is endorsed, by accepting such Note, agrees to and shall be bound by such provisions.

[Signatures on Following Pages]

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IN WITNESS WHEREOF, each of the Guarantors has caused this Guarantee to be signed by a duly authorized officer.

[GUARANTORS]

By:

Name:

Title:

REGISTRATION RIGHTS AGREEMENT

Dated as of March 10, 2005

By and Among

MERITAGE HOMES CORPORATION
as Issuer,

the GUARANTORS named herein

and

UBS SECURITIES LLC,
CITIGROUP GLOBAL MARKETS INC.,and J.P. MORGAN SECURITIES INC.,
as Initial Purchasers

6 1/4% Senior Notes due 2015

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SIGNATURES**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this "Agreement") is dated as of March 10, 2004, by and among Meritage Homes Corporation, a Maryland corporation (the "Company"), and each of the Guarantors (as defined herein) (the Company and the Guarantors are referred to collectively herein as the "Issuers"), on the one hand, and UBS Securities LLC, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc. (together, the "Initial Purchasers") on the other hand.

This Agreement is entered into in connection with the Purchase Agreement, dated as of February 24, 2005, by and among the Issuers and the Initial Purchasers, (the "Purchase Agreement"), relating to the offering of \$350,000,000 aggregate principal amount of the Company's 6 1/4% Senior Notes due 2015 (including the guarantees thereof by the Guarantors, the "Notes"). The execution and delivery of this Agreement is a condition to the Initial Purchasers' obligation to purchase the Notes

under the Purchase Agreement.

The parties hereby agree as follows:

Section 1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

“action” shall have the meaning set forth in Section 7(c) hereof.

“Advice” shall have the meaning set forth in Section 5 hereof.

“Agreement” shall have the meaning set forth in the first introductory paragraph hereto.

“Applicable Period” shall have the meaning set forth in Section 2(b) hereof.

“Board of Directors” shall have the meaning set forth in Section 5 hereof.

“Business Day” shall mean a day that is not a Legal Holiday.

“Company” shall have the meaning set forth in the introductory paragraph hereto and shall also include the Company’s permitted successors and assigns.

“Commission” shall mean the Securities and Exchange Commission.

“day” shall mean a calendar day.

“Delay Period” shall have the meaning set forth in Section 5 hereof.

“Effectiveness Period” shall have the meaning set forth in the second paragraph of Section 3(a) hereof.

“Event Date” shall have the meaning set forth in Section 4(b) hereof.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Exchange Notes” shall have the meaning set forth in Section 2(a) hereof.

“Exchange Offer” shall have the meaning set forth in Section 2(a) hereof.

“Exchange Offer Registration Statement” shall have the meaning set forth in Section 2(a) hereof.

“Guarantors” means each of the Persons executing this Agreement (as set forth on Schedule A) on the date hereof and each Person who executes and delivers a counterpart of this Agreement hereafter pursuant to Section 10(e) hereof.

“Holder” shall mean any holder of a Registrable Note or Registrable Notes.

“Indenture” shall mean the Indenture, dated as of March 10, 2005, by and among the Issuers and Wells Fargo Bank, National Association, as trustee, pursuant to which the Notes are being issued, as amended or supplemented from time to time in accordance with the terms thereof.

“Initial Purchasers” shall have the meaning set forth in the first introductory paragraph hereof.

“Initial Shelf Registration Statement” shall have the meaning set forth in Section 3(a) hereof.

“Inspectors” shall have the meaning set forth in Section 5(n) hereof.

“Issue Date” shall mean March 10, 2005, the date of original issuance of the Notes.

“Issuers” shall have the meaning set forth in the introductory paragraph hereto.

“Legal Holiday” shall mean a Saturday, a Sunday or a day on which banking institutions in New York, New York are required by law, regulation or executive order to remain closed.

“Liquidated Damages” shall have the meaning set forth in Section 4(a) hereof.

“Losses” shall have the meaning set forth in Section 7(a) hereof.

“NASD” shall have the meaning set forth in Section 5(s) hereof.

“Notes” shall have the meaning set forth in the second introductory paragraph hereto.

“Participant” shall have the meaning set forth in Section 7(a) hereof.

“Participating Broker-Dealer” shall have the meaning set forth in Section 2(b) hereof.

“Person” shall mean an individual, corporation, partnership, joint venture association, joint stock company, trust, unincorporated limited liability company, government or any agency or political subdivision thereof or any other entity.

“Private Exchange” shall have the meaning set forth in Section 2(b) hereof.

“Private Exchange Notes” shall have the meaning set forth in Section 2(b) hereof.

“Prospectus” shall mean the prospectus included in any Registration Statement (including, without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Purchase Agreement” shall have the meaning set forth in the second introductory paragraph hereof.

“Records” shall have the meaning set forth in Section 5(n) hereof.

“Registrable Notes” shall mean each Note upon its original issuance and at all times subsequent thereto, each Exchange Note as to which Section 2(c)(iv) hereof is applicable upon original issuance and at all times subsequent thereto and each Private Exchange Note upon original issuance thereof and at all times subsequent thereto, in each case until (i) a Registration Statement (other than, with respect only to any Exchange Note as to which Section 2(c)(iv) hereof is applicable, the Exchange Offer Registration Statement) covering such Note, Exchange Note or Private Exchange Note has been declared effective by the Commission and such Note, Exchange Note or such Private Exchange Note, as the case may be, has been disposed of in accordance with such effective Registration Statement, (ii) such Note has been exchanged pursuant to the Exchange Offer for an Exchange Note or Exchange Notes that may be resold without restriction under state and federal securities laws, (iii) such Note, Exchange Note or Private Exchange Note, as the case may be, ceases to be outstanding for purposes of the Indenture or (iv) such Note, Exchange Note or Private Exchange Note has been sold in compliance with Rule 144 or is salable pursuant to Rule 144(k).

“Registration Default” shall have the meaning set forth in Section 4(a) hereof.

“Registration Statement” shall mean any appropriate registration statement of the Issuers covering any of the Registrable Notes filed with the Commission under the Securities Act, and all amendments and supplements to any such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

“Requesting Participating Broker-Dealer” shall have the meaning set forth in Section 2(b) hereof.

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“Rule 144” shall mean Rule 144 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144A) or regulation hereafter adopted by the Commission providing for offers and sales of securities made in compliance therewith resulting in offers and sales by subsequent holders that are not affiliates of an issuer of such securities being free of the registration and prospectus delivery requirements of the Securities Act.

“Rule 144A” shall mean Rule 144A promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144) or regulation hereafter adopted by the Commission.

“Rule 415” shall mean Rule 415 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Shelf Filing Event” shall have the meaning set forth in Section 2(c) hereof.

“Shelf Registration Statement” shall have the meaning set forth in Section 3(b) hereof.

“Subsequent Shelf Registration Statement” shall have the meaning set forth in Section 3(b) hereof.

“TIA” shall mean the Trust Indenture Act of 1939, as amended.

“Trustee” shall mean the trustee under the Indenture and the trustee (if any) under any indenture governing the Exchange Notes and Private Exchange Notes.

“underwritten registration or underwritten offering” shall mean a registration in which securities of the Company are sold to an underwriter for reoffering to the public.

Section 2. Exchange Offer

(a) The Issuers shall (i) file a Registration Statement (the “Exchange Offer Registration Statement”) within 75 days after the Issue Date with the Commission on an appropriate registration form with respect to a registered offer (the “Exchange Offer”) to exchange any and all of the Registrable Notes for a like aggregate principal amount of notes (including the guarantees with respect thereto, the “Exchange Notes”) that are identical in all material respects to the Notes (except that the Exchange Notes bear no restrictive legend thereon and shall not contain terms with respect to Liquidated Damages upon a Registration Default), (ii) use their respective reasonable best efforts to cause the Exchange Offer Registration Statement to be declared effective under the Securities Act within 150 days after the Issue Date and (iii) use their respective reasonable best efforts to complete the Exchange Offer within 180 days after the Issue Date. The Exchange Offer shall be deemed completed or consummated for purposes of this Agreement upon delivery by the Company to the Trustee under the Indenture of Exchange Notes in the same aggregate principal amount as the aggregate principal amount of Notes tendered (and not withdrawn) by Holders thereof pursuant to the Exchange Offer. Upon the Exchange Offer Registration Statement being declared effective by the Commission, the Company will offer the Exchange Notes in

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exchange for surrender of the Notes. The Company shall keep the Exchange Offer open for not less than 20 Business Days (or longer if required by applicable law to complete the Exchange Offer) after the date notice of the Exchange Offer is mailed to Holders.

Each Holder that participates in the Exchange Offer will be required to represent to the Company in writing (which may be contained in the applicable letter of transmittal) that (i) any Exchange Notes to be received by it will be acquired in the ordinary course of its business, (ii) it has no arrangement or understanding with any Person to participate in the distribution (within the meaning of the Securities Act) of the Exchange Notes in violation of the Securities Act, (iii) it is not an affiliate (as defined in Rule 405 under the Securities Act) of any Issuer or, if it is an affiliate, it will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable, (iv) if such Holder is not a broker-dealer, it is not engaged in, and does not intend to engage in, a distribution of Exchange Notes, (v) if such Holder is a broker-dealer that will receive Exchange Notes for its own account in exchange for Notes that were acquired as a result of market-making or other trading activities, it will

deliver a prospectus in connection with any resale of such Exchange Notes and (vi) the Holder is not acting on behalf of any Persons who could not truthfully make the foregoing representations.

(b) The Company and the Initial Purchasers acknowledge that the staff of the Commission has taken the position that any broker-dealer that elects to exchange Notes that were acquired by such broker-dealer for its own account as a result of market-making or other trading activities for Exchange Notes in the Exchange Offer (a "Participating Broker-Dealer") may be deemed to be an "underwriter" within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Notes (other than a resale of an unsold allotment resulting from the original offering of the Notes).

The Company and the Initial Purchasers also acknowledge that the staff of the Commission has taken the position that if the Prospectus contained in the Exchange Offer Registration Statement includes a plan of distribution containing a statement to the above effect and the means by which Participating Broker-Dealers may resell the Exchange Notes, without naming the Participating Broker-Dealers or specifying the amount of Exchange Notes owned by them, such Prospectus may be delivered by Participating Broker-Dealers to satisfy their prospectus delivery obligations under the Securities Act in connection with resales of Exchange Notes for their own accounts, so long as the Prospectus otherwise meets the requirements of the Securities Act.

In light of the foregoing, if requested by a Participating Broker-Dealer (a "Requesting Participating Broker-Dealer"), the Issuers agree to use their reasonable best efforts to keep the Exchange Offer Registration Statement continuously effective for a period of up to 180 days after the date on which the Exchange Offer Registration Statement is declared effective, or such longer period if extended pursuant to the last paragraph of Section 5 hereof (such period, the "Applicable Period"), or such earlier date as all Requesting Participating Broker-Dealers shall have notified the Company in writing that such Requesting Participating Broker-Dealers have resold all Exchange Notes acquired in the Exchange Offer. The Company shall include a plan of distribution in such Exchange Offer Registration Statement that meets the requirements set forth in the preceding paragraph.

If, prior to consummation of the Exchange Offer, any Holder holds any Notes acquired by it that have, or that are reasonably likely to be determined to have, the status of an unsold allotment in an initial distribution, or if any Holder is not entitled to participate in the Exchange Offer, the Company

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upon the request of any such Holder shall simultaneously with the delivery of the Exchange Notes in the Exchange Offer, issue and deliver to any such Holder, in exchange (the "Private Exchange") for such Notes held by any such Holder, a like principal amount of notes (the "Private Exchange Notes") of the Company that are identical in all material respects to the Exchange Notes, except for the placement of a restrictive legend on such Private Exchange Notes. The Private Exchange Notes shall be issued pursuant to the same indenture as the Exchange Notes and bear the same CUSIP number as the Exchange Notes.

In connection with the Exchange Offer, the Company shall:

- (1) mail or cause to be mailed to each Holder entitled to participate in the Exchange Offer a copy of the Prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;
- (2) utilize the services of a depository for the Exchange Offer with an address in the Borough of Manhattan, The City of New York;
- (3) permit Holders to withdraw tendered Notes at any time prior to the close of business, New York time, on the last Business Day on which the Exchange Offer shall remain open; and
- (4) otherwise comply in all material respects with all applicable laws, rules and regulations.

As soon as practicable after the close of the Exchange Offer and the Private Exchange, if any, the Company shall:

- (1) accept for exchange all Registrable Notes validly tendered and not validly withdrawn pursuant to the Exchange Offer and the Private Exchange, if any;
- (2) deliver or cause to be delivered to the Trustee for cancellation all Registrable Notes so accepted for exchange; and
- (3) cause the Trustee to authenticate and deliver promptly to each Holder of Notes, Exchange Notes or Private Exchange Notes, as the case may be, equal in principal amount to the Notes of such Holder so accepted for exchange.

The Exchange Offer and the Private Exchange shall not be subject to any conditions, other than that (i) the Exchange Offer or Private Exchange, as the case may be, does not violate applicable law or any applicable interpretation of the staff of the Commission, (ii) no action or proceeding shall have been instituted or threatened in any court or by any governmental agency which might materially impair the ability of the Issuers to proceed with the Exchange Offer or the Private Exchange, and no material adverse development shall have occurred in any existing action or proceeding with respect to the Issuers that would impair their ability to so proceed and (iii) all governmental approvals shall have been obtained, which approvals the Issuers deem necessary for the consummation of the Exchange Offer or Private Exchange.

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In the event that the Issuers are unable to consummate the Exchange Offer or the Private Exchange due to any event listed in clauses (i) through (iii) above, the Issuers shall not be deemed to have breached any covenant under this Section 2.

The Exchange Notes and the Private Exchange Notes shall be issued under (i) the Indenture or (ii) an indenture identical in all material respects to the Indenture (in either case, with such changes as are necessary to comply with any requirements of the Commission to effect or maintain the qualification thereof under the TIA) and which, in either case, has been qualified under the TIA and shall provide that the Exchange Notes shall not be subject to the transfer restrictions set forth in the Indenture. The Indenture or such other indenture shall provide that when a vote or consent of the Holders is required, the Exchange Notes, the Private Exchange Notes and the Notes shall vote and consent together on all matters as one class and that none of the Exchange Notes, the Private Exchange Notes or the Notes will have the right to vote or consent as a separate class on any matter.

(c) In the event that (i) any changes in law or the applicable interpretations of the staff of the Commission do not permit the Issuers to effect the Exchange Offer, (ii) for any reason the Exchange Offer is not consummated within 180 days of the Issue Date, (iii) any Holder notifies the Company that it is prohibited by law or the applicable interpretations of the staff of the Commission from participating in the Exchange Offer, (iv) in the case of any Holder that participates in the Exchange Offer, such Holder does not receive Exchange Notes on the date of the exchange that may be sold without restriction under state and federal securities laws (other than due solely to the status of such holder as an affiliate of any Issuer), (v) any Initial Purchaser so requests with respect to Notes that have, or that are reasonably likely to be determined to have, the status of unsold allotments in an initial distribution or (vi) any Holder of Private Exchange Notes so requests (each such event referred to in clauses (i) through (vi) of this sentence, a "Shelf Filing Event"), then the Issuers shall file a Shelf Registration Statement pursuant to Section 3 hereof.

Section 3. Shelf Registration Statement

If at any time a Shelf Filing Event shall occur, then:

(a) Shelf Registration Statement. The Issuers shall file with the Commission a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 covering all of the Registrable Notes not exchanged in the Exchange Offer, Private Exchange Notes and Exchange Notes as to which Section 2(c) (iv) is applicable, which may be an amendment to the Exchange Offer Registration Statement (the "Initial Shelf Registration Statement"). The Issuers shall file with the Commission the Initial Shelf Registration Statement as promptly as practicable and in any event on or prior to 45 days after the Company determines or is notified that a Shelf Filing Event has occurred. The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Notes for resale by Holders in the manner or manners designated by them (including, without limitation, one or more underwritten offerings). The Issuers shall not permit any securities other than the Registrable Notes to be included in the Initial Shelf Registration Statement or in any Subsequent Shelf Registration Statement (as defined below). Notwithstanding the foregoing, in the event a Shelf Filing Event occurs as a result of the event set forth in Section 2(c)(ii), the Issuers' obligation to file and Initial Shelf Registration pursuant to this Section 3 shall cease *ab initio* if the Exchange Offer is

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completed within 225 days of the Issue Date, or, if such date is not a Business Day, the next day that is a Business Day.

The Issuers shall use their respective reasonable best efforts (x) to cause the Initial Shelf Registration Statement to be declared effective under the Securities Act on or prior to the 90th day after the Company determines or is notified that such a Shelf Filing Event has occurred and (y) to keep the Initial Shelf Registration Statement continuously effective under the Securities Act for the period ending on the date which is two years from the date it becomes effective (or one year if the Initial Shelf Registration Statement is filed at the request of an Initial Purchaser), subject to extension pursuant to the penultimate paragraph of Section 5 hereof (the "Effectiveness Period"), or such shorter period ending when (i) all Registrable Notes covered by the Initial Shelf Registration Statement have been sold in the manner set forth and as contemplated in the Initial Shelf Registration Statement or cease to be outstanding, (ii) all Registrable Notes are eligible to be sold to the public pursuant to Rule 144(k) under the Securities Act or (iii) a Subsequent Shelf Registration Statement covering all of the Registrable Notes covered by and not sold under the Initial Shelf Registration Statement or an earlier Subsequent Shelf Registration Statement has been declared effective under the Securities Act; provided, however, that (i) the Effectiveness Period in respect of the Initial Shelf Registration Statement shall be extended to the extent required to permit dealers to comply with the applicable prospectus delivery requirements of Rule 174 under the Securities Act and as otherwise provided herein and (ii) the Company may suspend the effectiveness of the Initial Shelf Registration Statement by written notice to the Holders solely as a result of the filing of a post-effective amendment to the Initial Shelf Registration Statement where such post-effective amendment is not yet effective and needs to be declared effective to permit holders to use the related Prospectus.

(b) Subsequent Shelf Registration Statements. If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because of the sale of all of the securities registered thereunder), the Issuers shall use their respective reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall as soon as practicable after such cessation amend the Initial Shelf Registration Statement or such Subsequent Shelf Registration Statement, as the case may be, in a manner to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional "shelf" Registration Statement pursuant to Rule 415 covering all of the Registrable Notes covered by and not sold under the Initial Shelf Registration Statement or such earlier Subsequent Shelf Registration Statement (each, a "Subsequent Shelf Registration Statement"). If a Subsequent Shelf Registration Statement is filed, the Issuers shall use their respective reasonable best efforts to cause the Subsequent Shelf Registration Statement to be declared effective under the Securities Act as soon as practicable after such filing and to keep such Subsequent Shelf Registration Statement continuously effective for a period equal to the number of days in the Effectiveness Period less the aggregate number of days during which the Initial Shelf Registration Statement and any Subsequent Shelf Registration Statement was previously continuously effective. As used herein, the term "Shelf Registration Statement" means the Initial Shelf Registration Statement and any Subsequent Shelf Registration Statement.

(c) Supplements and Amendments. The Issuers agree to supplement or make amendments to the Shelf Registration Statement as and when required by the rules, regulations or

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instructions applicable to the registration form used for such Shelf Registration Statement or by the Securities Act or rules and regulations thereunder for shelf registration, or if reasonably requested by the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement or by any underwriter of such Registrable Notes; provided, however, that the Issuers shall not be required to supplement or amend any Shelf Registration Statement upon the request of a Holder or any underwriter if such requested supplement or amendment would, in the good faith judgment of the Company (based on advice of counsel), violate the Securities Act, the Exchange Act or the rules and regulations promulgated thereunder.

Section 4. Liquidated Damages

(a) The Issuers and the Initial Purchasers agree that the Holders will suffer damages if the Issuers fail to fulfill their obligations under Section 2 or Section 3 hereof and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, the Issuers agree that if:

(i) the Exchange Offer Registration Statement is not filed with the Commission on or prior to the 75th day following the Issue Date, or, if that day is not a Business Day, then the next day that is a Business Day,

(ii) the Exchange Offer Registration Statement is not declared effective on or prior to the 150th day following the Issue Date, or, if that day is not a Business Day, then the next day that is a Business Day,

(iii) the Exchange Offer is not completed on or prior to the 180th day following the Issue Date, or, if that day is not a Business Day, then the next day that is a Business Day, or

(iv) the Shelf Registration Statement is required to be filed but is not filed or declared effective within the time periods set forth herein or is declared effective but thereafter ceases to be effective or usable prior to the expiration of the Effectiveness Period, except if the Shelf Registration Statement ceases to be effective or usable as specifically permitted by the penultimate paragraph of Section 5 hereof

(each such event referred to in clauses (i) through (iv) a "Registration Default"), liquidated damages in the form of additional cash interest ("Liquidated Damages") will accrue on the affected Notes and the affected Exchange Notes, as applicable. The rate of Liquidated Damages will be 0.25% per annum for the first 90-day period (or portion thereof) immediately following the occurrence of a Registration Default, increasing by an additional 0.25% per annum with respect to each subsequent 90-day period (or portion thereof) up to a maximum amount of additional interest of 1.00% per annum, from and including the date on which any such Registration Default shall occur to, but excluding, the earlier of (1) the date on which all Registration Defaults have been cured or (2) the date on which all the Notes and Exchange Notes otherwise become freely transferable by Holders other than affiliates of the Issuers without further registration under the Securities Act.

Notwithstanding the foregoing, (1) the amount of Liquidated Damages payable shall not increase because more than one Registration Default has occurred

and is pending, (2) a Holder of Notes or Exchange Notes who is not entitled to the benefits of the Shelf Registration Statement (i.e., such Holder has not elected to include information) shall not be entitled to Liquidated Damages with respect to

a Registration Default that pertains to the Shelf Registration Statement and (3) no holder of Notes constituting an unsold allotment from the original sale of the Notes by the Company to the Initial Purchasers shall be entitled to Liquidated Damages by reason of a Registration Default that pertains to an Exchange Offer.

Notwithstanding anything to the contrary set forth herein, with respect to any Registration Default, (1) upon filing of the Exchange Offer Registration Statement (and/or, if applicable, the Shelf Registration Statement), in the case of clause (i) or (iv) above, (2) upon the effectiveness of the Exchange Offer Registration Statement (and/or, if applicable, the Shelf Registration Statement), in the case of clause (ii) or (iv) above, (3) upon completion of the Exchange Offer, in the case of clause (iii) above, or (4) upon the filing of a post-effective amendment to the Registration Statement or an additional Registration Statement that causes the Exchange Offer Registration Statement (and/or, if applicable, the Shelf Registration Statement) to again be declared effective or made usable, the applicable Registration Default shall be deemed to have been cured.

(b) The Company shall notify the Trustee within one Business Day after each and every date on which an event occurs in respect of which Liquidated Damages are required to be paid (an "Event Date"). Any amounts of Liquidated Damages due pursuant to this Section 4 will be payable in addition to any other interest payable from time to time with respect to the Registrable Notes in cash semi-annually on the interest payment dates specified in the Indenture (to the holders of record as specified in the Indenture), commencing with the first such interest payment date occurring after any such Liquidated Damages commence to accrue. The amount of Liquidated Damages will be determined in a manner consistent with the calculation of interest under the Indenture.

Section 5. Registration Procedures

In connection with the filing of any Registration Statement pursuant to Section 2 or 3 hereof, the Issuers shall effect such registrations to permit the sale of the securities covered thereby in accordance with the intended method or methods of disposition thereof, and pursuant thereto and in connection with any Registration Statement filed by the Issuers hereunder, the Issuers shall:

(a) Prepare and file with the Commission the Registration Statement or Registration Statements prescribed by Section 2 or 3 hereof, and use their reasonable best efforts to cause each such Registration Statement to become effective and remain effective as provided herein; provided, however, that, if (1) such filing is pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period relating thereto, before filing any Registration Statement or Prospectus or any amendments or supplements thereto, the Company shall furnish to and afford the Holders of the Registrable Notes covered by such Registration Statement or each such Participating Broker-Dealer, as the case may be, their counsel and the managing underwriters, if any, a reasonable opportunity to review copies of all such documents (including copies of any documents to be incorporated by reference therein and all exhibits thereto) proposed to be filed (in each case at least five Business Days prior to such filing). The Issuers shall not file any Registration Statement or Prospectus or any amendments or supplements thereto if the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement, or any such Participating Broker-Dealer, as the case may be, their counsel, or the

managing underwriters, if any, shall reasonably object within five Business Days after receipt thereof.

(b) Prepare and file with the Commission such amendments and post-effective amendments to each Initial Shelf Registration Statement or Exchange Offer Registration Statement, as the case may be, as may be necessary to keep such Registration Statement continuously effective for the Effectiveness Period or the Applicable Period, as the case may be; cause the related Prospectus to be supplemented by any Prospectus supplement required by applicable law, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; and comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all securities covered by such Registration Statement as so amended or in such Prospectus as so supplemented and with respect to the subsequent resale of any securities being sold by a Participating Broker-Dealer covered by any such Prospectus, in each case, in accordance with the intended methods of distribution set forth in such Registration Statement or Prospectus, as so amended.

(c) If (1) a Shelf Registration Statement is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period relating thereto from whom the Issuers have received written notice that it will be a Participating Broker-Dealer in the Exchange Offer, notify the selling Holders of Registrable Notes, or each such Participating Broker-Dealer, as the case may be, their counsel and the managing underwriters, if any, as promptly as possible, and, if requested by any such Person, confirm such notice in writing, (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective under the Securities Act (including in such notice a written statement that any Holder may, upon request in writing, obtain, at the sole expense of the Company, one conformed copy of such Registration Statement or post-effective amendment including financial statements and schedules, documents incorporated or deemed to be incorporated by reference and exhibits), (ii) of the issuance by the Commission of any stop order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of any preliminary prospectus or the initiation of any proceedings for that purpose, (iii) if at any time when a Prospectus is required by the Securities Act to be delivered in connection with sales of the Registrable Notes or resales of Exchange Notes by Participating Broker-Dealers the representations and warranties of the Issuers contained in any agreement (including any underwriting agreement) contemplated by Section 5(m) hereof cease to be true and correct in all material respects, (iv) of the receipt by any of the Issuers of any notification with respect to the suspension of the qualification or exemption from qualification of a Registration Statement or any of the Registrable Notes or the Exchange Notes for offer or sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose, (v) of the happening of any event, the existence of any condition or any information becoming known to any Issuer that makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in or amendments or supplements to such Registration Statement, Prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not

misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (vi) of the Company's determination that a post-effective amendment to a Registration Statement would be appropriate.

(d) If (1) a Shelf Registration Statement is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, use their reasonable best efforts to prevent the issuance of any order suspending the effectiveness of a Registration Statement or of any order

preventing or suspending the use of a Prospectus or suspending the qualification (or exemption from qualification) of any of the Registrable Notes or the Exchange Notes, as the case may be, for sale in any jurisdiction, and, if any such order is issued, to use their reasonable best efforts to obtain the withdrawal of any such order at the earliest practicable moment.

(e) If (1) a Shelf Registration Statement is filed pursuant to Section 3 or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period and if requested by the managing underwriter or underwriters (if any), the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement or any Participating Broker-Dealer, as the case may be, (i) as promptly as practicable incorporate in such Registration Statement or Prospectus a prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters (if any), such Holders or any Participating Broker-Dealer, as the case may be (based upon advice of counsel), reasonably request as necessary to be included therein and (ii) make all required filings of such prospectus supplement or such post-effective amendment as soon as practicable after the Company has received notification of the matters to be incorporated in such prospectus supplement or post-effective amendment; provided, however, that the Issuers shall not be required to take any action hereunder that would, in the good faith judgment of the Company (based on advice of counsel), violate applicable laws.

(f) If (1) a Shelf Registration Statement is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, furnish to each selling Holder of Registrable Notes and a single counsel to such Holders, or each such Participating Broker-Dealer and their counsel, as the case may be, who so requests and each managing underwriter, if any, and a single counsel for such underwriters, at the sole expense of the Company, one conformed copy of the Registration Statement or Registration Statements and each post-effective amendment thereto, including financial statements and schedules, and, if requested, all documents incorporated or deemed to be incorporated therein by reference and any exhibits.

(g) If (1) a Shelf Registration Statement is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, deliver to each selling Holder of

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Registrable Notes and a single counsel to such Holders, or each such Participating Broker-Dealer and their counsel, as the case may be, and the underwriters, if any, and a single counsel for such underwriters, at the sole expense of the Company, as many copies of the Prospectus or Prospectuses (including each form of preliminary prospectus) and each amendment or supplement thereto and any documents incorporated by reference therein as such Persons may reasonably request; and, subject to the last paragraph of this Section 5, the Issuers hereby consent to the use of such Prospectus and each amendment or supplement thereto (provided the manner of such use complies with any limitations resulting from any applicable laws, including state securities or "Blue Sky" laws, and subject to the provisions of this Agreement) by each of the selling Holders of Registrable Notes or each such Participating Broker-Dealer, as the case may be, and the underwriters or agents, if any, and dealers (if any), in connection with the offering and sale of the Registrable Notes or the sale by Participating Broker-Dealers of the Exchange Notes covered by or pursuant to such Prospectus and any amendment or supplement thereto.

(h) Prior to any public offering of Registrable Notes or Exchange Notes or any delivery of a Prospectus contained in the Exchange Offer Registration Statement by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, use their reasonable best efforts to register or qualify, and to cooperate with the selling Holders of Registrable Notes or each such Participating Broker-Dealer, as the case may be, the managing underwriter or underwriters, if any, and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Notes or Exchange Notes, as the case may be, for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any selling Holder, Participating Broker-Dealer, or the managing underwriter or underwriters reasonably request in writing; provided, however, that where Exchange Notes held by Participating Broker-Dealers or Registrable Notes are offered other than through an underwritten offering, the Company agrees to cause the Company's counsel to perform Blue Sky investigations and file registrations and qualifications required to be filed pursuant to this Section 5(h), keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of such Exchange Notes or Registrable Notes covered by the applicable Registration Statement; provided, however, that no Issuer shall be required to (A) qualify generally to do business in any jurisdiction where it is not then so qualified, (B) take any action that would subject it to general service of process in any such jurisdiction where it is not then so subject or (C) subject itself to taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then so subject.

(i) If a Shelf Registration Statement is filed pursuant to Section 3 hereof, cooperate with the selling Holders of Registrable Notes and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Notes to be sold, which certificates shall not bear any restrictive legends and shall be in a form eligible for deposit with The Depository Trust Company; and enable such Registrable Notes to be in such denominations and registered in such names as the managing underwriter or underwriters, if any, or selling Holders may reasonably request at least two Business Days prior to any sale of such Registrable Notes or Exchange Notes.

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(j) Use their reasonable best efforts to cause the Registrable Notes or Exchange Notes covered by any Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be reasonably necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Notes or Exchange Notes, except as may be required solely as a consequence of the nature of such selling Holder's business, in which case the Company will cooperate in all reasonable respects with the filing of such Registration Statement and the granting of such approvals.

(k) If (1) a Shelf Registration Statement is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, upon the occurrence of any event contemplated by Section 5(c)(v) or 5(c)(vi) hereof, as promptly as practicable prepare and (subject to Section 5(a) and the penultimate paragraph of this Section 5) file with the Commission, at the sole expense of the Company, a supplement or post-effective amendment to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Notes being sold thereunder or to the purchasers of the Exchange Notes to whom such Prospectus will be delivered by a Participating Broker-Dealer, any such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) Prior to the effective date of the first Registration Statement relating to the Registrable Notes, (i) provide the Trustee with certificates for the Registrable Notes in a form eligible for deposit with The Depository Trust Company and (ii) provide a CUSIP number for the Registrable Notes.

(m) In connection with any underwritten offering of Registrable Notes pursuant to a Shelf Registration Statement, enter into an underwriting agreement as is customary in underwritten offerings of debt securities similar to the Notes in form reasonably satisfactory to the Issuers and take all such other actions as are reasonably requested by the managing underwriter or underwriters, if any, in order to expedite or facilitate the registration or the disposition of such Registrable Notes and, in such connection, (i) make such representations and warranties to, and covenants with, the underwriters with respect to the business of the Issuers and their

subsidiaries (including any acquired business, properties or entity, if applicable) and the Registration Statement, Prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, as are customarily made by issuers to underwriters in underwritten offerings of debt securities similar to the Notes, and confirm the same in writing if and when requested in form reasonably satisfactory to the Issuers; (ii) upon the request of any underwriter, use their reasonable best efforts to obtain the written opinions of counsel to the Company and written updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters, addressed to the underwriters covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by the managing underwriter or underwriters; (iii) upon the request of any underwriter, use their reasonable best efforts to obtain “cold comfort” letters and updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters from the independent

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certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included or incorporated by reference in the Registration Statement), addressed to each of the underwriters, such letters to be in customary form and covering matters of the type customarily covered in “cold comfort” letters in connection with underwritten offerings of debt securities similar to the Notes, and such other matters as reasonably requested by the managing underwriter or underwriters as permitted by the Statement on Auditing Standards No. 72; and (iv) if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures no less favorable than those set forth in Section 7 hereof (or such other provisions and procedures acceptable to Holders of a majority in aggregate principal amount of Registrable Notes covered by such Registration Statement and the managing underwriter or underwriters or agents, if any) with respect to all parties to be indemnified pursuant to said Section. The above shall be done at each closing under such underwriting agreement, or as and to the extent required thereunder.

(n) If (1) a Shelf Registration Statement is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, make available for inspection by any selling Holder of such Registrable Notes being sold or each such Participating Broker-Dealer, as the case may be, any underwriter participating in any such disposition of Registrable Notes, if any, and any attorney, accountant or other agent retained by any such selling Holder or each such Participating Broker-Dealer, as the case may be, or underwriter (collectively, the “Inspectors”), at the offices where normally kept, during reasonable business hours, all financial and other records, pertinent corporate documents and instruments of the Company and its subsidiaries (collectively, the “Records”) as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the appropriate officers, directors and employees of the Company and its subsidiaries to supply all information reasonably requested by any such Inspector in connection with such Registration Statement and Prospectus. Each Inspector shall agree in writing that it will keep the Records confidential and not disclose any Records that the Company determines, in good faith, to be confidential and that it notifies the Inspectors in writing are confidential unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such Registration Statement or Prospectus, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (iii) disclosure of such information is necessary or advisable in connection with any action, claim, suit or proceeding, directly or indirectly, involving or potentially involving such Inspector and arising out of, based upon, relating to, or involving this Agreement or the Purchase Agreement, or any transactions contemplated hereby or thereby or arising hereunder or thereunder, or (iv) the information in such Records has been made generally available to the public other than through an act of such Inspector in violation of this Section 5(n); provided, however, that, if practicable, prior notice shall be provided as soon as practicable to the Issuers of the potential disclosure of any information by such Inspector pursuant to clause (ii) of this sentence to permit the Issuers to obtain a protective order or to take other appropriate action to prevent the disclosure of such information and that such Inspector shall take such actions as are reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of the Holder or any Inspector.

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(o) Provide an indenture trustee for the Registrable Notes or the Exchange Notes, as the case may be, and cause the Indenture or the trust indenture provided for in Section 2(b) hereof to be qualified under the TIA not later than the effective date of the Exchange Offer or the first Registration Statement relating to the Registrable Notes; and in connection therewith, cooperate with the trustee under any such indenture and the Holders of the Registrable Notes or Exchange Notes, as applicable, to effect such changes to such indenture as may be required for such indenture to be so qualified in accordance with the terms of the TIA; and execute, and use their reasonable best efforts to cause such trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the Commission to enable such indenture to be so qualified in a timely manner.

(p) Comply with all applicable rules and regulations of the Commission and make generally available to the Company’s securityholders earnings statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) (i) commencing at the end of any fiscal quarter in which Registrable Notes or Exchange Notes are sold to underwriters in a firm commitment or best efforts underwritten offering and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter of the Company after the effective date of a Registration Statement.

(q) Upon the request of a Holder, upon consummation of the Exchange Offer or a Private Exchange, use their reasonable best efforts to obtain an opinion of counsel to the Issuers, in a form customary for underwritten transactions, addressed to the Trustee for the benefit of all Holders of Registrable Notes participating in the Exchange Offer or the Private Exchange, as the case may be, that the Exchange Notes or Private Exchange Notes, as the case may be, and the related indenture constitute legal, valid and binding obligations of the Issuers, enforceable against the Issuers in accordance with its respective terms, subject to customary exceptions and qualifications.

(r) If the Exchange Offer or a Private Exchange is to be consummated, upon delivery of the Registrable Notes by Holders to the Company (or to such other Person as directed by the Company) in exchange for the Exchange Notes or the Private Exchange Notes, as the case may be, mark, or cause to be marked, on such Registrable Notes that such Registrable Notes are being cancelled in exchange for the Exchange Notes or the Private Exchange Notes, as the case may be; in no event shall such Registrable Notes be marked as paid or otherwise satisfied.

(s) Cooperate with each seller of Registrable Notes covered by any Registration Statement and each underwriter, if any, participating in the disposition of such Registrable Notes and their respective counsel in connection with any filings required to be made with the National Association of Securities Dealers, Inc. (the “NASD”).

(t) Use their reasonable best efforts to take all other steps necessary or advisable to effect the registration of the Exchange Notes and/or Registrable Notes covered by a Registration Statement contemplated hereby.

The Company may require each seller of Registrable Notes or Exchange Notes as to which any registration is being effected to furnish to the Issuers such information regarding such seller

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and the distribution of such Registrable Notes or Exchange Notes as the Company may, from time to time, reasonably request. The Issuers may exclude from such registration the Registrable Notes or Exchange Notes of any seller so long as such seller fails to furnish such information within a reasonable time after receiving such request. Each seller as to which any Shelf Registration Statement is being effected agrees to furnish promptly to the Company all information required to be disclosed in order to make any information previously furnished to the Company by such seller not materially misleading.

If any such Registration Statement refers to any Holder by name or otherwise as the holder of any securities of the Company, then such Holder shall have the right to require (i) the insertion therein of language, in form and substance reasonably satisfactory to such Holder, to the effect that the holding by such Holder of such securities is not to be construed as a recommendation by such Holder of the investment quality of the securities covered thereby and that such holding does not imply that such Holder will assist in meeting any future financial requirements of the Company, or (ii) in the event that such reference to such Holder by name or otherwise is not required by the Securities Act or any similar federal statute then in force, the deletion of the reference to such Holder in any amendment or supplement to the Registration Statement filed or prepared subsequent to the time that such reference ceases to be required.

Each Holder of Registrable Notes and each Participating Broker-Dealer agrees by acquisition of such Registrable Notes or Exchange Notes that, upon actual receipt of any notice from the Company (x) of the happening of any event of the kind described in Section 5(c)(ii), 5(c)(iv), 5(c)(v), or 5(c)(vi) hereof, or (y) that the Board of Directors of the Company (the "Board of Directors") has resolved that the Company has *bona fide* business purpose for doing so, then the Company may delay the filing or the effectiveness of the Exchange Offer Registration Statement or the Shelf Registration Statement (if not then filed or effective, as applicable) and shall not be required to maintain the effectiveness thereof or amend or supplement the Exchange Offer Registration Statement or the Shelf Registration Statement, in all cases, for a period (a "Delay Period") expiring upon the earlier to occur of (i) in the case of the immediately preceding clause (x), such Holder's or Participating Broker-Dealer's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 5(k) hereof or until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus may be resumed, and has received copies of any amendments or supplements thereto or (ii) in the case of the immediately preceding clause (y), the date which is the earlier of (A) the date on which such business purpose ceases to interfere with the Company's obligations to file or maintain the effectiveness of any such Registration Statement pursuant to this Agreement or (B) 60 days after the Company notifies the Holders of such good faith determination. There shall not be more than 60 days of Delay Periods during any 12-month period. Each of the Effectiveness Period and the Applicable Period, if applicable, shall be extended by the number of days during any Delay Period. Any Delay Period will not alter the obligations of the Company to pay Liquidated Damages under the circumstances set forth in Section 4 hereof.

In the event of any Delay Period pursuant to clause (y) of the preceding paragraph, notice shall be given as soon as practicable after the Board of Directors makes such a determination of the need for a Delay Period and shall state, to the extent practicable, an estimate of the duration of such Delay Period and shall advise the recipient thereof of the agreement of such Holder provided in the next succeeding sentence. Each Holder, by his acceptance of any Registrable Note, agrees that during any Delay Period, each Holder will discontinue disposition of such Notes or Exchange Notes covered by such Registration Statement or Prospectus or Exchange Notes to be sold by such Holder or Participating Broker-Dealer, as the case may be.

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Section 6. Registration Expenses

All fees and expenses incident to the performance of or compliance with this Agreement by the Issuers shall be borne by the Issuers, whether or not the Exchange Offer Registration Statement or the Shelf Registration Statement is filed or becomes effective or the Exchange Offer is consummated, including, without limitation, (i) all registration and filing fees (including, without limitation, (A) fees with respect to filings required to be made with the NASD in connection with an underwritten offering and (B) fees and expenses of compliance with state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of one counsel in connection with Blue Sky qualifications of the Registrable Notes or Exchange Notes and determination of the eligibility of the Registrable Notes or Exchange Notes for investment under the laws of such jurisdictions (x) where the holders of Registrable Notes are located, in the case of an Exchange Offer, or (y) as provided in Section 5(h) hereof, in the case of Exchange Notes to be sold by a Participating Broker-Dealer during the Applicable Period)), (ii) printing expenses, including, without limitation, expenses of printing certificates for Registrable Notes or Exchange Notes in a form eligible for deposit with The Depository Trust Company and of printing prospectuses if the printing of prospectuses is requested by the managing underwriter or underwriters, if any, or by the Holders of a majority in aggregate principal amount of the Registrable Notes included in any Registration Statement or in respect of Exchange Notes to be sold by any Participating Broker-Dealer during the Applicable Period, as the case may be, (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Issuers and reasonable fees and disbursements of one special counsel for all of the sellers of Registrable Notes (exclusive of any counsel retained pursuant to Section 7 hereof), (v) fees and disbursements of all independent certified public accountants referred to in Section 5(m)(iii) hereof (including, without limitation, the expenses of any special audit and "cold comfort" letters required by or incident to such performance), (vi) Securities Act liability insurance, if the Issuers desire such insurance, (vii) fees and expenses of all other Persons retained by any of the Issuers, (viii) internal expenses of the Issuers (including, without limitation, all salaries and expenses of officers and employees of any of the Issuers performing legal or accounting duties), (ix) the expense of any audit, (x) the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange, and the obtaining of a rating of the securities, in each case, if applicable, and (xi) the expenses relating to printing, word processing and distributing all Registration Statements, underwriting agreements, indentures and any other documents necessary in order to comply with this Agreement. Notwithstanding the foregoing or anything to the contrary, each Holder shall pay all underwriting discounts and commissions of any underwriters with respect to any Registrable Notes sold by or on behalf of it.

Section 7. Indemnification

(a) Each Issuer, jointly and severally, agrees to indemnify and hold harmless each Holder of Registrable Notes and each Participating Broker-Dealer selling Exchange Notes during the Applicable Period, each Person, if any, who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, the agents, employees, officers and directors of each Holder and each such Participating Broker-Dealer and the agents, employees, officers and directors of any such controlling Person (each, a "Participant") from and against any and all losses, liabilities, claims, damages and expenses whatsoever (including, but not limited to, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation) (collectively, "Losses") to which they or any of them may become

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subject under the Securities Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus, in the light of the circumstances under which they were made, not misleading, provided that (A) the foregoing indemnity shall not be available to any Participant insofar as such Losses are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to such Participant furnished to the Company in writing by or on behalf of such Participant expressly for use therein and (B) with respect to any such untrue statement or omission made in any preliminary Prospectus, the indemnity contained in this Section 7(a) (to the extent and only to the extent that such losses, claims, damages or liabilities resulted from the untrue statement or omission described in clause (2) below) shall not inure to the benefit of a Participant if it shall be established that both (1) a copy of the amended or supplemented Prospectus was not sent or given by such Participant to the Person asserting any such losses, claims, damages or liabilities and such Participant was required by law to so send or give such Prospectus to such Person and (2) the untrue statement or omission in the preliminary Prospectus was corrected in the amended or supplemented Prospectus, unless, in either case, such failure to deliver the amended or supplemented Prospectus was a result of noncompliance by an Issuer with any of its covenants or obligations in this Agreement.

(b) Each Participant agrees, severally and not jointly, to indemnify and hold harmless each Issuer, each Person, if any, who controls any Issuer within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, and each of their respective agents, employees, officers and directors and the agents, employees, officers and directors of any such controlling Person from and against any Losses to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that any such Loss arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information relating to such Participant furnished in writing to the Company by or on behalf of such Participant expressly for use therein; provided, however, that with respect to any such untrue statement or omission made in any preliminary Prospectus, the indemnity contained in this Section 7(b) (to the extent and only to the extent that such losses, claims, damages or liabilities resulted from an untrue statement or omission in the preliminary Prospectus that was corrected in the amended or supplemented Prospectus) shall not inure to the benefit of an Issuer if it shall be established that (1) both (A) a copy of the amended or supplemented Prospectus was sent or given by such Participant to the Person asserting any such losses, claims, damages or liabilities and (B) the untrue statement or omission in the preliminary Prospectus was corrected in the amended or supplemented Prospectus or (2) such failure to deliver the amended or supplemented Prospectus was a result of noncompliance by an Issuer with any of its covenants or obligations in this Agreement.

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(c) Promptly after receipt by an indemnified party under subsection 7(a) or 7(b) above of notice of the commencement of any action, suit or proceeding (collectively, an “action”), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the commencement of such action (but the failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability that it may have under this Section 7 except to the extent that it has been prejudiced in any material respect by such failure or from any liability which it otherwise may have). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement of such action, the indemnifying party will be entitled to participate in such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense of such action with counsel reasonably satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such action, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to take charge of the defense of such action within a reasonable time after notice of commencement of the action, or (iii) the indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them that are different from or additional to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such reasonable fees and expenses of counsel shall be borne by the indemnifying parties; provided, however, that the indemnifying party will not be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) designated by the indemnified party or parties at any time for all indemnified parties in connection with any one action or separate but similar or related actions arising out of the same general allegations or circumstances. An indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent, which consent may not be unreasonably withheld. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) In order to provide for contribution in circumstances in which the indemnification provided for in this Section 7 is for any reason held to be unavailable from the indemnifying party, or is insufficient to hold harmless a party indemnified under this Section 7, each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such aggregate Losses (i) in such proportion as is appropriate to reflect the relative benefits received by each indemnifying party, on the one hand, and each indemnified party, on the other hand, from the sale of the Notes to the Initial Purchasers or the resale of the Registrable Notes by such Holder, as applicable, or (ii) if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to above but also the relative fault of each indemnified party, on the one hand, and each indemnifying party, on the other hand, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Issuers, on the one hand, and each Participant, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the sale of the Notes to the Initial Purchasers (net of discounts and commissions but before deducting expenses) received by the Issuers are to (y) the total net profit received by such

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Participant in connection with the sale of the Registrable Notes. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuers or such Participant and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission.

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

Section 8. Rules 144 and 144A

The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission thereunder in a timely manner in accordance with the requirements of the Securities Act and the Exchange Act and, if at any time the Company is not required to file such reports, it will, upon the request of any Holder or beneficial owner of Registrable Notes, make available such information necessary to permit sales pursuant to Rule 144A under the Securities Act, in each case for so long as any Registrable Notes remain outstanding. The Issuers further covenant for so long as any Registrable Notes remain outstanding that they will take such further action as any Holder of Registrable Notes may reasonably request from time to time to enable such Holder to sell Registrable Notes without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144(k) and Rule 144A under the

Section 9. Underwritten Registrations

If any of the Registrable Notes covered by any Shelf Registration Statement are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will manage the offering will be selected by the Holders of a majority in aggregate principal amount of such Registrable Notes included in such offering and shall be reasonably acceptable to the Company.

No Holder of Registrable Notes may participate in any underwritten registration hereunder if such Holder does not (a) agree to sell such Holder's Registrable Notes on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) complete and execute all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

Section 10. Miscellaneous

(a) No Inconsistent Agreements. The Issuers have not entered, as of the date hereof, and shall not enter, after the date of this Agreement, into any agreement with respect to any of their securities that is inconsistent with the rights granted to the Holders of Registrable Notes in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not conflict with and are not inconsistent with, in any material respect, the rights granted to the holders of any of the Issuers' other issued and outstanding securities under any such agreements. The Issuers have not entered and will not enter into any agreement with respect to any of their securities which will grant to any Person piggy-back registration rights with respect to any Registration Statement.

(b) Adjustments Affecting Registrable Notes. The Issuers shall not, directly or indirectly, take any action with respect to the Registrable Notes as a class that would adversely affect the ability of the Holders of Registrable Notes to include such Registrable Notes in a registration undertaken pursuant to this Agreement.

(c) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given except pursuant to a written agreement duly signed and delivered by (I) the Issuers and (II)(A) the Holders of not less than a majority in aggregate principal amount of the then outstanding Registrable Notes and (B) in circumstances that would adversely affect the Participating Broker-Dealers, the Participating Broker-Dealers holding not less than a majority in aggregate principal amount of the Exchange Notes held by all Participating Broker-Dealers; provided, however, that Section 7 and this Section 10(c) may not be amended, modified or supplemented except pursuant to a written agreement duly signed and delivered by each Holder and each Participating Broker-Dealer (including any Person who was a Holder or Participating Broker-Dealer of Registrable Notes or Exchange Notes, as the case may be, disposed of pursuant to any Registration Statement) adversely affected by any such amendment, modification, supplement or waiver. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Notes whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders of Registrable Notes may be given by Holders of at least a majority in aggregate principal amount of the Registrable Notes being sold pursuant to such Registration Statement.

(d) Notices. All notices and other communications (including, without limitation, any notices or other communications to the Trustee) provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, next-day air courier or telecopier:

(i) if to a Holder of the Registrable Notes or any Participating Broker-Dealer, at the most current address of such Holder or Participating Broker-Dealer, as the case may be, set forth on the records of the registrar under the Indenture.

(ii) if to the Issuers, at the address as follows:

Meritage Homes Corporation
8501 East Princess Drive
Suite 290
Scottsdale, Arizona 85255
Telephone: (480) 998-8700
Fax: (480) 998-9178
Attention: Larry W. Seay

With a copy to:

Snell & Wilmer L.L.P.
One Arizona Center
400 E. Van Buren Street
Phoenix, Arizona 85004-2223
Telephone: (602) 382-6000
Fax: (602) 382-6070
Attention: Steven D. Pidgeon, Esq.

(iii) if to the Initial Purchasers, at the address as follows:

UBS Securities LLC.
677 Washington Blvd.
Stanford, Connecticut 06901
Facsimile No.: (203) 719-0680
Attention: Legal and Compliance Department

With a copy to:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
Telephone: (212) 701-3000
Fax: (212) 269-5420
Attention: Daniel J. Zubkoff, Esq.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage

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prepaid, if mailed; when receipt is acknowledged by the recipient's telecopier machine, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address and in the manner specified in such Indenture.

(e) Guarantors. So long as any Registrable Notes remain outstanding, the Issuers shall cause each Person that becomes a guarantor of the Notes under the Indenture to execute and deliver a counterpart to this Agreement which subjects such Person to the provisions of this Agreement as a Guarantor. Each of the Guarantors agrees to join the Company in all of its undertakings hereunder to effect the Exchange Offer for the Exchange Notes and the filing of any Shelf Registration Statement required hereunder.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, the Holders and the Participating Broker-Dealers; provided, however, that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign holds Registrable Notes.

(g) Counterparts. This Agreement may be executed by facsimile and in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(j) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction.

(k) Securities Held by the Company or Its Affiliates. Whenever the consent or approval of Holders of a specified percentage of Registrable Notes is required hereunder, Registrable Notes held by the Company or any of its affiliates (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(l) Third-Party Beneficiaries. Holders and beneficial owners of Registrable Notes and Participating Broker-Dealers are intended third-party beneficiaries of this Agreement, and this

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Agreement may be enforced by such Persons. No other Person is intended to be, or shall be construed as, a third-party beneficiary of this Agreement.

(m) Attorneys' Fees. As between the parties to this Agreement, in any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' fees actually incurred in addition to its costs and expenses and any other available remedy.

(n) Entire Agreement. This Agreement, together with the Purchase Agreement and the Indenture, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between the Holders on the one hand and the Issuers on the other, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

MERITAGE HOMES CORPORATION

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Chief Financial Officer

MONTEREY HOMES ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE PASEO CROSSING, LLC

By: Meritage Homes of Arizona, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MONTEREY HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE PASEO CONSTRUCTION, LLC

By: Meritage Homes Construction, Inc., its Sole Member

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By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF ARIZONA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES CONSTRUCTION, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS GP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS LP, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

LEGACY/MONTEREY HOMES L.P.

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE HOMES OF CALIFORNIA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay

Title: Vice President-Secretary

LEGACY OPERATING COMPANY, L.P.

By: Meritage Holdings, L.L.C., its General Partner

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

HULEN PARK VENTURE, LLC

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

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MERITAGE HOLDINGS, L.L.C.

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS GP II, Inc.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH HOMES-TEXAS, L.P.

By: MTH-Texas GP II, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-TEXAS LP II, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-HOMES NEVADA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH-CAVALIER, LLC

By: Monterey Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MTH GOLF, LLC

By: Meritage Homes Construction, Inc., its Sole Member

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

LEGACY-HAMMONDS MATERIALS, L.P.

By: Meritage Holdings, L.L.C., its General Partner

By: Legacy/Monterey Homes L.P., its Sole Member

By: MTH-Texas GP, Inc., its General Partner

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES COLORADO, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

MERITAGE HOMES OF FLORIDA, INC.

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Vice President-Secretary

UBS SECURITIES LLC

By: /s/ Robert Crowley
Name: Robert Crowley
Title: Managing Director

By: [Signature illegible]
Name:
Title:

CITIGROUP GLOBAL MARKETS INC.

By: /s/ Stephen Cunningham
Name: Stephen Cunningham
Title: Managing Director

J.P. MORGAN SECURITIES INC.

By: [Signature illegible]
Name:
Title:

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Schedule A

Guarantors

1. Monterey Homes Arizona, Inc.
 2. Meritage Paseo Crossing, LLC
 3. Monterey Homes Construction, Inc.
 4. Meritage Paseo Construction, LLC
 5. Meritage Homes of Arizona, Inc.
 6. Meritage Homes Construction, Inc.
 7. MTH-Texas GP, Inc.
 8. MTH-Texas LP, Inc.
 9. Legacy/Monterey Homes L.P.
 10. Meritage Homes of California, Inc.
 11. Legacy Operating Company, L.P.
 12. Hulen Park Venture, LLC
 13. Meritage Holdings, L.L.C.
 14. MTH-Texas GP II, Inc.
 15. MTH Homes-Texas, L.P.
 16. MTH-Texas LP II, Inc.
 17. MTH-Homes Nevada, Inc.
 18. MTH-Cavalier, LLC
 19. MTH Golf, LLC
 20. Legacy-Hammonds Materials, L.P.
 21. Meritage Homes of Colorado, Inc.
 22. Meritage Homes of Florida, Inc.
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MERITAGE HOMES CORPORATION
STOCK OPTION PLAN

1. Establishment, Purpose and Definitions

(a) The Stock Option Plan (the "Option Plan") of Meritage Homes Corporation (the "Company") is hereby adopted. The Option Plan shall provide for the issuance of incentive stock options ("ISOs") and nonqualified stock options ("NSOs").

(b) The purpose of this Option Plan is to promote the long-term success of the Company by attracting, motivating and retaining key executives, consultants and directors (the "Participants") through the use of competitive long-term incentives which are tied to stockholder interests by providing incentives to the Participants in the form of stock options which offer rewards for achieving the long-term strategic and financial objectives of the Company.

(c) The Option Plan is intended to provide a means whereby Participants may be given an opportunity to purchase shares of Stock (as defined herein) of the Company pursuant to (i) options which may qualify as ISOs under Section 422 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), or (ii) NSOs which may not so qualify.

(d) The term "Affiliates" as used in this Option Plan means parent or subsidiary corporations, as defined in Section 424(e) and (f) of the Code (but substituting "the Company" for "employer corporation"), including parents or subsidiaries which become such after adoption of the Option Plan.

2. Administration of the Plan

(a) The Option Plan shall be administered by members of the Board of Directors of the Company (the "Board") qualifying as "non-employee directors" as such term is defined in Rule 16b-3 promulgated by the Securities and Exchange Commission (the "Commission").

(b) The Board may from time to time determine which employees of the Company or its Affiliates or other individuals or entities (each an "option holder") shall be granted options under the Option Plan, the terms thereof (including without limitation determining whether the option is an incentive stock option and the times at which the options shall become exercisable), and the number of shares of Stock for which an option or options may be granted.

(c) If rights of the Company to repurchase Stock are imposed, the Board may, in its sole discretion, accelerate, in whole or in part, the time for lapsing of any rights of the Company to repurchase shares of such Stock or forfeiture restrictions.

(d) If rights of the Company to repurchase Stock are imposed, the certificates evidencing such shares of Stock awarded hereunder, although issued in the name of the option holder concerned, shall be held by the Company or a third party designated by the Board in escrow subject to delivery to the option holder or to the Company at such times and in such amounts as shall be directed by the Board under the terms of this Option Plan. Share certificates

representing Stock that is subject to repurchase rights shall have imprinted or typed thereon a legend or legends summarizing or referring to the repurchase rights.

(e) The Board shall have the sole authority, in its absolute discretion, to adopt, amend and rescind such rules and regulations, consistent with the provisions of the Option Plan, as, in its opinion, may be advisable in the administration of the Option Plan, to construe and interpret the Option Plan, the rules and regulations, and the instruments evidencing options granted under the Option Plan and to make all other determinations deemed necessary or advisable for the administration of the Option Plan. All decisions, determinations and interpretations of the Board shall be binding on all option holders under the Option Plan.

3. Stock Subject to the Plan

(a) "Stock" shall mean Common Stock of the Company or such stock as may be changed as contemplated by Section 3(c) below. Stock shall include shares drawn from either the Company's authorized but unissued shares of Common Stock or from reacquired shares of Common Stock, including without limitation shares repurchased by the Company in the open market. The maximum number of shares of Common Stock that can be issued under this Option Plan is 5,900,000 shares, and the maximum number of shares of Common Stock that can be issued to any one person under this Option Plan is 100,000 shares per year.

(b) Options may be granted under the Option Plan from time to time to eligible persons. Stock options awarded pursuant to the Option Plan which are forfeited, terminated, surrendered or canceled for any reason prior to exercise shall again become available for grants under the Option Plan (including any option canceled in accordance with the cancellation regrant provisions of Section 6(f) herein).

(c) If there shall be any changes in the Stock subject to the Option Plan, including Stock subject to any option granted hereunder, through merger, consolidation, recapitalization, reorganization, reincorporation, stock split, reverse stock split, stock dividend, combination or reclassification of the Company's Stock or other similar events, an appropriate adjustment shall be made by the Board in the number of shares of Stock. Consistent with the foregoing, in the event that the outstanding Stock is changed into another class or series of capital stock of the Company, outstanding options to purchase Stock granted under the Option Plan shall become options to purchase such other class or series and the provisions of this Section 3(c) shall apply to such new class or series.

(d) The aggregate number of shares of Stock approved by the Option Plan may not be exceeded without amending the Option Plan and obtaining stockholder approval within twelve months of such amendment.

4. Eligibility

Persons who shall be eligible to receive stock options granted under the Option Plan shall be those individuals and entities as the Board in its discretion determines should be awarded such incentives given the best interests of the Company; provided, however, that (i) ISOs may only be granted to employees of the Company and its Affiliates and (ii) any person holding capital stock possessing more than 10% of the total combined voting power of all classes of Stock of the

Company or any Affiliate shall not be eligible to receive ISOs unless the exercise price per share of Stock is at least 110% of the fair market value of the Stock on the date the option is granted.

5. Exercise Price for Options Granted Under the Plan

(a) All ISOs and NSOs will have option exercise prices per option share not less than the fair market value of a share of the Stock on the date the option is granted, except that in the case of ISOs granted to any person possessing more than 10% of the total combined voting power of all classes of stock of the Company or any

Affiliate the price shall be not less than 110% of such fair market value. The price of ISOs or NSOs granted under the Option Plan shall be subject to adjustment to the extent provided in Section 3(c) above.

(b) The fair market value on the date of grant shall be determined based upon the closing price on an exchange on that day or, if the Stock is not listed on an exchange, on the average of the closing bid and asked prices in the Over the Counter Market on that day.

6. Terms and Conditions of Options

(a) Each option granted pursuant to the Option Plan shall be evidenced by a written stock option agreement (the "Option Agreement") executed by the Company and the person to whom such option is granted. The Option Agreement shall designate whether the option is an ISO or an NSO.

(b) The term of each ISO and NSO shall be no more than 10 years, except that the term of each ISO issued to any person possessing more than 10% of the voting power of all classes of stock of the Company or any Affiliate shall be no more than 5 years. Subsequently issued options, if Stock becomes available because of further allocations or the lapse of previously outstanding options, will extend for terms determined by the Board or the Committee but in no event shall an ISO be exercised after the expiration of 10 years from the date of its grant.

(c) In the case of ISOs, the aggregate fair market value (determined as of the time such option is granted) of the Stock to which ISOs are exercisable for the first time by such individual during any calendar year (under this Option Plan and any other plans of the Company or its Affiliates if any) shall not exceed the amount specified in Section 422(d) of the Internal Revenue Code, or any successor provision in effect at the time an ISO becomes exercisable.

(d) The Option Agreement may contain such other terms, provisions and conditions regarding vesting, repurchase or other provisions as may be determined by the Board. To the extent such terms, provisions and conditions are inconsistent with this Option Plan, the specific provisions of the Option Plan shall prevail. If an option, or any part thereof, is intended to qualify as an ISO, the Option Agreement shall contain those terms and conditions, which the Board determines, are necessary to so qualify under Section 422 of the Internal Revenue Code.

(e) The Board shall have full power and authority to extend the period of time for which any option granted under the Option Plan is to remain exercisable following the option holder's cessation of service as an employee, director or consultant, including without limitation

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cessation as a result of death or disability; provided, however, that in no event shall such option be exercisable after the specified expiration date of the option term.

(f) As a condition to option grants under the Option Plan, the option holder agrees to grant the Company the repurchase rights as the Company may at its option require and as may be set forth in a separate repurchase agreement. Any option granted under the Option Plan may be subject to a vesting schedule as provided in the Option Agreement and, except as provided in this Section 6 herein, only the vested portion of such option may be exercised at any time during the Option Period. All rights to exercise any option shall lapse and be of no further effect whatsoever immediately if the option holder's service as an employee is terminated for "Cause" (as hereinafter defined) or if the option holder voluntarily terminates the option holder's service as an employee. The unvested portion of the option will lapse and be of no further effect immediately upon any termination of employment of the option holder for any reason. In the remaining cases where the option holder's service as an employee is terminated due to death, permanent disability, or is terminated by the Company (or its affiliates) without Cause at any time, unless otherwise provided by the Committee, the vested portion of the option will extend for a period of three (3) months following the termination of employment and shall lapse and be of no further force or effect whatsoever only if it is not exercised before the end of such three (3) month period. "Cause" shall be defined in an Employment Agreement between Company and option holder and if none there shall be "Cause" for termination if (i) the option holder is convicted of a felony, (ii) the option holder engages in any fraudulent or other dishonest act to the detriment of the Company, (iii) the option holder fails to report for work on a regular basis, except for periods of authorized absence or bona fide illness, (iv) the option holder misappropriates trade secrets, customer lists or other proprietary information belonging to the Company for the option holder's own benefit or for the benefit of a competitor, (v) the option holder engages in any willful misconduct designed to harm the Company or its stockholders, or (vi) the option holder fails to perform properly assigned duties.

(g) No fractional shares of Stock shall be issued under the Option Plan, whether by initial grants or any adjustments to the Option Plan.

7. Use of Proceeds

Cash proceeds realized from the sale of Stock under the Option Plan shall constitute general funds of the Company.

8. Amendment, Suspension or Termination of Plan

(a) The Board may at any time suspend or terminate the Option Plan, and may amend it from time to time in such respects as the Board may deem advisable provided that (i) such amendment, suspension or termination complies with all applicable state and federal requirements and requirements of any stock exchange on which the Stock is then listed, including any applicable requirement that the Option Plan or an amendment to the Option Plan be approved by the stockholders, and (ii) the Board shall not amend the Option Plan to increase the maximum number of shares of Stock subject to ISOs under the Option Plan or to change the description or class of persons eligible to receive ISOs under the Option Plan without the consent of the stockholders of the Company sufficient to approve the Option Plan in the first instance.

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The Option Plan shall terminate on the earlier of (i) tenth anniversary of the Plan's approval or (ii) the date on which no additional shares of Stock are available for issuance under the Option Plan.

(b) No option may be granted during any suspension or after the termination of the Option Plan, and no amendment, suspension or termination of the Option Plan shall, without the option holder's consent, alter or impair any rights or obligation under any option granted under the Option Plan.

(c) [Reserved.]

(d) Nothing contained herein shall be construed to permit a termination, modification or amendment adversely affecting the rights of any option holder under an existing option theretofore granted without the consent of the option holder.

9. Assignability of Options and Rights

(a) Except as set forth in Section (b) below, each ISO and NSO granted pursuant to this Option Plan shall, during the holder's lifetime, be exercisable only by the option holder, and neither the option nor any right to purchase Stock shall be transferred, assigned or pledged by the option holder, by operation of law or otherwise, other than upon a beneficiary designation executed by the option holder and delivered to the Company or the laws of descent and distribution.

(b) The Board shall have the authority, in its discretion, to grant (or to sanction by way of amendment to an existing option) NSOs which may be transferred by

the Participant during his or her lifetime to any Family Member (as defined below). Unless transfers for the Participant have been previously approved by the Board, a transfer of an option pursuant hereto may only be effected by the Company at the written request of the Participant. In the event an option is transferred as contemplated herein, such transferred option may not be subsequently transferred by the transferee (other than another transfer meeting the conditions herein) except by will or the laws of descent and distribution. A transferred option shall continue to be governed by and subject to the terms and limitations of the Option Plan and relevant Option Agreement, and the transferee shall be entitled to the same rights as the Participant, as if the transfer had not taken place.

For purposes of this Section 9(b), the term "Family Member" means spouse and any parent, stepparent, grandparent, child, stepchild, or grandchild, including adoptive relationships or a trust or any other entity in which these persons (or the Participant) have more than 50% of the beneficial interest.

10. Payment Upon Exercise

Payment of the purchase price upon exercise of any option or right to purchase Stock granted under this Option Plan shall be made by giving the Company written notice of such exercise, specifying the number of such shares of Stock as to which the option is exercised. Such notice shall be accompanied by payment of an amount equal to the Option Price of such shares of Stock. Such payment may be (i) cash, (ii) by check drawn against sufficient funds,

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(iii) such other consideration as the Board, in its sole discretion, determines and is consistent with the Option Plan's purpose and applicable law, or (iv) any combination of the foregoing. Any Stock used to exercise options to purchase Stock (including Stock withheld upon the exercise of an option to pay the purchase price of the shares of Stock as to which the option is exercised) shall be valued in accordance with procedures established by the Board. If accepted by the Committee in its discretion, such consideration also may be paid through a broker-dealer sale and remittance procedure pursuant to which the option holder (i) shall provide irrevocable written instructions to a designated brokerage firm to effect the immediate sale of the purchased Stock and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate option price payable for the purchased Stock plus all applicable Federal and State income and employment taxes required to be withheld by the Company in connection with such purchase and (ii) shall provide written directives to the Company to deliver the certificates for the purchased Stock directly to such brokerage firm in order to complete the sale transaction.

11. Withholding Taxes

(a) Shares of Stock issued hereunder shall be delivered to an option holder only upon payment by such person to the Company of the amount of any withholding tax required by applicable federal, state, local or foreign law. The Company shall not be required to issue any Stock to an option holder until such obligations are satisfied.

(b) The Board may, under such terms and conditions as it deems appropriate, authorize an option holder to satisfy withholding tax obligations under this Section 11 by surrendering a portion of any Stock previously issued to the option holder or by electing to have the Company withhold shares of Stock from the Stock to be issued to the option holder, in each case having a fair market value equal to the amount of the withholding tax required to be withheld.

12. Ratification

This Option Plan and all options issued under this Option Plan shall be void unless this Option Plan is or was approved or ratified by (i) the Board; and (ii) a majority of the votes cast at a stockholder meeting at which a quorum representing at least a majority of the outstanding shares of Stock is (either in person or by proxy) present and voting on the Option Plan within twelve months of the date this Option Plan is adopted by the Board. No ISOs shall be exercisable prior to the date such stockholder approval is obtained.

13. Corporate Transactions

(a) For the purpose of this Section 13, a "Corporate Transaction" shall include any of the following stockholder-approved transactions to which the Company is a party:

(i) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the State of the Company's incorporation;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company in liquidation or dissolution of the Company; or

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(iii) any reverse merger in which the Company is the surviving entity but in which beneficial ownership of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities are transferred to holders different from those who held such securities immediately prior to such merger.

(b) Upon the occurrence of a Corporate Transaction, if the surviving corporation or the purchaser, as the case may be, does not assume the obligations of the Company under the Option Plan, then irrespective of the vesting provisions contained in individual option agreements, all outstanding options shall become immediately exercisable in full and each option holder will be afforded an opportunity to exercise their options prior to the consummation of the merger or sale transaction so that they can participate on a pro rata basis in the transaction based upon the number of shares of Stock purchased by them on exercise of options if they so desire. To the extent that the Option Plan is unaffected and assumed by the successor corporation or its parent company a Corporate Transaction will have no effect on outstanding options and the options shall continue in effect according to their terms.

(c) Each outstanding option under this Option Plan which is assumed in connection with the Corporate Transaction or is otherwise to continue in effect shall be appropriately adjusted, immediately after such Corporate Transaction, to apply and pertain to the number and class of securities which would have been issued to the option holder in connection with the consummation of such Corporate Transaction had such person exercised the option immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to the option price payable per share, provided the aggregate option price payable for such securities shall remain the same. In addition, the class and number of securities available for issuance under this Option Plan following the consummation of the Corporate Transaction shall be appropriately adjusted.

(d) The grant of options under this Option Plan shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

14. Regulatory Approvals

The obligation of the Company with respect to Stock issued under the Plan shall be subject to all applicable laws, rules and regulations and such approvals by any governmental agencies or stock exchanges as may be required. The Company reserves the right to restrict, in whole or in part, the delivery of Stock under the Plan until such

time as any legal requirements or regulations have been met relating to the issuance of Stock, to their registration or qualification under the Securities Exchange Act of 1934, if applicable, or any applicable state securities laws, or to their listing on any stock exchange at which time such listing may be applicable.

15. No Employment/Service Rights

Neither the action of the Company in establishing this Option Plan, nor any action taken by the Board or the Committee hereunder, nor any provision of this Option Plan shall be construed so as to grant any individual the right to remain in the employ or service of the

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Company (or any parent, subsidiary or affiliated corporation) for any period of specific duration, and the Company (or any parent, subsidiary or affiliated corporation retaining the services of such individual) may terminate or change the terms of such individual's employment or service at any time and for any reason, with or without cause.

16. Miscellaneous Provisions

(a) The provisions of this Option Plan shall be governed by the laws of the State of Arizona, as such laws are applied to contracts entered into and performed in such State, without regard to its rules concerning conflicts of law.

(b) The provisions of this Option Plan shall insure to the benefit of, and be binding upon, the Company and its successors or assigns, whether by Corporate Transaction or otherwise, and the option holders, the legal representatives of their respective estates, their respective heirs or legatees and their permitted assignees.

(c) The option holders shall have no dividend rights, voting rights or any other rights as a stockholder with respect to any options under the Option Plan prior to the issuance of a stock certificate for such Stock.

(d) If there is a conflict between the terms of any employment agreement pursuant to which options under this Plan are to be granted and the provisions of this Plan, the terms of the employment agreement shall prevail.

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**MERITAGE HOMES CORPORATION
LIST OF SUBSIDIARIES**

Monterey Homes Arizona, Inc.
Monterey Homes Construction, Inc.
Meritage Homes of Arizona, Inc.
Meritage Paseo Crossing, LLC
Meritage Homes Construction, Inc.
Meritage Paseo Construction, LLC
Meritage Homes of Colorado, Inc.
Meritage Homes of Florida, Inc.
MTH-Texas GP, Inc.
MTH-Texas GP II, Inc.
MTH-Texas LP, Inc.
MTH-Texas LP II, Inc.
MTH Homes-Texas, L.P.
MTH-Homes Nevada, Inc.
Meritage Holdings, L.L.C.
Meritage Homes of California, Inc.
MTH Mortgage, LLC
MTH-Cavalier, LLC
MTH Golf, LLC
Legacy-Hammonds Materials, L.P.
Legacy/Monterey Homes L.P.
Legacy Operating Company, L.P.
Hulen Park Venture, LLC
Texas Home Mortgage Corporation

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-58793 and 333-87398 on Form S-3 and Nos. 333-91960, 333-37859, 333-75629 and 333-39036 on Form S-8 of Meritage Homes Corporation of our report dated March 15, 2004, relating to the financial statements of Meritage Homes Corporation and of our report on internal control over financial reporting dated March 15, 2005 (which report expresses an unqualified opinion on management's assessment on the effectiveness of internal control over financial reporting and an adverse opinion on the effectiveness of internal control over financial reporting, and includes an explanatory paragraph relating to a material weakness identified), appearing in this Annual Report on Form 10-K of Meritage Homes Corporation for the year ended December 31, 2004.

DELOITTE & TOUCHE LLP

Phoenix, Arizona
March 15, 2005

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors
Meritage Homes Corporation:

We consent to incorporation by reference in Registration Statement Nos. 333-58793 and 333-87398 on Form S-3 and to incorporation by reference in Registration Statement Nos. 333-91960, 333-37859, 333-75629, 333-116243 and 333-39036 on Form S-8 of Meritage Homes Corporation and subsidiaries, formerly Meritage Corporation, of our report dated February 16, 2004, with respect to the consolidated balance sheet of Meritage Homes Corporation and subsidiaries as of December 31, 2003, and the related consolidated statements of earnings, stockholders' equity and cash flows for the years ended December 31, 2003 and 2002, which report appears in the December 31, 2004 annual report on Form 10-K of Meritage Homes Corporation.

Our report refers to a change in accounting for goodwill in 2002.

KPMG LLP

Phoenix, Arizona
March 16, 2005

SECTION 302 CERTIFICATION

I, Steven J. Hilton, certify that:

1. I have reviewed this annual report on Form 10-K of Meritage Homes Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered public accounting firm and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2005

/s/ Steven J. Hilton
Steven J. Hilton
Co-Chief Executive Officer

SECTION 302 CERTIFICATION

I, John R. Landon, certify that:

1. I have reviewed this annual report on Form 10-K of Meritage Homes Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered public accounting firm and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2005

/s/ John R. Landon

John R. Landon

Co-Chief Executive Officer

SECTION 302 CERTIFICATION

I, Larry W. Seay, certify that:

1. I have reviewed this annual report on Form 10-K of Meritage Homes Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered public accounting firm and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2005

/s/ Larry W. Seay
Larry W. Seay
Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Meritage Homes Corporation (the "Company") on Form 10-K for the period ending December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John R. Landon, Co-Chief Executive Officer of the Company certify, to the best of my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

MERITAGE HOMES CORPORATION,
a Maryland Corporation

By /s/ STEVEN J. HILTON
Steven J. Hilton
Co-Chief Executive Officer

March 16, 2005

By /s/ JOHN R. LANDON
John R. Landon
Co-Chief Executive Officer

March 16, 2005

By /s/ LARRY W. SEAY
Larry W. Seay
Chief Financial Officer

March 16, 2005
