UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported) September 12, 2012

MERITAGE HOMES CORPORATION

(Exact Name of Registrant as Specified in Charter)

Maryland	**1-9977**	**86-0611231**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

17851 N. 85th Street, Suite 300, Scottsdale, Arizona	**85255**
(Address of Principal Executive Offices)	**(Zip Code)**

(480) 515-8100
(Registrant's telephone number, including area code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

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

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

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

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

ITEM 1.01 ENTRY INTO MATERIAL DEFINITIVE AGREEMENT

On September 12, 2012, Meritage Homes Corporation (the "Company") entered into an Underwriting Agreement, by and among the Company, the Guarantors (as therein defined), Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriters") to sell $126.5 million aggregate principal amount of its 1.875% Convertible Senior Notes due 2032 (the "Notes"), which includes the exercise in full by the underwriters of their overallotment option. The offering of the Notes closed on September 18, 2012. The Company received net proceeds of approximately $123.0 million from this offering, before offering expenses. The Company expects to use these proceeds for general corporate purposes. The Company made certain customary representations, warranties and covenants concerning the Company in the Underwriting Agreement and also agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

The Company will pay interest on the Notes on March 15 and September 15 of each year, commencing on March 15, 2013. The Notes will mature on September 15, 2032. The Notes will initially be convertible into shares of the Company's common stock (the "Common Stock") at a conversion rate of 17.1985 shares of the Company's Common Stock per $1,000 principal amount of Notes, corresponding to an initial conversion price of approximately $58.14 per share, representing a conversion premium of approximately 47.5% based on the closing price of $39.42 per share of the Common Stock on September 12, 2012. The conversion rate will be subject to adjustment upon the occurrence of certain events. The Notes are initially guaranteed fully and unconditionally guaranteed, jointly and severally, by all of the Company's 100% owned subsidiaries (the "Guarantors").

The Notes were issued under an indenture with Wells Fargo Bank, National Association, as trustee (the "Trustee"), dated September 18, 2012 (the "Base Indenture"), as supplemented by that certain Supplemental Indenture No. 1, dated as of September 18, 2012, by and among the Company, the Guarantors and the Trustee (the "Supplemental Indenture"). Copies of the press releases announcing the commencement, the pricing and the closing, dated September 12, 2012, September 12, 2012 and September 18, 2012, respectively, are filed as Exhibits 99.1, 99.2 and 99.3 hereto.

Legal opinions with respect to the validity of the Notes, the Guarantees and the shares of Common Stock issuable upon conversion of the Notes are attached hereto as Exhibits 5.1, 5.2, 5.3 and 5.4 and are incorporated herein by reference.

The Underwriting Agreement under which the Company sold the Notes, the Base Indenture, a form of the Notes, the Supplemental Indenture and the statement of eligibility of the trustee are all filed or incorporated by reference as exhibits to this Current Report.

ITEM 2.03 CREATION OF DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT

The information set forth under Item 1.01 is incorporated herein by reference into this Item 2.03.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits

1.1	Underwriting Agreement, dated September 12, 2012, by and among the Company, the Guarantors and the Underwriters named therein.
4.1	Indenture, dated as of September 18, 2012, by and among Company, the Guarantors and Wells Fargo Bank, National Association, as trustee.
4.2	Supplemental Indenture No. 1, dated as of September 18, 2012, by and among the Company, the Guarantors and Wells Fargo Bank, National Association, as trustee.
4.3	Form of 1.875% Convertible Senior Notes due 2032 (included in Exhibit 4.2).
4.4	Form of Guarantee of 1.875% Convertible Senior Notes due 2032 (included in Exhibit 4.2).
5.1	Opinion of Snell & Wilmer L.L.P., dated September 18, 2012.
5.2	Opinion of Venable LLP, dated September 18, 2012.
5.3	Opinion of Gardere Wynn Sewell LLP, dated September 18, 2012.
5.4	Opinion of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., dated September 18, 2012.
23.1	Consent of Snell & Wilmer L.L.P. (included in Exhibit 5.1).
23.2	Consent of Venable LLP (included in Exhibit 5.2).
23.3	Consent of Gardere Wynn Sewell LLP (included in Exhibit 5.3).
23.4	Consent of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. (included in Exhibit 5.4).
25.1	Statement of Eligibility of Wells Fargo Bank, National Association, to act as trustee under the Indenture (incorporated by reference to Form S-3ASR (No. 333-180685) filed April 12, 2012).
99.1	Press release dated September 12, 2012 announcing the Notes offering.
99.2	Press release dated September 12, 2012 announcing the pricing of the Notes offering.
99.3	Press release dated September 18, 2012 announcing the closing of the Notes offering.

SIGNATURES

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

Dated: September 18, 2012

MERITAGE HOMES CORPORATION

/s/ LARRY W. SEAY

By: Larry W. Seay
Executive Vice President and Chief Financial Officer

Exhibit 1.1

MERITAGE HOMES CORPORATION

$110,000,000 Convertible Senior Notes due 2032

UNDERWRITING AGREEMENT

September 12, 2012

MERITAGE HOMES CORPORATION

1.875% Convertible Senior Notes due 2032

UNDERWRITING AGREEMENT

September 12, 2012

Citigroup Global Markets Inc.
J.P. Morgan Securities LLC
Deutsche Bank Securities Inc.
Merrill Lynch, Pierce, Fenner & Smith Inc.

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

c/o Deutsche Bank Securities Inc.
60 Wall Street
New York, New York 10005

c/o Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10021

Ladies and Gentlemen:

Meritage Homes Corporation, a Maryland corporation (the "**Company**"), proposes to issue and sell to the underwriters named in Schedule A annexed hereto (the "**Underwriters**") for whom Citigroup Global Markets Inc. ("**Citigroup**"), J.P. Morgan Securities LLC ("**J.P. Morgan**"), Deutsche Bank Securities Inc. ("**DB**") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**BofAML**") are acting as representatives, $110,000,000 principal amount of 1.875% Convertible Senior Notes due 2032 of the Company (the "**Firm Notes**") to be issued pursuant to an Indenture (the "**Base Indenture**") to be entered into among the Company, the Guarantors (as defined below) and Wells Fargo Bank National Association, as indenture trustee (the "**Trustee**"). Certain terms of the Notes (as defined below) will be established pursuant to a supplemental indenture (the "**Supplemental Indenture**", and together with the Base Indenture, the "**Indenture**") to the Base Indenture. In addition, at the option of the Underwriters, the Company proposes to issue up to an additional $16,500,000 principal amount of its 1.875% Convertible Senior

Notes due 2032 (the "**Option Notes**"). The Firm Notes and the Option Notes together are herein referred to as the "**Notes.**" The Company's obligations under the Notes and the Indenture will be unconditionally guaranteed (the "**Guarantees**") on an unsecured senior basis by each of the entities listed on Schedule D hereto (each a "**Guarantor**" and collectively the "**Guarantors**"). The Notes will be convertible into the Company's common shares, par value $0.01 per share (the "**Common Stock**").

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the "**Act**"), with the Securities and Exchange Commission (the "**Commission**") a registration statement, as amended by that certain Post-Effective Amendment No. 1 (the "**Company Registration Statement**") on Form S-3 (File No. 333-180685) including a base prospectus, relating to the Notes, which incorporates by reference documents which the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the "**Exchange Act**"). The Company has prepared a prospectus supplement (the "**Prospectus Supplement**") to the prospectus included in the registration statement referred to above setting forth the terms of the offering, sale and plan of distribution of the Notes and additional information concerning the Company and its business. The Company has furnished to you, for use by the Underwriters and by dealers, copies of one or more preliminary prospectuses, containing the prospectus included in the registration statement referred to above, as supplemented by a preliminary Prospectus Supplement relating to the Notes, and the documents incorporated by reference therein (each such preliminary prospectus being referred to herein as a "**Preliminary Prospectus**"). Except where the context otherwise requires, the Company Registration Statement, as amended as of the date hereof, including all documents filed as a part thereof or incorporated by reference therein, and including any information deemed to be part of the registration statement at the time of its effectiveness pursuant to Rule 430B under the Act, is referred to herein as the "**Registration Statement**", and the prospectus included in the Registration Statement, including all documents incorporated therein by reference, as supplemented by the final Prospectus Supplement relating to the Notes, in the form filed by the Company with the Commission pursuant to Rule 424(b) under the Act on or before the second business day after the date hereof (or such earlier time as may be required under the Act), are herein collectively called the "**Prospectus**". As used herein, "**Permitted Free Writing Prospectus**" means each of the documents listed on Schedule B annexed hereto and each "road show" (as defined in Rule 433 under the Act), if any, related to the offering of the Notes contemplated hereby that is a "written communication" (as defined in Rule 405 under the Act). As used herein, "**Disclosure Package**" means any Preliminary Prospectus as the same may be amended or supplemented as of the Applicable Time, together with any combination of one or more Permitted Free Writing Prospectuses, if any, as of the Applicable Time. As used herein, "**General Use Disclosure Package**" means the Disclosure Package, other than each "road show" (as defined in Rule 433 under the Act), if any, related to the offering of the Notes contemplated hereby. As used herein, "**Applicable Time**" means 4:57 P.M., New York City Time on the date of this Agreement. Any reference herein to the Registration Statement, the Prospectus, any Preliminary Prospectus, any Permitted Free Writing Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms "**amend**", "**amendment**", or "**supplement**" with respect to the Registration Statement, the Prospectus, any Preliminary Prospectus or any Permitted Free Writing Prospectus

shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus, any Preliminary Prospectus or any Permitted Free Writing Prospectus or to any amendment or supplement thereto shall be deemed to include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("**EDGAR**").

The Company and the Underwriters agree as follows:

1. Sale and Purchase. Upon the basis of the warranties and representations and subject to the terms and conditions herein set forth, the Company agrees to sell to the respective Underwriters, and each of the Underwriters, severally and not jointly, agrees to purchase from the Company, the principal amount of Firm Notes set forth opposite the name of such Underwriter in Schedule A annexed hereto at a purchase price of equal to 97.25% of the principal amount thereof (the "**Purchase Price**"). The Company is advised by you that the Underwriters intend (i) to make a public offering of their respective principal amount of the Firm Notes as soon after the execution and delivery of this Agreement as in your judgment is advisable and (ii) initially to offer the Firm Notes upon the terms set forth in the Prospectus. You may from time to time increase or decrease the public offering price after the initial public offering to such extent as you may determine.

In addition, the Company hereby grants to the several Underwriters the option to purchase, and upon the basis of the warranties and representations and subject to the terms and conditions herein set forth, the Underwriters shall have the right to purchase, severally and not jointly, from the Company, ratably in accordance with the principal amount of Firm Notes to be purchased by each of them (or such principal amount increased as set forth in Section 10 hereof), all or a portion of the Option Notes at the same purchase price to be paid by the Underwriters to the Company for the Firm Notes (subject, however, to such adjustments to eliminate any fractional Notes as the representatives in their sole discretion shall make). This option may be exercised by you on behalf of the several Underwriters at any time (but not more than once) on or before the thirtieth day following the date hereof, by written notice to the Company. Such notice shall set forth the aggregate principal amount of Option Notes as to which the option is being exercised and the date and time when the Option Notes are to be delivered (such date and time being herein referred to as the "**Additional Time of Purchase**"); provided, however, that the Additional Time of Purchase shall not be earlier than the Time of Purchase (as defined below) nor, if after the Time of Purchase (as defined below), earlier than the second business day after the date on which the option shall have been exercised nor later than the tenth business day after the date on which the option shall have been exercised. As used herein "business day" shall mean a day on which the New York Stock Exchange is open for trading. The principal amount of Option Notes to be sold to each Underwriter shall be the principal amount which bears the same proportion to the aggregate principal amount of Option Notes being purchased as the principal amount of Firm Notes set forth opposite the name of such Underwriter on Schedule A hereto bears to the aggregate principal amount of Firm Notes (subject, in each case, to such adjustment as you may determine to eliminate fractional Notes).

2. Payment and Delivery. Payment of the purchase price for the Firm Notes shall be made to the Company by Federal Funds wire transfer against delivery of the global certificates for the Firm Notes to you through the facilities of the Depository Trust Company ("**DTC**") for the respective accounts of the Underwriters. Such payment and delivery shall be made at 10:00 A.M., New York City time, on September 18, 2012 (unless another time shall be agreed to by you and the Company or unless postponed in accordance with the provisions of Section 10 hereof). The time at which such payments and delivery are actually made is hereinafter referred to as the "**Time of Purchase**". One or more of the Firm Notes in global registered form shall be delivered to you in definitive form in such names and in such denominations as you shall specify no later than the second business day preceding the Time of Purchase. For the purpose of expediting the checking of the global certificates for the Firm Notes by you, the Company agrees to make such global certificates available to you for such purpose at least one full business day preceding the Time of Purchase.

Payment of the purchase price for the Option Notes shall be made to the Company at the Additional Time of Purchase in the same manner and at the same office as the payment for the Firm Notes. One of more of the Option Notes in global registered form shall be delivered to you by the Company in definitive form in such names and in such denominations as you shall specify no later than the second business day preceding the Additional Time of Purchase. For the purpose of expediting the checking of the global forms for the Option Notes by you, the Company agrees to make such global forms available to you for such purpose at least one full business day preceding the Additional Time of Purchase.

3. Representations and Warranties of the Company and the Guarantors. The Company and the Guarantors, jointly and severally, represent and warrant to each of the Underwriters that:

(a) The Company meets the requirements for use of Form S-3 under the Act and has prepared and filed the Company Registration Statement for registration under the Act of the offering and sale of the Notes. Such Company Registration Statement, including any amendments thereto filed prior to the Applicable Time, became effective upon filing. Each Preliminary Prospectus and each Permitted Free Writing Prospectus, at the time of filing thereof with the Commission, conformed in all material respects to the requirements of the Act; as of the Applicable Time, at the Time of Purchase and at each Additional Time of Purchase, the Disclosure Package did not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Prospectus will comply, as of its date, the date that it is filed with the Commission, the Time of Purchase and each Additional Time of Purchase, if any, in all material respects, with the requirements of the Act (including, without limitation, Section 10(a) of the Act); as of its date, the date that it is filed with the Commission, the Time of Purchase and each Additional Time of Purchase, if any, the Prospectus, as then amended or supplemented, did not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Registration Statement complied, when it became effective, complies and will comply in all material

respects with the provisions of the Act; and any statutes, regulations, contracts, governmental proceedings, affiliate transactions, off-balance sheet transactions, contracts, licenses or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement have been and will be so described or filed; the Registration Statement did not, when it became effective, does not and 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 not misleading; provided, however, that the Company and the Guarantors make no warranty or representation with respect to any statement contained in the Disclosure Package, the Registration Statement or the Prospectus in reliance upon and in conformity with information concerning an Underwriter and furnished in writing by or on behalf of such Underwriter through you to the Company expressly for use in the Disclosure Package, the Registration Statement or the Prospectus; and the Company and the Guarantors have not distributed any offering material in connection with the offering or sale of the Notes other than the Registration Statement, the Preliminary Prospectus, any Permitted Free Writing Prospectus, the Prospectus or any other materials, if any, permitted by the Act. Each Permitted Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated therein by reference and any prospectus supplement deemed to be a part thereof that has not been superseded or modified; provided, however, that the Company and the Guarantors make no warranty or representation with respect to any statements in or omissions from any Permitted Free Writing Prospectus based upon and in conformity with written information furnished to the Company or the Guarantors by any Underwriter through you specifically for use therein.

(b) Prior to the execution of this Agreement, the Company has not, directly or indirectly, offered or sold any Notes by means of any "prospectus" (within the meaning of the Act) or used any "prospectus" (within the meaning of the Act) in connection with the offer or sale of the Notes, in each case other than the Preliminary Prospectuses and the Permitted Free Writing Prospectuses, if any; the Company and the Guarantors have not, directly or indirectly, prepared, used or referred to any Permitted Free Writing Prospectus except in compliance with Rules 164 and 433 under the Act; assuming that such Permitted Free Writing Prospectus is so sent or given after the Registration Statement was filed with the Commission (and after such Permitted Free Writing Prospectus was, if required pursuant to Rule 433(d) under the Act, filed with the Commission), the sending or giving, by any Underwriter, of any Permitted Free Writing Prospectus will satisfy the provisions of Rule 164 or Rule 433 (without reliance on subsections (b), (c) and (d) of Rule 164); the conditions set forth in one or more of subclauses (i) through (iv), inclusive, of Rule 433(b)(1) under the Act are satisfied, and the Registration Statement relating to the offering of the Notes contemplated hereby, as initially filed with the Commission, includes a prospectus that, other than by reason of Rule 433 or Rule 431 under the Act, satisfies the requirements of Section 10 of the Act; the Company is not disqualified, by reason of subsection (f) or (g) of Rule 164 under the Act, from using, in connection with the offer and sale of the Notes, "free writing prospectuses" (as defined in Rule 405 under the Act) pursuant to Rules 164 and 433 under the Act; the Company is not an "ineligible issuer" (as defined in Rule 405 under the Act) as of the eligibility determination

date for purposes of Rules 164 and 433 under the Act with respect to the offering of the Notes contemplated by the Registration Statement; the parties hereto agree and understand that the content of any and all "road shows" (as defined in Rule 433 under the Act) related to the offering of the Notes contemplated hereby is solely the property of the Company.

(c) As of the date of this Agreement, the Company has an authorized capitalization as set forth under the heading entitled "Actual" in the section of the Registration Statement, the Disclosure Package and the Prospectus entitled "Capitalization" (and any similar sections or information, if any, contained in any Permitted Free Writing Prospectus) and, as of the Time of Purchase, the Company shall have an authorized capitalization as set forth under the heading entitled "As Further Adjusted for Notes Offered Hereby" in the section of the Registration Statement, the Disclosure Package and the Prospectus entitled "Capitalization" (and any similar sections or information, if any, contained in any Permitted Free Writing Prospectus). All of the issued and outstanding shares of capital stock or other equity interests of the Company have been duly authorized and validly issued, are fully paid and nonassessable and were not issued in violation of any preemptive or similar right. Attached as Exhibit A is a true and complete list of each entity in which the Company has, or will have as of the Time of Purchase, a direct or indirect majority voting interest, their jurisdictions of incorporation or formation, their stockholders, partners or members and percentage equity ownership by the Company. The term "**Subsidiaries**" as used herein shall refer to all of the subsidiaries listed on Exhibit A hereto (excluding the Sundance Entities (as defined below)). All of the issued and outstanding shares of capital stock or other equity interests of each of the Subsidiaries have been duly and validly authorized and issued, are fully paid and nonassessable, were not issued in violation of any preemptive or similar right and, except as set forth in the Registration Statement, the Disclosure Package and the Prospectus or on Exhibit A hereto, are owned, directly or indirectly, by the Company free and clear of all liens. Except as set forth in the Registration Statement, the Disclosure Package and the Prospectus, there are no outstanding options, warrants or other rights to acquire or purchase, or instruments convertible into or exchangeable for, any shares of capital stock of any of the Company or any of the Subsidiaries. Notwithstanding the foregoing representations and warranties, the Company disclosed that its ownership interests in Buckeye Land, L.L.C., Arcadia Ranch, L.L.C. and Sundance Buckeye LLC (the "**Sundance Entities**") were received as part of litigation and resulting bankruptcy proceedings. The Company and the Guarantors make no representations or warranties in this Agreement regarding the Sundance Entities, including, without limitation, in this Section 3 other than (i) that to the Company's knowledge, it is the indirect legal owner of the interests in the Sundance Entities as reflect on Exhibit A to this Agreement and (ii) none of the Company or any of the Subsidiaries (excluding the Sundance Entities) has taken any affirmative actions to enter into any agreement, contract, or arrangement to (x) subscribe for additional equity interests of any of the Sundance Entities (y) maintain or preserve the financial condition of any of the Sundance Entities or (z) guarantee any indebtedness of any of the Sundance Entities.

(d) Each of the Company and the Subsidiaries (a) is a corporation, limited liability company, partnership or other entity duly organized and validly existing under the

laws of the jurisdiction of its organization; (b) has all requisite corporate, limited liability company, partnership or other similar power and authority, and has all governmental licenses, authorizations, consents and approvals necessary to own its property and carry on its business as now being conducted, except if the failure to obtain any such license, authorization, consent and approval would not, individually or in the aggregate, have a Material Adverse Effect; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to be so qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect. A "**Material Adverse Effect**" means any material adverse effect on the business, condition (financial or other), results of operations, performance, properties or prospects of the Company and the Subsidiaries, taken as a whole.

(e) The Company has all requisite corporate power and authority to execute, deliver the Indenture, this Agreement and the Notes and to perform its obligations under the Indenture, this Agreement and the Notes; each of the Guarantors has all the requisite power and authority to execute and deliver the Indenture, this Agreement and the Guarantees and to perform all of its obligations under the Indenture, this Agreement and the Guarantees; and all action required to be taken by each of the Company and each Guarantor for the due and proper execution and delivery by it of the Indenture, this Agreement, and as applicable, the Notes and the Guarantees, and the consummation by it of the transactions contemplated hereby and thereby, has been duly and validly taken.

(f) This Agreement has been duly and validly authorized, executed and delivered by the Company and each of the Guarantors.

(g) The Indenture has been duly and validly authorized by the Company and the Guarantors and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company and the Guarantors enforceable against the Company and the Guarantors in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles (whether considered in a proceeding in equity or at law) and except as rights to indemnification may be limited by applicable law. At the Time of Purchase, the Indenture will conform in all material respects to the requirements of the Trust Indenture Act and the rules and regulations of the Commission applicable to an indenture that is qualified thereunder.

(h) The Notes have been duly and validly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will be duly and validly issued and outstanding and will constitute the legal, valid and binding obligations of the Company entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles (whether considered in a proceeding in equity or at law).

(i) The Guarantees have been duly authorized by each of the Guarantors and, when duly executed, issued and delivered as provided in the Indenture, each Guarantee of a Guarantor will constitute the legal, valid and binding obligation of such Guarantor entitled to the benefits of the Indenture and enforceable against such Guarantor in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles (whether considered in a proceeding in equity or at law).

(j) No shareholder approval and no approval, authorization, consent or order of or filing with any national, state or local governmental or regulatory commission, board, body, authority or agency is required in connection with the issuance and sale of the Notes or the issuance of the Common Stock initially issuable upon conversion of the Notes or the consummation by the Company of the transaction as contemplated hereby other than (A) such as have been or will be obtained or made on or prior to the Time of Purchase, (B) registration of the offer and sale of the Notes under the Act which has been effected as described herein, (C) such approvals as have been obtained (or will be obtained prior to the Time of Purchase) in connection with the listing of the Common Stock issuable upon conversion of the Notes on the NYSE, (D) any necessary qualification under the securities or blue sky laws of the various jurisdictions in which the Notes are being offered by the Underwriters or under the rules and regulations of the Financial Industry Regulatory Authority, Inc. ("**FINRA**"), and any approvals, authorizations, consents or orders the failure to obtain or make would not adversely affect consummation of the transactions contemplated by this Agreement.

(k) Except as described in the Registration Statement, the Disclosure Package and the Prospectus, no person has the right, contractual or otherwise, to cause the Company to register under the Act any shares of capital stock or other equity interests as a result of the filing or effectiveness of the Registration Statement, the sale of the Notes to the Underwriters contemplated hereby or the issuance of the Common Stock initially issuable upon conversion of the Notes, nor does any holder of outstanding Common Stock have any preemptive or other rights to subscribe for additional shares of Common Stock upon the sale of the Notes to the Underwriters contemplated hereby or upon issuance of the Common Stock initially issuable upon conversion of the Notes.

(l) All taxes, fees and other governmental charges that are due and payable on or prior to the Time of Purchase in connection with the execution, delivery and performance of this Agreement and the delivery and sale of the Notes shall have been paid by or on behalf of the Company at or prior to the Time of Purchase.

(m) None of the Company or any Subsidiary is (A) in violation of its charter, bylaws or other constitutive documents, (B) in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement,

covenant or condition contained in any bond, debenture, note, indenture, mortgage, deed of trust, loan or credit agreement, lease, license, franchise agreement, authorization, permit, certificate or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of their assets or properties is subject (collectively, "**Agreements and Instruments**"), (C) in violation of any law, statute, rule or regulation applicable to the Company or any Subsidiary or their respective assets or properties or (D) in violation of any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Subsidiary or their respective assets or properties, which in the case of clauses (B), (C) and (D) herein, individually or in the aggregate, could have a Material Adverse Effect.

(n) The capital stock of the Company conforms in all material respects to the description thereof contained in the Registration Statement, the Disclosure Package and the Prospectus. The shares of Common Stock issuable upon conversion of the Notes have been duly authorized and reserved by the Company and, when issued upon conversion of the Notes in accordance with the terms of the Indenture and the Notes, will be validly issued, fully paid and nonassessable, and such issuance of the shares of Common Stock will not be subject to any preemptive or similar rights.

(o) The execution, delivery and performance by the Company and the Guarantors of this Agreement, including the consummation of the offer and sale of the Notes and the Guarantees, does not and will not violate, conflict with or constitute a breach of any of the terms or provisions of or a default (or an event that with notice or lapse of time or both, would constitute a default) under, or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Subsidiary pursuant to (A) the charter, bylaws or other constitutive documents of any of the Company or any Subsidiary, (B) any of the Agreements and Instruments, except as would not have a Material Adverse Effect or be materially adverse to the consummation of the transactions contemplated hereunder, (C) any law, statute, rule or regulation applicable to the Company or any Subsidiary or their respective assets or properties or (D) any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Subsidiary or their respective assets or properties.

(p) Except as set forth in the Registration Statement, the Disclosure Package and the Prospectus, there is (A) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to the knowledge of the Company, threatened or contemplated, to which the Company or any Subsidiary is or may be a party or to which the business, assets or property of such person is or may be subject, (B) no statute, rule, regulation or order that has been enacted, adopted or issued or, to the knowledge of the Company, that has been proposed by any governmental body or agency, domestic or foreign, (C) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Company or any Subsidiary is or may be subject that (x) in the case of clause (A) above, if determined adversely to the Company or any Subsidiary, could, individually or in the aggregate, (1) have a Material Adverse Effect or (2) interfere with or

adversely affect the issuance of the Notes (including the Guarantees) in any jurisdiction or adversely affect the consummation of the transactions contemplated hereby and (y) in the case of clauses (B) and (C) above, could, individually or in the aggregate (1) have a Material Adverse Effect or (2) interfere with or adversely affect the issuance of the Notes (including the Guarantees) in any jurisdiction or adversely affect the consummation of the transactions contemplated hereby. Every request of any securities authority or agency of any jurisdiction for additional information with respect to the Notes that has been received by the Company or any Subsidiary or their counsel prior to the date hereof has been, or will prior to the Time of Purchase be, complied with in all material respects.

(q) Except as would not have a Material Adverse Effect, no labor problem or dispute with the employees of the Company or any of the Subsidiaries exists or, to the knowledge of the Company, is threatened.

(r) Except as described in the Registration Statement, the Disclosure Package and the Prospectus, the Company and each Subsidiary (A) is in compliance with, or not subject to costs or liabilities for violations under, laws, regulations, rules of common law, orders and decrees, as in effect as of the date hereof, and any present judgments and injunctions issued or promulgated thereunder, relating to pollution or protection of public and employee health and safety, emissions, discharges, releases or threatened releases of hazardous or toxic substances or wastes into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), pollutants or contaminants applicable to it or its business or operations or ownership or use of its property (including, but not limited to, the (i) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of hazardous materials, and (ii) underground and above ground storage tanks and related piping, and emissions, discharges, releases or threatened releases therefrom) ("**Environmental Laws**"), other than noncompliance or such costs or liabilities that, individually or in the aggregate, would not have a Material Adverse Effect, and (B) possesses all permits, licenses or other approvals required under applicable Environmental Laws, except where the failure to possess any such permit, license or other approval would not have, either individually or in the aggregate, a Material Adverse Effect. All currently pending and, to the knowledge of the Company, threatened proceedings, notices of violation, demands, notices of potential responsibility or liability, suits and existing environmental conditions by any governmental authority which could result in a Material Adverse Effect are fully and accurately described in all material respects in the Registration Statement, the Disclosure Package and the Prospectus.

(s) The Company and each Subsidiary have (A) all licenses, certificates, permits, authorizations, approvals, franchises and other rights from, and has made all declarations and filings with, all applicable authorities, all self-regulatory authorities and all courts and other tribunals (each, a "**License**"), necessary to engage in the business conducted by it in the manner described in the Registration Statement, the Disclosure Package and the Prospectus, except where failure to hold such Licenses would not, individually or in the aggregate, have a Material Adverse Effect, and (B) no reason to believe that any governmental body or agency, domestic or foreign, is considering limiting, suspending

or revoking any such License, except where any such limitations, suspensions or revocations would not, individually or in the aggregate, have a Material Adverse Effect. All such Licenses are valid and in full force and effect and the Company and each Subsidiary are in compliance in all material respects with the terms and conditions of all such Licenses and with the rules and regulations of the regulatory authorities having jurisdiction with respect to such Licenses, except for any invalidity, failure to be in full force and effect or noncompliance with any License that would not, individually or in the aggregate, have a Material Adverse Effect.

(t) The Company and each Subsidiary have valid title in fee simple to all items of real property and valid title to all personal property owned by each of them (excluding land banks, homeowners' associations, golf clubs and district properties) described in the Registration Statement, the Disclosure Package and the Prospectus, in each case free and clear of any pledge, lien, encumbrance, security interest or other defect or claim of any third party, except (i) such as do not materially and adversely affect the value of such property and do not interfere with the use made or proposed to be made of such property by the Company or such Subsidiary to an extent that such interference could have a Material Adverse Effect, and (ii) liens securing debt described in the Registration Statement, the Disclosure Package and the Prospectus. Any real property and buildings held under lease by the Company or any such Subsidiary are held under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made or proposed to be made of such property and buildings by the Company or such Subsidiary.

(u) Except as set forth in the Registration Statement, the Disclosure Package and the Prospectus, the Company and each Subsidiary owns, possesses or has the right to use or employ all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names (collectively, the "**Intellectual Property**") necessary to conduct the businesses operated by it as described in the Registration Statement, the Disclosure Package and the Prospectus, except where the failure to own, possess or have the right to use or employ such Intellectual Property would not have a Material Adverse Effect. Except as set forth in the Registration Statement, the Disclosure Package and the Prospectus, none of the Company or any Subsidiary has received any notice of infringement of or conflict with (and none of them knows of any such infringement or a conflict with) asserted rights of others with respect to any of the foregoing that, if such assertion of infringement or conflict were sustained, could have a Material Adverse Effect. Except as set forth in the Registration Statement, the Disclosure Package and the Prospectus, the use of the Intellectual Property in connection with the business and operations of the Company and the Subsidiaries does not infringe on the rights of any person, except for such infringement as would not have a Material Adverse Effect.

(v) All material tax returns required to be filed by the Company and each Subsidiary have been filed in all jurisdictions where such returns are required to be filed, except where valid extensions have been obtained; and all taxes, including withholding,

value added and franchise taxes, penalties and interest, assessments, fees and other charges that are due and payable have been paid (or, with respect to those based on good faith estimates, have been paid to the extent of such estimates), other than those being contested in good faith and for which reserves have been provided in accordance with generally accepted accounting principles or those currently payable without penalty or interest and except where the failure to make such required filings or payments would not, individually or in the aggregate, have a Material Adverse Effect. To the knowledge of the Company, there are no material proposed additional tax assessments against any of the Company and the Subsidiaries or their assets or property.

(w) None of the Company or the Subsidiaries has any liability for any prohibited transaction or accumulated funding deficiency (within the meaning of Section 412 of the Internal Revenue Code of 1986, as amended) or any complete or partial withdrawal liability with respect to any pension, profit sharing or other plan which is subject to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), to which the Company or any Subsidiary makes or ever has made a contribution and in which any employee of the Company or any Subsidiary is or has ever been a participant. With respect to such plans, the Company and each Subsidiary are in compliance in all material respects with all applicable provisions of ERISA.

(x) Neither the Company nor any Guarantor is, after giving effect to the offering and sale of the Notes and the application of the proceeds thereof as described in the Disclosure Package, an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act of 1940, as amended.

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

(z) (i) the Company and each Subsidiary has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-14 and 15d-14 under the Exchange Act); (ii) such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; (iii) the Company has disclosed, based on the most recent evaluation of its Chief Executive Officer and its Chief Financial Officer, prior to the date hereof, to the Company's auditors and the Audit

Committee of the Board of Directors: (x) any significant deficiencies in the design or operation of internal controls that are reasonably expected to adversely affect the Company's ability to record, process, summarize, and report financial data; and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls; (iv) any material weaknesses in internal controls have been identified for the Company's auditors; and (v) since the date of the most recent evaluation of such disclosure controls and procedures, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses, except, in the case of clauses (i), (ii) and (v), as set forth in the Registration Statement, the Disclosure Package and the Prospectus.

(aa) The Company and any of the officers and directors of the Company, in their capacities as such, are in compliance in all material respects with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder.

(bb) The Company and each Subsidiary maintains insurance covering their properties, assets, operations, personnel and businesses, and, in the good faith estimate of management, such insurance is of such type and in such amounts as is in accordance with customary industry practice in the locations where the Company and each Subsidiary conduct operations, taking into account the costs and availability of such insurance.

(cc) Deloitte & Touche LLP is a registered independent accounting firm with respect to the Company within the meaning of the Act. The historical financial statements, including any amendment thereto, and the notes thereto included in the Registration Statement, the Disclosure Package and the Prospectus present fairly in all material respects the consolidated financial position and results of operations of the Company and the Subsidiaries at the respective dates and for the respective periods indicated. Such financial statements comply as to form in all material respects with the applicable requirements of Regulation S-X promulgated under the Exchange Act and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods presented (except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus). The other financial and statistical information and data included in the Registration Statement, the Disclosure Package and the Prospectus are accurately presented in all material respects and prepared on a basis consistent with the financial statements and the books and records of the Company and the Subsidiaries. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus has been prepared in good faith in accordance with the Commission's rules and guidelines applicable thereto and the Company is not aware that it fails to comply with the Commission's rules and guidelines. The Company has no reason to believe that the interactive data in eXtensible Business Reporting Language incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus is not true and correct.

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

(ee) The statistical and market-related data included in the Registration Statement, the Disclosure Package and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects and represent its good faith estimates that are made on the basis of data derived from such sources.

(ff) The Company has obtained (or will obtain prior to the Time of Purchase) the written agreement in substantially the form attached hereto as Exhibit B (the "**Lock-Up Letter Agreement**") of each of the Company's directors and executive officers.

(gg) Neither the Company nor any of the Subsidiaries has either sent or received any notice of termination of any of the contracts or agreements expressly referred to or described in the Prospectus, and no such termination has been threatened by the Company or any of the Subsidiaries or, to the knowledge of the Company, any other party to any such contract or agreement.

(hh) Neither the Company nor any of the Subsidiaries or any of their respective directors and officers has taken, directly or indirectly, any action designed to or which has constituted or which might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Notes.

(ii) The Company has not distributed and will not distribute, prior to the later of the Additional Time of Purchase and the completion of the Underwriters' distribution of the Notes, any offering material in connection with the offering and sale of the Notes other than any Preliminary Prospectus, the Prospectus, the Registration Statement or any Permitted Free Writing Prospectus.

(jj) The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange ("**NYSE**"), and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the NYSE, nor has the Company received any notification that the Commission or the NYSE is contemplating terminating such registration or listing.

(kk) Any certificate signed by an officer of the Company or any Subsidiary delivered to you or to counsel for the Underwriters pursuant to this Agreement or in connection with the Closing contemplated hereby shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

(ll) Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its Subsidiaries is aware of or has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its Subsidiaries and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA in all material respects and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith or (iv) made any bribe, rebate, payoff, influence payment, kickback or other payment, in each case, that is unlawful.

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

(nn) Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its Subsidiaries is currently subject to any sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(oo) The Company is not contemplating either the filing of a petition by it under any bankruptcy or insolvency laws or the liquidating of all or a substantial portion of its property, and has no knowledge of any person contemplating the filing of any such petition against it.

4. [Intentionally Omitted.]

5. Certain Covenants of the Company and the Guarantors. The Company and the Guarantors hereby jointly and severally agree:

(a) to furnish such information as may be required and otherwise to cooperate in qualifying the Notes for offering and sale under the securities or blue sky laws of such states as you may designate and to maintain such qualifications in effect so long as required for the distribution of the Notes; provided that none of the Company and the Guarantors shall be required to qualify as a foreign corporation or to consent to the service of process under the laws of any such state (except service of process with respect to the offering and sale of the Notes (including the Guarantees)); and to promptly advise you of the receipt by the Company or any Guarantor of any notification with respect to the suspension of the qualification of the Notes for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(b) to make available to the Underwriters in New York City, as soon as practicable after the execution and delivery of this Agreement and thereafter from time to time to furnish to the Underwriters, as many copies of the Disclosure Package and the Prospectus (or of the Prospectus as amended or supplemented if the Company shall have made any amendments or supplements thereto after the effective date of the Registration Statement) as the Underwriters may reasonably request for the purposes contemplated by the Act; in case any Underwriter is required to deliver a prospectus beyond the nine-month period referred to in Section 10(a)(3) of the Act in connection with the sale of the Notes, the Company will prepare promptly upon request such amendment or amendments to the Registration Statement and such prospectuses as may be necessary to permit compliance with the requirements of Section 10(a)(3) of the Act;

(c) to advise you promptly and (if requested by you) to confirm such advice in writing, (i) when any post-effective amendment to the Registration Statement becomes effective, (ii) when the Prospectus is filed with the Commission pursuant to Rule 424(b) under the Act (which the Company and the Guarantors agree to file in a timely manner under such rule) and (iii) when any Permitted Free Writing Prospectus is filed with the Commission pursuant to Rule 433 under the Act (which the Company and the Guarantors agree to file in a timely manner under such rule);

(d) to advise you promptly, and, if requested by you, confirming such advice in writing, of any request by the Commission for amendments or supplements to the Registration Statement, any Preliminary Prospectus, the Prospectus or any Permitted Free Writing Prospectus or for additional information with respect thereto, or of notice of institution of proceedings for, or the entry of a stop order suspending the effectiveness of the Registration Statement and, if the Commission should enter a stop order suspending the effectiveness of the Registration Statement, to use their best efforts to obtain the lifting or removal of such order as soon as possible; to advise you promptly of any proposal to amend or supplement the Registration Statement, any Preliminary Prospectus, the Prospectus or any Permitted Free Writing Prospectus and to file no such amendment or supplement to which you shall object in writing;

(e) to file in a timely manner all reports and any definitive proxy or information statement required to be filed by the Company with the Commission in order to comply with the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Notes, and to promptly notify you of such filing;

(f) with respect to the Company, to reserve and keep available at all times, free of preemptive rights, the full number of shares of Common Stock issuable upon conversion of the Notes;

(g) upon your request, to furnish to you and each of the other Underwriters for a period of two years from the date of this Agreement (i) copies of any reports or other communications which the Company shall send to its stockholders or shall from time to time publish or publicly disseminate, (ii) copies of all annual, quarterly and current reports filed with the Commission on Forms 10-K, 10-Q and 8-K, or such other similar form as may be designated by the Commission, (iii) copies of documents or reports filed with any national securities exchange on which any class of securities of the Company is listed, and (iv) such other information as you may reasonably request regarding the Company or its Subsidiaries, in each case as soon as such communications, documents or information becomes available;

(h) to advise the Underwriters promptly of the happening of any event known to the Company within the time during which a Prospectus relating to the Notes is required to be delivered under the Act which, in the judgment of the Company, would require the making of any change in the Prospectus then being used, so that the Prospectus would not include an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading, and, during such time, to prepare and furnish, at the Company's expense, to the Underwriters promptly such amendments or supplements to such Prospectus as may be necessary to reflect any such change and to furnish you a copy of such proposed amendment or supplement before filing any such amendment or supplement with the Commission;

(i) to make generally available to its security holders, and to deliver to you, as soon as it is practicable to do so, but in any event not later than 15 months after the effective date of the Registration Statement, an earnings statement of the Company (which will satisfy the provisions of Section 11(a) of the Act) covering a period of twelve months beginning after the effective date of the Registration Statement (as defined in Rule 158(c) of the Act); provided, however, that this Section 5(i) will not be construed to require the Company to file any periodic report referred to in Rule 158 prior to the time at which such report is otherwise due;

(j) to furnish to its stockholders as soon as practicable, but in no event prior to the delivery of its proxy statement to its stockholders in accordance with applicable securities laws, after the end of each fiscal year an annual report (including a balance sheet and statements of income, stockholders' equity and of cash flow of the Company) for such fiscal year, accompanied by a copy of the certificate or report thereon of nationally recognized independent certified public accountants;

(k) to furnish to you conformed copies of the Registration Statement, as initially filed with the Commission, and of all amendments thereto (including all exhibits thereto) in such quantities as you shall reasonably request for distribution to each of the Underwriters;

(l) to furnish to you as early as practicable prior to the Time of Purchase and the Additional Time of Purchase, as the case may be, but not later than two business days prior thereto, a copy of the latest available unaudited interim consolidated financial statements, if any, of the Company and its Subsidiaries which have been read by the Company's independent certified public accountants, as stated in their letter to be furnished pursuant to Section 8(d) hereof;

(m) not to take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of the Company or any Guarantors to facilitate the sale or resale of the Notes;

(n) to apply the net proceeds from the sale of the Notes in the manner set forth under the caption "Use of Proceeds" in the Prospectus;

(o) to furnish to you, before filing with the Commission subsequent to the effective date of this Agreement and during the period referred to in paragraph (e) above, a copy of any document proposed to be filed pursuant to Section 13, 14 or 15(d) of the Exchange Act;

(p) not to sell, offer or agree to sell, contract to sell, grant any option to sell or otherwise dispose of, directly or indirectly, any shares of Common Stock or securities convertible into or exchangeable or exercisable for Common Stock or warrants or other rights to purchase Common Stock or any other securities of the Company that are substantially similar to Common Stock or permit the registration under the Act of any shares of Common Stock, for a period of 60 days after the date hereof, without the prior written consent of Citigroup, J.P. Morgan, DB and BofAML, except for (i) the Notes and Guarantees to be sold hereunder (ii) the issuance of shares of the Common Stock upon conversion of the Notes, (iii) issuances of Common Stock upon the exercise of outstanding options, warrants and debentures disclosed as outstanding in the Registration Statement, (iv) the granting of options and the issuances of Common Stock upon the exercise thereof pursuant to stock option and employee benefit plans of the Company in existence on the date hereof, and (v) issuances as consideration for the acquisition of assets, businesses or companies;

(q) to take all action necessary to list on the NYSE the Common Stock initially issuable upon conversion of the Notes;

(r) to comply with Rule 433(g) under the Act;

(s) not, (i) at any time at or after the execution of this Agreement, to offer or sell any Notes by means of any "prospectus" (within the meaning of the Act), or use any "prospectus" (within the meaning of the Act) in connection with the offer or sale of the Notes, in each case other than the Prospectus and (ii) at any time at or after the execution of this Agreement, to offer or sell any Notes by means of any "free writing prospectus" (as defined in Rule 405 under the Act), or use any "free writing prospectus" (as defined in Rule 405 under the Act) in connection with the offer or sale of the Notes, in each case other than the Permitted Free Writing Prospectuses;

(t) between the date hereof and the Time of Purchase, not to do or authorize any act that would result in a change of the conversion price of the Notes.

6. Payment of Expenses. The Company and each of the Guarantors, jointly and severally, agree with each Underwriter to pay all expenses, fees and taxes (other than any transfer taxes incurred by the Underwriters for the resale of the Notes and, except as set forth under Section 7 hereof and (iv) and (vi) below, fees and disbursements of counsel for the Underwriters, such transfer taxes, counsel fees and disbursements to be paid by the Underwriters) in connection with (i) the preparation and filing of the Registration Statement, each Preliminary Prospectus, the Prospectus, each Permitted Free Writing Prospectus and any amendments or supplements thereto, and the printing and furnishing of copies of each thereof to the Underwriters and to dealers (including costs of mailing and shipment), (ii) all air travel-related expenses incurred by the Company and the Underwriters and all hotel expenses attributable to the Company, in each case, in connection with any meetings with prospective investors in the Notes, (iii) the issuance, sale and delivery of the Notes by the Company, (iv) the word processing and/or printing of this Agreement, any Agreement Among Underwriters, any dealer agreements, any Statements of Information, the Letter of Instruction, any Trustee expenses and the reproduction and/or printing and furnishing of copies of each thereof to the Underwriters and to dealers (including costs of mailing and shipment), (v) the qualification of the Notes for offering and sale under state laws and the determination of their eligibility for investment under state law as aforesaid (including the reasonable legal fees and filing fees and other disbursements of counsel to the Underwriters) and the printing and furnishing of copies of any blue sky surveys or legal investment surveys to the Underwriters and to dealers, (vi) the listing on the NYSE of the Common Stock initially issuable upon conversion of the Notes, (vii) the filing, if any, for review of the public offering of the Notes by FINRA (including the reasonable legal fees and filing fees and other disbursements of counsel to the Underwriters), and (viii) the performance of the Company's other obligations hereunder.

7. Reimbursement of Underwriters' Expenses.

If the Notes are not delivered for any reason other than the termination of this Agreement pursuant to clauses (y)(i), (iii), (iv) or (v) of Section 9 or the last paragraph of Section 10 hereof, or the default by one or more of the Underwriters in its or their respective obligations hereunder, the Company and the Guarantors shall, in addition to paying the amounts described in Section 6 hereof, reimburse the Underwriters for all of their reasonable out-of-pocket expenses, including the fees and disbursements of their respective counsel. Notwithstanding the foregoing, if the Notes are not delivered because of a termination of this Agreement pursuant to the last paragraph of Section 10 hereof, the Company and the Guarantors shall reimburse the non-defaulting Underwriters for all of their reasonable out-of-pocket expenses, including the fees and disbursements of their respective counsel.

8. Conditions of Underwriters' Obligations. The several obligations of the Underwriters hereunder are subject to the following conditions:

(a) All of the representations and warranties of the Company and the Guarantors contained in this Agreement shall be true and correct in all material respects, or true and correct where such representations and warranties are already qualified by materiality or Material Adverse Effect, on the date of this Agreement and, in each case after giving effect to the transactions contemplated hereby, at the Time of Purchase (and the several obligations of the Underwriters at the Additional Time of Purchase are subject to the accuracy of the representations and warranties of the Company and the Guarantors contained in Section 3 hereof, on the date hereof and at the Time of Purchase (unless previously waived) and at the Additional Time of Purchase, as the case may be), except that if a representation and warranty is made as of a specific date, and such date is expressly referred to therein, such representation and warranty shall be true and correct (or true and correct in all material respects, as applicable) as of such date. The Company and the Guarantors shall have performed or complied with all of the agreements and covenants contained in this Agreement and required to be performed or complied with by them at or prior to the Time of Purchase and at the Additional Time of Purchase.

(b) The Underwriters shall have received at the Time of Purchase and Additional Time of Purchase opinions dated the Time of Purchase and Additional Time of Purchase, as the case may be, addressed to the Underwriters, of Snell & Wilmer L.L.P. and Venable LLP, counsel to the Company and its Subsidiaries, Lowndes, Drosdick, Doster, Kantor & Reed P.A. and Gardere Wynne Sewell LLP, special counsel to certain Guarantors, substantially in the form of Exhibits C, D and E hereto, respectively, in each case in form and substance reasonably satisfactory to the Underwriters and counsel to the Underwriters.

(c) You shall have received at the Time of Purchase and at the Additional Time of Purchase, as the case may be, an opinion of Cahill Gordon & Reindel llp, counsel for the Underwriters, dated the Time of Purchase or the Additional Time of Purchase, as the case may be, with respect to matters as the Underwriters may require.

(d) You shall have received from Deloitte & Touche LLP, a registered independent public accounting firm for the Company, letters dated the date of this Agreement and the Time of Purchase and Additional Time of Purchase, as the case may be, and addressed to the Underwriters (with reproduced copies for each of the Underwriters) in the forms heretofore approved by Cahill Gordon & Reindel llp, counsel for the Underwriters.

(e) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Act, at or before 2:00 P.M., New York City time, on the second business day following the date of this Agreement, unless a later time (but not later than 5:00 P.M., New York City time, on the second full business day after the date of this Agreement) shall be agreed to by the Company and you in writing or by telephone, confirmed in writing.

(f) Prior to the Time of Purchase or the Additional Time of Purchase, as the case may be, (i) no stop order with respect to the effectiveness of the Registration Statement shall have been issued under the Act and remain in effect and proceedings initiated under Section 8(d) or 8(e) of the Act shall be pending; (ii) no action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental body, agency or official that would prevent the issuance of the Notes and, except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus, no action, suit or proceeding shall have been commenced and be pending against or affecting or, to the knowledge of the Company after due inquiry, threatened against the Company or the Guarantors before any court or arbitrator or any governmental body, agency or official that, if adversely determined, could have a Material Adverse Effect; (iii) the Registration Statement and all amendments thereto, or modifications thereof, if any, shall 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 not misleading; (iv) the Prospectus and all amendments or supplements thereto, or modifications thereof, if any, shall 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 are made, not misleading; (v) the Disclosure Package shall not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading; and (vi) the Company shall not have amended or supplemented the Registration Statement, the Preliminary Prospectus, the Prospectus or any Permitted Free Writing Prospectus unless the Underwriters shall previously have been advised of such proposed amendment or supplement at least two business days prior to the proposed use, and shall not have reasonably objected to such amendment or supplement.

(g) Between the time of execution of this Agreement and the Time of Purchase or the Additional Time of Purchase, as the case may be, (a) neither the Company nor any Subsidiary shall have incurred any liabilities or obligations, direct or contingent, except in the ordinary course of business and consistent with past practice, that, individually or in the aggregate, could have a Material Adverse Effect and (b) there shall not have been any event or development in respect of the business or condition (financial or other) of the Company or the Subsidiaries that, individually or in the aggregate, could have a Material Adverse Effect.

(h) You shall have received (A) a certificate, dated the Time of Purchase or Additional Time of Purchase, as the case may be, signed by a Chief Executive Officer and the Chief Financial Officer of the Company, confirming, as of the Time of Purchase or the Additional Time of Purchase, as the case may be, to their knowledge, (i) the matters set forth in paragraphs (a), (e), (f) and (g) of this Section 8, (ii) that the Company's information included in the Company's Definitive Proxy Statement filed with the

Commission on April 3, 2012, presents fairly in all material respects the Company's compensation amounts and fees paid to independent auditors at the respective dates and for the respective periods indicated and (iii) that the financial information included in the Preliminary Prospectus and the Prospectus under the headings "Summary—Recent Developments—Summary Results for the First Six Months of 2012" and " and "Summary—Recent Developments—Recent Business Trends" is presented fairly in all material respects at the respective dates and for the respective periods indicated (B) a certificate, dated the Applicable Time, Time of Purchase or Additional Time of Purchase, as the case may be, signed by the Chief Financial Officer of the Company, confirming, as of the Applicable Time, Time of Purchase or the Additional Time of Purchase, as the case may be, that, as to certain information in the Prospectus noted in the certificate, nothing has come to the Chief Financial Officer's attention that caused such person to believe that the certain information contained in the Prospectus is not true, correct and accurate in all material respects and (C) certificates, dated the Time of Purchase signed by a duly authorized officer of each Guarantor, confirming, as of the Time Purchase Date, to their knowledge, the matters set forth in paragraphs (a), (f) and (g) of this Section 8.

(i) You shall have received Lock-Up Letter Agreements, dated the date of this Agreement, from each of the Company's directors and executive officers (as set forth on Schedule C hereto);

(j) Between the time of execution of this Agreement and the Time of Purchase or Additional Time of Purchase, as the case may be, there shall not have occurred any downgrading, nor shall any notice or announcement have been given or made of (i) any intended or potential downgrading or (ii) any review or possible change that does not indicate an improvement, in the rating accorded any securities of or guaranteed by the Company or any Subsidiary by any "nationally recognized statistical rating organization", as that term is defined in Rule 436(g)(2) under the Act.

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

(l) The Underwriters shall have been furnished with such other information as they may reasonably request.

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

(n) The shares of Common Stock initially issuable upon conversion of the Notes shall be eligible for trading on the NYSE in each case subject to conversion of the Notes and issuance of the Common Stock.

(o) At the Closing Date, the Company, the Guarantors and the Trustee shall have entered into the Indenture and the Underwriters shall have received counterparts, conformed as executed, thereof.

9. Effective Date of Agreement; Termination. This Agreement shall become effective when the parties hereto have executed and delivered this Agreement.

The obligations of the several Underwriters hereunder shall be subject to termination in the discretion of Citigroup, or any group of Underwriters (which may include Citigroup) which has agreed to purchase in the aggregate at least 50% of the principal amount of the Firm Notes, if (x) between the time of execution of this Agreement and the Time of Purchase or the Additional Time of Purchase, as the case may be, (i) either the Company or any Subsidiary shall have incurred any liabilities or obligations, direct or contingent, except in the ordinary course of business and consistent with past practice, that, individually or in the aggregate, could have a Material Adverse Effect or (b) there shall have been any event or development in respect of the business or condition (financial or other) of the Company or the Subsidiaries that, individually or in the aggregate, could have a Material Adverse Effect, which would, in Citigroup's judgment or in the judgment of such group of Underwriters, make it impracticable or inadvisable to proceed with the public offering or the delivery of the Notes on the terms and in the manner contemplated in the Registration Statement, the Disclosure Package and the Prospectus or (y) there shall have occurred: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange, the NYSE MKT LLC or The Nasdaq Stock Market; (ii) a suspension or material limitation in trading in the Company's securities on the New York Stock Exchange; (iii) a general moratorium on commercial banking activities declared by either federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (iv) an outbreak or escalation of hostilities or acts of terrorism involving the United States or a declaration by the United States of a national emergency or war; or (v) any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in Citigroup's judgment or in the judgment of such group of Underwriters makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Notes on the terms and in the manner contemplated in the Registration Statement, the Disclosure Package and the Prospectus or (z) there shall have occurred any downgrading, or any notice or announcement shall have been given or made of (i) any intended or potential downgrading or (ii) any watch, review or possible change that does not indicate an affirmation or improvement, in the rating accorded any securities of or guaranteed by the Company by any "nationally recognized statistical rating organization," as that term is defined in Rule 436(g)(2) under the Act.

If you or any group of Underwriters elects to terminate this Agreement as provided in this Section 9, the Company and each other Underwriter shall be notified promptly by letter or telegram from such terminating Underwriter.

If the sale to the Underwriters of the Notes, as contemplated by this Agreement, is not carried out by the Underwriters for any reason permitted under this Agreement or if such sale is not carried out because the Company shall be unable to comply with any of the terms of this Agreement, the Company shall not be under any obligation or liability under this Agreement (except to the extent provided in Sections 6, 7 and 11 hereof), and the Underwriters shall be under no obligation or liability to the Company under this Agreement (except to the extent provided in Section 11 hereof) or to one another hereunder.

10. Increase in Underwriters' Commitments. Subject to Sections 8 and 9, if any Underwriter shall default in its obligation to take up and pay for the Firm Notes to be purchased by it hereunder (otherwise than for reasons sufficient to justify the termination of this Agreement under the provisions of Section 9 hereof) and if the aggregate principal amount of Firm Notes which all Underwriters so defaulting shall have agreed but failed to take up and pay for does not exceed 10% of the total aggregate principal amount of Firm Notes, the non-defaulting Underwriters shall take up and pay for (in addition to the aggregate principal amount of Firm Notes they are obligated to purchase pursuant to Section 1 hereof) the aggregate principal amount of Firm Notes agreed to be purchased by all such defaulting Underwriters, as hereinafter provided. Such Notes shall be taken up and paid for by such non-defaulting Underwriter or Underwriters in such amount or amounts as you may designate with the consent of each Underwriter so designated or, in the event no such designation is made, such Notes shall be taken up and paid for by all non-defaulting Underwriters pro rata in proportion to the aggregate principal amount of Firm Notes set opposite the names of such non-defaulting Underwriters in Schedule A.

Without relieving any defaulting Underwriter from its obligations hereunder, the Company agrees with the non-defaulting Underwriters that they will not sell any Firm Notes hereunder unless all of the Firm Notes are purchased by the Underwriters (or by substituted Underwriters selected by you with the approval of the Company or selected by the Company with your approval).

If a new Underwriter or Underwriters are substituted by the Underwriters or by the Company for a defaulting Underwriter or Underwriters in accordance with the foregoing provision, the Company or you shall have the right to postpone the Time of Purchase for a period not exceeding five business days in order that any necessary changes in the Registration Statement and Prospectus and other documents may be effected.

The term Underwriter as used in this agreement shall refer to and include any Underwriter substituted under this Section 10 with like effect as if such substituted Underwriter had originally been named in Schedule A.

If the aggregate principal amount of Firm Notes which the defaulting Underwriter or Underwriters agreed to purchase exceeds 10% of the total number of Firm Notes which all Underwriters agreed to purchase hereunder, and if neither the non-defaulting Underwriters nor the Company shall make arrangements within the five business day period stated above for the purchase of all the Firm Notes which the defaulting Underwriter or Underwriters agreed to purchase hereunder, this Agreement shall be terminated without further act or deed and without any liability on the part of the Company to any non-defaulting Underwriter and without any liability on the part of any non-defaulting Underwriter to the Company. Nothing in this paragraph, and no action taken hereunder, shall relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

11. Indemnification.

(a) The Company and each of the Guarantors jointly and severally agree to indemnify, defend and hold harmless each Underwriter, its partners, directors and officers, and any person who controls any Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and the successors and assigns of all of the foregoing persons, from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which, jointly or severally, any such Underwriter or any such person may incur under the Act, the Exchange Act, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company) or in a Prospectus (the term Prospectus for the purpose of this Section 11 being deemed to include any Preliminary Prospectus, the Prospectus and the Prospectus as amended or supplemented by the Company), or the Disclosure Package, or arises out of or is based upon any omission or alleged omission to state a material fact required to be stated in such Registration Statement, or any omission or alleged omission to state a material fact in such Prospectus or such Disclosure Package or necessary to make the statements made in such Registration Statement, such Prospectus or such Disclosure Package not misleading, except insofar as any such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information concerning such Underwriter furnished in writing by or on behalf of such Underwriter through you to the Company expressly for use in such Registration Statement, such Prospectus or such Disclosure Package (it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 12 hereof) or arises out of or is based upon any omission or alleged omission to state a material fact in connection with such information required to be stated in such Registration Statement, or arises out of or is based upon any omission or alleged omission to state a material fact in connection with such information in such Prospectus or such Disclosure Package or necessary to make such information in such Registration Statement, such Prospectus or such Disclosure Package not misleading or (ii) any untrue statement or alleged untrue statement made by the Company in Section 3 hereof or the failure by the Company or any Guarantors to perform when and as required any agreement or covenant contained herein.

If any action, suit or proceeding (each, a "**Proceeding**") is brought against an Underwriter or any such person in respect of which indemnity may be sought against the Company and the Guarantors pursuant to the foregoing paragraph, such Underwriter or such person shall promptly notify the Company in writing of the institution of such Proceeding and the Company shall assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; provided, however, that the omission to so notify the Company shall not relieve the Company from any liability which the Company may have to any Underwriter or any such person or otherwise. Such Underwriter or such person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Underwriter or of such person unless the employment of such counsel shall have been authorized in writing by the Company in connection with the defense of such Proceeding or the Company shall not have, within a

reasonable period of time in light of the circumstances, employed counsel to have charge of the defense of such Proceeding or such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from, additional to or in conflict with those available to the Company (in which case the Company shall not have the right to direct the defense of such Proceeding on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by the Company and paid as incurred (it being understood, however, that the Company shall not be liable for the expenses of more than one separate counsel (in addition to any local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). The Company shall not be liable for any settlement of any Proceeding effected without its written consent but if settled with the written consent of the Company, the Company agrees to indemnify and hold harmless any Underwriter and any such person from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second sentence of this paragraph, then the indemnifying party agrees that it shall be liable for any settlement of any Proceeding effected without its written consent if (i) such settlement is entered into more than 60 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have fully reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 30 days' prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such Proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of such indemnified party.

(b) Each Underwriter severally agrees to indemnify, defend and hold harmless the Company, each of the Guarantors, each of their respective directors, each of their respective officers and any person who controls the Company or any of the Guarantors within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and the successors and assigns of all of the foregoing persons, from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which, jointly or severally, the Company or any such person may incur under the Act, the Exchange Act, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information concerning such Underwriter furnished in writing by or on behalf of such Underwriter through you to the Company expressly for use in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company), the Prospectus or the Disclosure Package, or arises out of or is based upon any omission or alleged omission to state a material fact in connection with such information required to be stated in such Registration Statement, such Prospectus or such Disclosure Package or necessary to make such information not misleading.

If any Proceeding is brought against the Company, the Guarantors or any such person in respect of which indemnity may be sought against any Underwriter pursuant to the foregoing paragraph, the Company, the Guarantors or such person shall promptly notify such Underwriter in writing of the institution of such Proceeding and such Underwriter shall assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; provided, however, that the omission to so notify such Underwriter shall not relieve such Underwriter from any liability which such Underwriter may have to the Company, the Guarantors or any such person or otherwise. The Company, the Guarantors or such person shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company, the Guarantors or such person unless the employment of such counsel shall have been authorized in writing by such Underwriter in connection with the defense of such Proceeding or such Underwriter shall not have, within a reasonable period of time in light of the circumstances, employed counsel to defend such Proceeding or such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to or in conflict with those available to such Underwriter (in which case such Underwriter shall not have the right to direct the defense of such Proceeding on behalf of the indemnified party or parties, but such Underwriter may employ counsel and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such Underwriter), in any of which events such fees and expenses shall be borne by such Underwriter and paid as incurred (it being understood, however, that such Underwriter shall not be liable for the expenses of more than one separate counsel (in addition to any local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). No Underwriter shall be liable for any settlement of any such Proceeding effected without the written consent of such Underwriter but if settled with the written consent of such Underwriter, such Underwriter agrees to indemnify and hold harmless the Company, the Guarantors and any such person from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second sentence of this paragraph, then the indemnifying party agrees that it shall be liable for any settlement of any Proceeding effected without its written consent if (i) such settlement is entered into more than 60 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 30 days' prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such Proceeding.

(c) If the indemnification provided for in this Section 11 is unavailable to an indemnified party under subsections (a) and (b) of this Section 11 or insufficient to hold an indemnified party harmless in respect of any losses, damages, expenses, liabilities or claims referred to therein, then each applicable indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, damages, expenses, liabilities or claims (i) in

such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors on the one hand and the Underwriters on the other hand from the offering of the Notes or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Guarantors on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such losses, damages, expenses, liabilities or claims, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Guarantors on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportions as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company and the Guarantors and the total underwriting discounts and commissions received by the Underwriters, bear to the aggregate public offering price of the Notes. The relative fault of the Company and the Guarantors on the one hand and of the Underwriters on the other shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission relates to information supplied by the Company and the Guarantors or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, damages, expenses, liabilities and claims referred to in this subsection shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating, preparing to defend or defending any Proceeding.

(d) The Company, the Guarantors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 11 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in subsection (c) above. Notwithstanding the provisions of this Section 11, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Notes underwritten by such Underwriter and distributed to the public were offered to the public exceeds the amount of any damage which such Underwriter has otherwise been required to pay by reason of such untrue statement or alleged untrue statement or omission or alleged omission. 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. The Underwriters' obligations to contribute pursuant to this Section 11 are several in proportion to their respective underwriting commitments and not joint.

(e) The indemnity and contribution agreements contained in this Section 11 and the covenants, warranties and representations of the Company and the Guarantors contained in this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of any Underwriter, its partners, directors or officers or any person (including each partner, officer or director of such person) who controls any Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, or by or on behalf of the Company or the Guarantors, or any of the respective directors or officers of the Company or the Guarantors or any person who controls the Company or the Guarantors within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and shall survive any termination of this Agreement or the issuance and delivery of the Notes. The Company, the Guarantors and each Underwriter

agree promptly to notify each other of the commencement of any Proceeding against it and, in the case of the Company and the Guarantors, against any of the respective officers and directors of the Company or the Guarantors, in connection with the issuance and sale of the Notes, or in connection with the Registration Statement, the Prospectus or the Disclosure Package.

12. Information Furnished by the Underwriters. The statements set forth in the last paragraph on the cover page of the Prospectus and the statements set forth in the fifth, ninth, tenth and eleventh paragraphs under the caption "Underwriting" in the Prospectus constitute the only information furnished by or on behalf of the Underwriters as such information is referred to in Sections 3 and 11 hereof.

13. Notices. All communications with respect to or under this Agreement, except as may be otherwise specifically provided in this Agreement, shall be in writing and, if sent to the Underwriters, shall be mailed, delivered, or telegraphed or telecopied and confirmed in writing to Citigroup Global Markets Inc., 388 Greenwich Street, New York, New York, 10013 (fax: (212) 816-7912) Attention: General Counsel and J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179 (fax: (212) 622-8358); Attention: Equity Syndicate Desk, Deutsche Bank Securities Inc., 60 Wall Street, 4th Floor, New York, New York, Fax (212) 797-9344, Attn: ECM Syndicate Desk, with a copy to: General Counsel, Fax (212) 797-4561, Merrill Lynch at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730), 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.; and if sent to the Company or any Guarantor, shall be mailed, delivered or, telegraphed or telecopied and confirmed in writing to Meritage Homes Corporation, 17851 North 85th Street, Suite 300, Scottsdale, AZ 85255 (telephone: (480) 515 8100, fax: (480) 998 9178), Attention: Larry W. Seay, with a copy to, Snell & Wilmer L.L.P, 400 East Van Buren, Suite 1900, Phoenix, AZ 85004 (telephone: (480) 382-6316, fax: (480) 606-6700), Attention: Jeffrey E. Beck, Esq.

14. Governing Law; Construction. This Agreement and any claim, counterclaim or dispute of any kind or nature whatsoever arising out of or in any way relating to this Agreement ("**Claim**"), directly or indirectly, shall be governed by, and construed in accordance with, the laws of the State of New York. The section headings in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

15. Submission to Jurisdiction. Except as set forth below, no Claim may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company and the Guarantors consent to the jurisdiction of such courts and personal service with respect thereto. The Company and the Guarantors hereby consent to personal jurisdiction, service and venue in any court in which any Claim arising out of or in any way relating to this Agreement is brought by any third party against any Underwriter or any indemnified party. Each Underwriter, the Company and the Guarantors (in each case, on their behalf and, to the extent permitted by applicable law, on behalf of their stockholders and affiliates) waive all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise)

in any way arising out of or relating to this Agreement. The Company and the Guarantors agree that a final determination or final judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon the Company and the Guarantors and may be enforced in any other courts in the jurisdiction of which the Company and the Guarantors is or may be subject, by suit upon such judgment.

16. Parties at Interest. The Agreement herein set forth has been and is made solely for the benefit of the Underwriters, the Company, the Guarantors and to the extent provided in Section 11 hereof the controlling persons, directors and officers referred to in such sections, and their respective successors, assigns, heirs, personal representatives and executors and administrators. No other person, partnership, association or corporation (including a purchaser, as such purchaser, from any of the Underwriters) shall acquire or have any right under or by virtue of this Agreement.

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

18. Counterparts. This Agreement may be signed by the parties in one or more counterparts which together shall constitute one and the same agreement among the parties.

19. Successors and Assigns. This Agreement shall be binding upon the Underwriters, the Company, the Guarantors and their respective successors and assigns and any successor or assign of any substantial portion of the Company's, any Guarantors' and any of the Underwriters' respective businesses and/or assets.

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

Very truly yours,

MERITAGE HOMES CORPORATION

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

MERITAGE PASEO CROSSING, LLC

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

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

MERITAGE PASEO CONSTRUCTION, LLC

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

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

MERITAGE HOMES OF ARIZONA, INC.

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

MERITAGE HOMES CONSTRUCTION, INC.

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

MERITAGE HOMES OF TEXAS HOLDING, INC.

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

MERITAGE HOMES OF CALIFORNIA, INC.

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

MERITAGE HOMES OF TEXAS JOINT VENTURE HOLDING COMPANY, LLC

By: Meritage Homes of Texas, LLC
Its: Sole Member

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOLDINGS, L.L.C.

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOMES OF NEVADA, INC.

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

MTH-CAVALIER, LLC

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

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

MTH GOLF, LLC

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

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

MERITAGE HOMES OF COLORADO, INC.

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

MERITAGE HOMES OF FLORIDA, INC.

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

CALIFORNIA URBAN HOMES, LLC

By: Meritage Homes of California, Inc.
Its: Sole Member and Manager

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

MERITAGE HOMES OF TEXAS, LLC

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOMES OPERATING COMPANY, LLC

By: Meritage Holdings, L.L.C.
Its: Manager

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

WW PROJECT SELLER, LLC

By: Meritage Paseo Crossing, LLC
Its: Sole Member

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

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

MERITAGE HOMES OF NORTH CAROLINA, INC.

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

CAREFREE TITLE AGENCY, INC.

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

M&M FORT MYERS HOLDINGS, LLC

By: Meritage Paseo Crossing, LLC
Its: Sole Member and Manager

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

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

MERITAGE HOMES OF FLORIDA REALTY LLC

By: Meritage Homes of Florida, Inc.
Its: Sole Member and Manager

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

Accepted and agreed to as of the date first above written, on behalf of themselves and the other several Underwriters named in Schedule A.

CITIGROUP GLOBAL MARKETS INC.

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

Accepted and agreed to as of the date first above written, on behalf of themselves and the other several Underwriters named in Schedule A.

J.P. MORGAN SECURITIES LLC

By: /s/ Santosh Screenivasan
Name: Santosh Screenivasan
Title: Managing Director

Accepted and agreed to as of the date first above written, on behalf of themselves and the other several Underwriters named in Schedule A.

DEUTSCHE BANK SECURITIES INC.

By: /s/ Andrew Yaeger
Name: Andrew Yaeger
Title: Managing Director

By: /s/ David Sullivan
Name: David Sullivan
Title: Director

Accepted and agreed to as of the date first above written, on behalf of themselves and the other several Underwriters named in Schedule A.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ James Scott
Name: James Scott
Title: Managing Director

SCHEDULE A

Underwriter	Principal Amount of Firm Notes purchased
CITIGROUP GLOBAL MARKETS INC.	$ 37,730,000
J.P. MORGAN SECURITIES LLC	32,340,000
DEUTSCHE BANK SECURITIES INC.	26,950,000
MERRILL LYNCH, PIERCE FENNER & SMITH INCORPORATED	10,780,000
JMP SECURITIES LLC	2,200,000
Total	$ 110,000,000

SCHEDULE B

See Attached.

SCHEDULE C

Directors and Executive Officers

1. Steven J. Hilton
2. Larry W. Seay
3. Hilla Sferruzza
4. Peter L. Ax
5. Raymond Oppel
6. Robert G. Sarver
7. C. Timothy White
8. Gerald W. Haddock
9. Richard T. Burke
10. Steven M. Davis
11. Dana Bradford
12. Michael A. Odell

SCHEDULE D

Guarantors

1. Meritage Paseo Crossing, LLC
2. Meritage Paseo Construction, LLC
3. Meritage Homes of Arizona, Inc.
4. Meritage Homes Construction, Inc.
5. Meritage Homes of Texas Holding, Inc.
6. Meritage Homes of California, Inc.
7. Meritage Homes of Texas Joint Venture Holding Company, LLC
8. Meritage Holdings, L.L.C.
9. Meritage Homes of Nevada, Inc.
10. MTH-Cavalier, LLC
11. MTH Golf, LLC
12. Meritage Homes of Colorado, Inc.
13. Meritage Homes of Florida, Inc.
14. California Urban Homes, LLC
15. Meritage Homes of Texas, LLC
16. Meritage Homes Operating Company, LLC
17. WW Project Seller, LLC
18. Meritage Homes of North Carolina, Inc.
19. Carefree Title Agency, Inc.
20. M&M Fort Myers Holdings, LLC
21. Meritage Homes of Florida Realty LLC

EXHIBIT A

Subsidiary	Jurisdiction of Incorporation or Formation	Stockholders or Members	% Owned by the Company (directly or indirectly)
Meritage Paseo Crossing, LLC	Arizona	Meritage Homes of Arizona, Inc.	100%
Meritage Paseo Construction, LLC	Arizona	Meritage Homes Construction, Inc.	100%
Meritage Homes of Arizona, Inc.	Arizona	Meritage Homes Corporation	100%
Meritage Homes Construction, Inc.	Arizona	Meritage Homes Corporation	100%
Meritage Homes of Texas Holding, Inc.	Arizona	Meritage Homes Corporation	100%
Meritage Homes of California, Inc.	California	Meritage Homes Corporation	100%
Meritage Homes of Texas Joint Venture Holding Company, LLC	Texas	Meritage Homes of Texas, LLC; Meritage Homes of Texas Holding, Inc.	100%
Meritage Holdings, L.L.C.	Texas	Meritage Homes of Texas Holding, Inc.	100%
Meritage Homes of Nevada, Inc.	Arizona	Meritage Homes Corporation	100%
MTH-Cavalier, LLC	Arizona	Meritage Homes Construction, Inc.	100%
MTH Golf, LLC	Arizona	Meritage Homes Construction, Inc.	100%
Meritage Homes of Colorado, Inc.	Arizona	Meritage Homes Corporation	100%
Meritage Homes of Florida, Inc.	Florida	Meritage Homes Corporation	100%
California Urban Homes, LLC	California	Meritage Homes of California, Inc.	100%

Subsidiary	Jurisdiction of Incorporation or Formation	Stockholders or Members	% Owned by the Company (directly or indirectly)
Meritage Homes of Texas, LLC	Arizona	Meritage Homes of Texas Holding, Inc.	100%
Meritage Homes Operating Company, LLC	Arizona	Meritage Holdings, L.L.C. (1%); Meritage Homes of Texas Holding, Inc. (99%)	100%
WW Project Seller, LLC	Arizona	Meritage Paseo Crossing, LLC	100%
Meritage Homes of North Carolina, Inc.	Arizona	Meritage Homes Corporation	100%
Carefree Title Agency, Inc.	Texas	Meritage Homes Corporation	100%
M&M Fort Myers Holdings, LLC	Delaware	Meritage Paseo Crossing, LLC	100%
Meritage Homes of Florida Realty LLC	Florida	Meritage Homes of Florida, Inc.	100%
Buckeye Land, L.L.C.	Arizona	Meritage Paseo Construction, LLC	Approximately 83%
Arcadia Ranch, L.L.C.	Arizona	Meritage Paseo Construction, LLC	Approximately 83%
Sundance Buckeye LLC	Arizona	Meritage Paseo Construction, LLC	Approximately 83%

EXHIBIT B

Meritage Homes Corporation

Lock-Up Agreement

September 12, 2012

Citigroup Global Markets Inc.
J.P. Morgan Securities LLC
Deutsche Bank Securities Inc.
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

c/o Deutsche Bank Securities Inc.
60 Wall Street
New York, New York 10005

c/o Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10021

Re: Meritage Homes Corporation – Lock-Up Agreement

Ladies and Gentlemen:

The undersigned is an owner of record or beneficially of certain shares of common stock, par value $0.01 per share ("**Common Stock**"), of Meritage Homes Corporation, a Maryland corporation (the "**Company**"), or securities convertible into or exchangeable or exercisable for shares of Common Stock. The undersigned understands that you, as representatives (the "**Representatives**"), propose to enter into an Underwriting Agreement on behalf of the several Underwriters named in such agreement (collectively, the "**Underwriters**"), with the Company and the Guarantors named therein, providing for a public offering of newly issued convertible senior notes (the "**Notes**") pursuant to a Registration Statement on Form S-3 (File No. 333-180685) filed with the Securities and Exchange Commission (the "**SEC**"). The Notes will be convertible into the Company's common shares, par value $0.01 per share (the "**Common Stock**").

In consideration of the agreement by the Underwriters to offer and sell the Notes, and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned agrees that, during the period beginning from the date of the final prospectus covering the public offering of the Notes and continuing to and including the date 45 days after the date of such final prospectus, the undersigned will not offer, sell, contract to sell, hypothecate, pledge, loan, grant any option to purchase, make any short sale or otherwise dispose of or grant any rights with respect to any shares of Common Stock, or any options or warrants to purchase any shares of Common Stock, or any securities convertible into, exchangeable for or that represent the right to receive shares of Common Stock, whether now owned or hereinafter acquired, owned directly by the undersigned (including holding as a custodian) or with respect to which the undersigned has beneficial ownership within the rules and regulations of the SEC (collectively the "**Undersigned's Shares**"). All such sales must be pre-cleared by Larry Seay, the Company's Chief Financial Officer. Written notice of any such sale shall be given to the Representatives promptly following such sale.

The foregoing restriction is expressly agreed to preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Shares even if the Undersigned's Shares would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include without limitation any short sale (whether or not against the box) or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any of the Undersigned's Shares or with respect to any security that includes, relates to, or derives any significant part of its value from the Undersigned's Shares.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Shares (i) as a *bona fide* gift or gifts, provided that the donee or donees thereof agree to be bound in writing by the restrictions set forth herein, (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, (iii) if the undersigned is a corporation, to any wholly-owned subsidiary of such corporation, (iv) in connection with a simultaneous sale of all or substantially all of the Common Stock of the Company (by means of a merger, consolidation, tender offer or otherwise), (v) in connection with the sale of the Undersigned's Shares for the purpose of satisfying the Undersigned's tax withholding obligations relating to the vesting of restricted stock or restricted stock units in transactions consistent with past practice or (vi) with the prior written consent of the Representatives on behalf of the Underwriters. For purposes of this Lock-Up Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. It shall be a condition to any transfer permitted by the first sentence of this paragraph (other than clause (iv) thereof) that (a) the transferee execute an agreement stating that the transferee is receiving and holding the Undersigned's Shares subject to the provisions of this Agreement and there shall be no further transfer of the Undersigned's Shares except in accordance with this Agreement and (b) any such transfer shall not involve a disposition for value. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Undersigned's Shares except in compliance with the foregoing restrictions.

The undersigned understands that the Company, the Guarantors and the Underwriters are relying upon this Lock-Up Agreement in proceeding toward consummation of the offering. The undersigned further understands that this Lock-Up Agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Very truly yours,

_____

Exact Name of Record and/or Beneficial Owner

_____

Authorized Signature

_____

Title

EXHIBIT C

FORM OF OPINION OF SNELL & WILMER, L.L.P.

(i) Each of the Guarantors (other than the Excluded Guarantors (to be defined in such opinion)) (a) is a corporation or limited liability company duly incorporated or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its organization and (b) has the requisite corporate, limited liability company power and authority, as the case may be, necessary to own its property and carry on its business as now being conducted.

(ii) Each of the Guarantors (other than the Excluded Guarantors) has all requisite corporate or limited liability company power and authority, as the case may be, to execute, deliver and perform its obligations under the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party and to consummate the transactions contemplated thereby to be consummated by such party. Each of the Guarantors (other than the Excluded Guarantors) has duly authorized the execution, delivery and performance of, and has duly executed and delivered, each of the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party.

(iii) The Indenture, assuming the due authorization, execution and delivery thereof by the Trustee, is a legally binding and valid agreement of each Issuer and each Guarantor, enforceable against each of them in accordance with its terms.

(iv) The Notes, assuming the due authorization, execution, authentication and delivery thereof by the Trustee, when issued and delivered by the Company against payment by each of the Underwriters in accordance with the terms of the Underwriting Agreement and the Indenture, will be legally binding and valid obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms.

(v) The Guarantees, when the Notes are issued and delivered in accordance with the terms of the Underwriting Agreement and the Indenture, will be legally binding and valid obligations of the Guarantors, enforceable against each of them in accordance with terms.

(vi) Except as set forth or incorporated by reference in the General Use Disclosure Package, the Registration Statement or the Prospectus or as disclosed in the officer's certificate of Larry W. Seay, Executive Vice President, Chief Financial Officer, and Assistant Secretary of the Company, attached as an exhibit to such opinion, to our knowledge there is (a) no action, suit or proceeding before or by an domestic court, arbitrator or governmental agency, body or official, now pending or threatened to which the Company or any Guarantor is a party and (b) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Company or any Guarantor is subject that we believe (x) in the case of clause (a) above,

could, individually or in the aggregate, reasonably be expected (1) to have a Material Adverse Effect if determined adversely to the Company or any Subsidiary or (2) to interfere with or adversely affect the issuance of the Notes or the Guarantees in any jurisdiction or adversely affect the consummation of the transactions contemplated by the Underwriting Agreement, Guarantees, Notes or Indenture and (y) in the case of clause (b) above, could, individually or in the aggregate, reasonably be expected to (1) have a Material Adverse Effect or (2) interfere with or adversely affect the issuance of the Notes or the Guarantees in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Transaction Documents.

(vii) The execution, delivery and performance by the Company and each of the Guarantors (other than the Excluded Guarantors) of the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party, including the consummation of the offer and sale of the Notes, does not and will not violate, conflict with or constitute a breach of any of the terms or provisions of or constitute a default (or an event that with the giving of notice or lapse of time or both, would constitute a default) under, or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Guarantor (other than the Excluded Guarantors) pursuant to, (A) the charter, bylaws or other constitutive documents of the Company or any Guarantor (other than the Excluded Guarantors), (B) any agreement or instrument binding upon the Company or any Guarantor that is filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, to the Company's Form 10-Q for the quarter ended March 31, 2012, to the Company's Form 10-Q for the period ended June 30, 2012, or to any Form 8-K filed by the Company subsequent to February 24, 2012, as filed with the Securities and Exchange Commission, or incorporated by reference therein (C) any law, statute, rule or regulation applicable to the Company or any Guarantor or their respective assets or properties or (D) any judgment, order or decree known to us of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Guarantor or their respective assets or properties.

(viii) No consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any court or governmental agency, body or administrative agency, domestic or foreign is required to be obtained or made by the Company or Guarantors for the execution, delivery and performance by the Company or Guarantors of the Underwriting Agreement, Indenture, Notes and Guarantees to which they are party including the consummation of any of the transactions contemplated thereby, except such as have been or will be obtained or made on or prior to the Time of Purchase.

(ix) None of the Company or Guarantors is an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act of 1940, as amended.

(x) To our knowledge, none of the Company or any Guarantor (or any agent thereof acting on their behalf) has taken any action that might cause the execution or delivery by them of the Underwriting Agreement or the issuance or sale of the Notes by them to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System, as in effect on the Closing Date.

(xi) Each of the Underwriting Agreement, Indenture, Notes and Guarantees described in the Disclosure Package, the Registration Statement or the Prospectus, to the extent described therein and subject to the qualifications stated therein, conforms in all material respects to the description thereof contained in the Disclosure Package, the Registration Statement or the Prospectus, (it being understood that we express no opinion as to the necessity to summarize any additional provisions of the Underwriting Agreement, Indenture, Notes and Guarantees that are not summarized in the Disclosure Package, the Registration Statement or the Prospectus).

(xii) The statements under the captions "Description of Notes" and "United States Federal Tax Considerations" in the Disclosure Package, the Registration Statement or the Prospectus, insofar as such statements constitute a summary of legal matters, documents or proceedings referred to therein, to the extent described therein and subject to the qualifications stated therein, fairly summarize in all material respects such legal matters, documents and proceedings (it being understood that we express no opinion as to the necessity to summarize any additional legal matters, documents or proceedings in the above-referenced sections that are not summarized in the Disclosure Package, the Registration Statement or the Prospectus).

(xiii) The Registration Statement has become effective under the Act and, to such counsel's knowledge, no stop order proceedings with respect thereto and no proceeding pursuant to Section 8A of the Act against the Company in connection with the offering of the Notes are pending or threatened under the Act and any required filing of the Prospectus and any supplement thereto pursuant to Rule 424 under the Act has been made in the manner and within the time period required by such Rule 424.

(xiv) To such counsel's knowledge, there are no contracts, licenses, agreements, leases or documents of a character that are required to be filed as exhibits to the Registration Statement or to be summarized or described in the Registration Statement, the General Use Disclosure Package or the Prospectus which have not been so filed, summarized or described as required.

(xv) Except as described in the Registration Statement, the General Use Disclosure Package and the Prospectus, no person has, pursuant to the terms of any contract, agreement or other instrument known to such counsel (i) any preemptive rights, rights of first refusal, resale rights or similar rights with respect to the sale of the Notes to the Underwriters or the issuance of Common Stock upon the conversion of such Notes or (ii) the right to cause the Company to register under the Act any shares of capital stock or other equity interests as a result of the filing or effectiveness of the Registration Statement or the sale of the Notes to the Underwriters as contemplated hereby.

In addition, such counsel shall state that, in connection with the preparation of the Registration Statement, the Disclosure Package and the Prospectus, it has, participated, from time to time, in conferences with officers and other representatives of the Company, representatives of and counsel for the Underwriters, and representatives of the registered independent accounting firm of the Company, during which the contents of the Registration Statement, the Disclosure Package and the Prospectus were discussed; while the limitations inherent in the independent verification of factual matters and the character of determinations involved in the registration process are such that such counsel is not passing upon and does not assume any responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Prospectus (except to the extent expressly set forth in such counsel's opinions above), subject to the foregoing and based on such participation and discussions, such counsel shall advise that (relying as to materiality to the extent such counsel deems appropriate on officers and other representatives of the Company: (A) the Registration Statement and the Prospectus (other than the financial statements, including the notes and schedules thereto, and other financial, statistical and accounting information contained therein, as to which counsel need not express a view) comply as to form in all material respects with the applicable requirements of the Securities Act and the rules thereunder; (B) no facts have come to its attention that have caused it to believe that (i) the Registration Statement or any amendment thereto at the time such Registration Statement or amendment became effective contained an untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus or any supplement thereto as of its date and the Time of Purchase or the Additional Time of Purchase, as applicable, included or includes any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, subject to the parenthetical in clause (A) above); (C) we have no reason to believe that the General Use Disclosure Package as amended and supplemented as of the Applicable Time when taken as a whole, contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, subject to the parenthetical in clause (A) above).

EXHIBIT D

FORM OF OPINION OF VENABLE LLP

The opinion of Venable LLP, counsel for the Company, to be delivered pursuant to Section 8(b) of the Underwriting Agreement (capitalized terms not otherwise defined herein shall have the meanings provided in the Underwriting Agreement, to which this is an Exhibit) shall be to the effect that:

(i) The Company (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland and (b) has the requisite corporate power and authority to carry on its business as now being conducted, as that business is described in the Disclosure Package, the Registration Statement or the Prospectus.

(ii) The Company has the requisite power and authority to execute, deliver and perform all of its obligations under the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party and to consummate the transactions contemplated thereby to be consummated by it including, without limitation, the Company has the requisite power and authority to issue, sell and deliver the Notes. The Company has duly authorized the execution, delivery and performance of each of the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party and has duly executed and delivered each of such Underwriting Agreement, Indenture, Notes and Guarantees.

(iii) The execution, delivery and performance by the Company of the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party does not and will not violate or conflict with its charter, bylaws, other constitutive documents or laws of the State of Maryland.

(iv) Other than with respect to the number of shares outstanding, as to which such counsel renders no opinion, the stock of the Company, including the Common Stock initially issuable upon conversion of the Notes, conforms in all material respects to the description thereof contained under the caption “Description of Capital Stock” in the Registration Statement, the General Use Disclosure Package and the Prospectus.

(v) The shares of Common Stock initially issuable upon conversion of the Notes have been duly authorized and, when issued and delivered by the Company pursuant to the terms of the Indenture and the Notes, will be validly issued, fully paid and nonassessable.

EXHIBIT E

FORM OF OPINION OF GARDERE WYNNE SEWELL LLP/LOWNDES, DROSDICK, DOSTER, KANTOR & REED P.A.

The opinion of Gardere Wynne Sewell LLP/Lowndes, Drosdick, Doster, Kantor & Reed P.A., counsel for certain Guarantors, to be delivered pursuant to Section 8(b) of the Underwriting Agreement (capitalized terms not otherwise defined herein shall have the meanings provided in the Underwriting Agreement, to which this is an Exhibit) shall be to the effect that:

(i) Each of the LLC Guarantors (as defined in such opinion) is a limited liability company validly existing and in good standing under the Laws of the State of [Texas/Florida] and has the requisite power and authority necessary to own its assets and carry on its business as now being conducted.

(ii) Each of the [Texas/Florida] Guarantors (as defined in such opinion) has all requisite limited liability company power and authority to execute, deliver and perform its obligations under each of the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party and to consummate the transactions contemplated thereby to be consummated by such party and, without limitation, each [Texas/Florida] Guarantor has all requisite limited liability company power and authority to execute, deliver, and perform its obligations under its Guarantee. Each of the [Texas/Florida] Guarantors has duly authorized the execution, delivery, and performance of, and has duly executed and delivered, each of the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party.

(iii) The execution, delivery, and performance by each of the [Texas/Florida] Guarantors of the Underwriting Agreement, Indenture, Notes and Guarantees to which it is a party, including the consummation of the offer and sale of the Original Notes, does not and will not violate or conflict with the operating agreement, articles of organization or other constituent documents of any [Texas/Florida] Guarantor.

Exhibit 4.1

Execution Version

MERITAGE HOMES CORPORATION

AND

WELLS FARGO BANK, NATIONAL ASSOCIATION

AS TRUSTEE

GUARANTEED TO THE EXTENT SET FORTH THEREIN
BY THE GUARANTORS NAMED HEREIN.

INDENTURE

DATED AS OF SEPTEMBER 18, 2012

CROSS REFERENCE SHEET*

Provisions of the Trust Indenture Act of 1939 and the Indenture (the "Indenture"), dated as of September 18, 2012, by and among Meritage Homes Corporation, a Maryland corporation, the guarantors listed on Schedule 1 to the Indenture, and Wells Fargo Bank, National Association, as Trustee:

TIA Section	Indenture Section
310(a)(1)	7.10
310(a)(2)	7.10
310(a)(3)	Not applicable
310(a)(4)	Not applicable
310(a)(5)	Not applicable
310(b)	7.03; 7.08; 7.10
310(b)(1)	7.10
310(c)	Not applicable
311(a)	7.03; 7.11
311(b)	7.03; 7.11
311(c)	Not applicable
312(a)	2.05
312(b)	11.03
312(c)	11.03
313(a)	7.06
313(b)(1)	Not applicable
313(b)(2)	7.06
313(c)	7.06; 11.02
313(d)	7.06
314(a)	4.03; 4.04; 11.02
314(b)	Not applicable
314(c)(1)	11.04(a)
314(c)(2)	11.04(b)
314(c)(3)	Not applicable
314(d)	Not applicable
314(e)	11.05
314(f)	Not applicable
315(a)	7.01(b)
315(b)	7.05; 11.02
315(c)	7.01(a)
315(d)	7.01(c)
315(e)	6.12
316(a)(1)(A)	6.05
316(a)(1)(B)	6.04
316(a)(2)	Not applicable
316(a) (last sentence)	2.08; 6.04
316(b)	6.08
317(a)(1)	6.09
317(a)(2)	6.10
317(b)	2.04; 7.12
318(a)	11.01

* This cross reference sheet shall not, for any purpose, be deemed to be a part of the Indenture.

TABLE OF CONTENTS

INDENTURE dated as of September 18, 2012 by and among Meritage Homes Corporation, a Maryland corporation, (the "Issuer"), the guarantors listed on Schedule 1 hereto (herein called the "Guarantors") and Wells Fargo Bank, National Association, as Trustee (the "Trustee").

The Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the "Securities"), as herein provided, up to such principal amount as may from time to time be authorized in or pursuant to one or more resolutions of the Board of Directors or by supplemental indenture.

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of each series of the Securities:

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01 Certain Definitions.

"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 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, authenticating agent or co-Registrar.

"asset" means any asset or property.

"Board of Directors" means, with respect to any Person, the board of directors of such Person (or, if such Person is a limited liability company, the board of managers of such Person) or similar governing body or any authorized committee thereof.

"Board Resolution" means a copy of a resolution certified by the secretary or an assistant secretary of the Issuer to have been duly adopted by the Board of Directors or pursuant to authorization by the Board of Directors and to be in full force and effect on the date of such certification (and delivered to the Trustee, if appropriate).

"Business Day" means any day other than a Legal Holiday.

"Closing Date" means the date on which the Securities of a particular series were originally issued under this Indenture.

"Commission" means the Securities and Exchange Commission.

"Corporate Trust Office" shall mean a corporate trust office of the Trustee, which shall initially be Wells Fargo Bank, National Association, 707 Wilshire Blvd., 17th Floor, Los Angeles, CA 90017.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"Depositary" means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the person designated as Depositary for such series by the Issuer, which Depositary shall be a clearing agency registered under the Exchange Act; and if at any time there is more than one such person, "Depositary" as used with respect to the Securities of any series shall mean the Depositary with respect to the Securities of such series.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

"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 have been approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the applicable measurement date.

"Global Security" shall mean a Security issued to evidence all or a part of any series of Securities that is executed by the Issuer and authenticated and delivered by the Trustee to a Depositary or pursuant to such Depositary's instructions, all in accordance with this Indenture and pursuant to Section 2.01, which shall be registered as to principal and interest in the name of such Depositary or its nominee.

"Holder" or "Securityholder" means a Person in whose name a Security is registered in the register of Securities kept by the Registrar.

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

"Issuer" means the party named as such above until a successor replaces it pursuant to this Indenture and thereafter means the successor.

"Issuer Order" means a written order signed in the name of the Issuer by two Officers, one of whom must be the Issuer's principal executive officer, principal financial officer, treasurer, principal accounting officer or vice president and delivered to the Trustee.

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

"Officer" means, with respect to any Person, a chairman of the board, a chief executive officer, a president, the chief financial officer, any vice-president, the treasurer, the controller, the secretary, any assistant treasurer or any assistant secretary of such Person.

"Officers' Certificate" means a certificate signed by two or more Officers, one of whom must be the principal executive officer, principal financial officer or principal accounting officer of the Issuer that meets the requirements of Section 11.05 hereof.

"Opinion of Counsel" means an opinion from legal counsel who is reasonably acceptable to the Trustee that meets the requirements of Section 11.05 hereof. The counsel may be an employee of or counsel to the Issuer or the Trustee.

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

"principal" of a Security means the principal amount due on the stated maturity of the Security plus the premium, if any, on the Security.

"Securities" means the Securities authenticated and delivered under this Indenture.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

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

"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.

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the date on which this Indenture is qualified under the TIA provided, however, that in the event the TIA is amended after such date, "TIA" means, to the extent required by such amendment, the Trust Indenture Act, as amended.

"Trust Officer" when used with respect to the Trustee, means any officer assigned to the Corporate Trust Office 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 and who shall have direct responsibility for the administration of this Indenture.

"Trustee" means the party named as such above until a successor becomes such pursuant to this Indenture and thereafter means or includes each party who is then a trustee hereunder, and if at any time there is more than one such party, "Trustee" as used with respect to the Securities of any series means the Trustee with respect to Securities of that series. If Trustees with respect to different series of Securities are trustees under this Indenture, nothing herein shall constitute the Trustees co-trustees of the same trust, and each Trustee shall be the trustee of a trust separate and apart from any trust administered by any other Trustee with respect to a different series of Securities.

"U.S. Government Obligations" means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America that is not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation evidenced by such depository receipt.

SECTION 1.02 Other Definitions.

Term	Defined in Section
"Act"	2.17
"Bankruptcy Law"	6.01
"Custodian"	6.01
"Event of Default"	6.01
"Legal Holiday"	11.07
"Paying Agent"	2.03
"Place of Payment"	2.01
"redemption price"	3.03
"Registrar"	2.03

SECTION 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision 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 Securities.

"indenture securityholder" means a Securityholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the Securities means the Issuer and any Guarantor and any successor obligor on the Securities.

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

SECTION 1.04 Rules of Construction.

Unless the context otherwise requires:

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

(ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(iii) "or" is not exclusive;

(iv) words in the singular include the plural, and in the plural include the singular;

(v) provisions apply to successive events and transactions; and

(vi) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

ARTICLE 2
THE SECURITIES

SECTION 2.01 Unlimited in Amount, Issuable in Series, Form and Dating.

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series.

There shall be established in or pursuant to a Board Resolution or an Officers' Certificate pursuant to authority granted under a Board Resolution or established in one or more indentures supplemental hereto authorized by a Board Resolution, prior to the issuance of Securities of any series:

(a) the title of the Securities of the series, whether the Securities rank as senior Securities, senior subordinated Securities or subordinated Securities, or any combination thereof;

(b) the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the series will be issued;

(c) the aggregate principal amount of the Securities and any limit upon the aggregate principal amount of the Securities that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to this Article 2);

(d) the date or dates on which the principal on the Securities will be payable and the amount of principal that will be payable;

(e) the rate or rates (which may be fixed or variable) at which the Securities of the series will bear interest, if any, as well as the dates from which interest will accrue, the dates on which the interest will be payable and the record date for the interest payable on any payment date;

(f) the form and terms of any guarantee of the Securities, including the terms of subordination, if any, of the series;

(g) any depositories, interest rate calculation agents or other agents with respect to Securities of such series if other than those appointed herein;

(h) the right, if any, of Holders of the Securities to convert them into common stock or other securities of the Issuer, including any provisions to prevent dilution of such conversion rights;

(i) the place or places where the principal, premium, if any, and interest, if any, on the Securities of the series will be payable and where the Securities which are in registered form can be presented for registration of transfer or exchange and the identification of any depositary or depositaries for any Global Securities;

(j) the provisions, if any, regarding the Issuer's right to redeem, repay or purchase Securities of the series, in whole or in part, or the right of the Holders to require the Issuer to redeem, repay or purchase Securities of the series, in whole or in part;

(k) the provisions, if any, requiring or permitting the Issuer to make payments in a sinking fund or analogous provision to be used to redeem the Securities of the series or a purchase fund or analogous provision to purchase the Securities of the series;

(l) if other than denominations of $2,000 and any integral multiples of $1,000 in excess thereof, the denominations in which Securities of the series shall be issuable;

(m) the percentage of the principal amount at which the Securities of the series will be issued and, if other than the full principal amount thereof, the percentage of the principal amount of the Securities of the series which is payable if maturity of such Securities is accelerated because of a Default;

(n) the currency or currencies in which principal, premium, if any, and interest, if any, of the Securities of the series will be payable;

(o) if payments of principal of, premium or interest on the Securities of the series will be made in one or more currencies other than that or those in which the Securities of the series are denominated, the manner in which the exchange rate with respect to such payments will be determined;

(p) the manner in which the amounts of payment of principal of, or premium or interest on the Securities of the series will be determined, if these amounts may be determined by reference to an index based on a currency or currency other than that in which the Securities of the series are denominated or designated to be payable;

(q) the provisions, if any, relating to any security provided for the Securities of the series;

(r) any addition to or change in the Events of Default with respect to the Securities of a particular series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.02 hereof;

(s) any addition to, change in or deletion from, the covenants set forth in Articles 4 or 5 that applies to Securities of the series;

(t) the Trustee for the series of Securities;

(u) if applicable that the Secuities of the series, in whole or in specific part, shall be defeasible pursuant to Sections 8.03 and 8.04 and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Securities shall be evidenced;

(v) any other terms of the series (which terms may modify, supplement or delete any provision of this Indenture with respect to such series; provided, however, that no such term may modify or delete any provision hereof if imposed by the TIA; and provided, further, that any modification or deletion of the rights, duties or immunities of the Trustee hereunder shall have been consented to in writing by the Trustee).

All Securities of any series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution or Officers' Certificate or in any such indenture supplemental hereto.

The principal of and any interest on the Securities shall be payable at the office or agency of the Issuer designated in the form of Security for the series (each such place herein called the "Place of Payment"); provided, however, that payment of interest may be made at the option of the Issuer by check mailed to the address of the Person entitled thereto as such address shall appear in the register of Securities referred to in Section 2.03 hereof.

Each Security shall be in one of the forms approved from time to time by or pursuant to a Board Resolution or Officers' Certificate, or established in one or more indentures supplemental hereto. Prior to the delivery of a Security to the Trustee for authentication in any form approved by or pursuant to a Board Resolution or Officers' Certificate, the Issuer shall deliver to the Trustee the Board Resolution or Officers' Certificate by or pursuant to which such form of Security has been approved, which Board Resolution or Officers' Certificate shall have attached thereto a true and correct copy of the form of Security that has been approved by or pursuant thereto.

The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Security shall be dated the date of its authentication.

SECTION 2.02 Execution and Authentication.

One or more Officers shall sign the Securities for the Issuer by manual or facsimile signature.

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

A Security shall not be valid until authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall authenticate Securities for original issue upon receipt of an Issuer Order.

The Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Securities. An authenticating agent may authenticate Securities 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 or an Affiliate of the Issuer.

SECTION 2.03 Registrar and Paying Agent.

The Issuer shall maintain an office or agency (which, unless otherwise set forth in a Board Resolution or one or more indentures supplemental hereto, shall be located in the City of Minneapolis, State of Minnesota) where Securities of a particular series may be presented for registration of transfer or for exchange (the "Registrar") and an office or agency where Securities of that series may be presented for payment (a "Paying Agent"). The Registrar for a particular series of Securities shall keep a register of the Securities of that series and of their registration of transfer and exchange. The Issuer may appoint one or more co-Registrars and one or more additional paying agents for each series of Securities. The term "Paying Agent" includes any additional Paying Agent. The Issuer may change any Paying Agent, Registrar or co-Registrar without prior notice to any Securityholder. The Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture.

If the Issuer fails to maintain a Registrar or Paying Agent for any series of Securities, the Trustee shall act as such. The Issuer or any of its Affiliates may act as Paying Agent, Registrar or co-Registrar.

The Issuer hereby appoints the Trustee the initial Registrar and Paying Agent for each series of Securities unless another Registrar or Paying Agent, as the case may be, is appointed prior to the time Securities of that series are first issued.

SECTION 2.04 Paying Agent to Hold Money in Trust.

Whenever the Issuer has one or more Paying Agents it will, prior to each due date of the principal of or interest on, any Securities, deposit with a Paying Agent a sum sufficient to pay the principal or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal or interest, and (unless such Paying Agent is the Trustee) the Issuer will promptly notify the Trustee of its action or failure so to act.

The Issuer shall require each Paying Agent other than the Trustee to agree in writing that such Paying Agent will hold in trust for the benefit of the Securityholders of the particular series for which it is acting, or the Trustee, all money held by the Paying Agent for the payment of principal or interest on the Securities of such series, and that such Paying Agent will notify the Trustee of any Default by the Issuer or any other obligor of the series of Securities in making any such payment and at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent. If the Issuer or an Affiliate acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Securityholders of the particular series for which it is acting all money held by it as Paying Agent. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon so doing, the Paying Agent (if other than the Issuer or an Affiliate of the Issuer) shall have no further liability for such money. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Securities.

SECTION 2.05 Securityholder 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 Securityholders, separately by series, and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee as of the relevant record date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders, separately by series, relating to such interest payment date or request, as the case may be.

SECTION 2.06 Transfer and Exchange.

Where Securities of a series are presented to the Registrar or a co-Registrar with a request to register a transfer or to exchange them for an equal principal amount of Securities of the same series of other authorized denominations, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Issuer shall issue and the Trustee shall authenticate Securities at the Registrar's request.

No service charge shall be made for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to Sections 2.09, 2.13, 3.06 or 9.05).

The Issuer need not issue, and the Registrar or co-Registrar need not register the transfer or exchange of, (i) any Security of a particular series during a period beginning at the opening of business 15 days before the day of any selection of Securities of that series for redemption under Section 3.02 and ending at the close of business on the day of selection, or (ii) any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security of that series being redeemed in part.

Any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of the beneficial interests in such Global Security may be effected only through a book entry system maintained by the Issuer of such Global Security (or its agent), and that ownership of a beneficial interest in the Global Security shall be required to be reflected in a book entry.

SECTION 2.07 Replacement Securities.

If a mutilated Security is surrendered to the Trustee or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Security of same series if the Issuer's and the Trustee's requirements are met. The Trustee or the Issuer may require an indemnity bond to be furnished which is sufficient in the judgment of both to protect the Issuer, the Trustee, and any Agent from any loss which any of them may suffer if a Security is replaced. The Issuer or the Trustee may charge such Holder for its expenses in replacing a Security.

Every replacement Security is an obligation of the Issuer and shall be entitled to all the benefit of the Indenture equally and proportionately with any and all other Securities of the same series.

SECTION 2.08 Outstanding Securities.

The Securities of any series outstanding at any time are all the Securities of that series authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, and those described in this Section as not outstanding.

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

If Securities are considered paid under Section 4.01, they cease to be outstanding and interest on them ceases to accrue.

Except as set forth in Section 2.16 hereof, a Security does not cease to be outstanding because the Issuer or an Affiliate holds the Security.

SECTION 2.09 Temporary Securities.

Until definitive Securities are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Securities upon an Issuer Order. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Issuer considers appropriate for temporary Securities. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities.

Holders of temporary Securities shall be entitled to all of the benefits of this Indenture.

SECTION 2.10 Cancellation.

The Issuer at any time may deliver Securities to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee shall cancel all Securities surrendered for registration of transfer, exchange, payment, replacement or cancellation in accordance with its standard procedures and provide evidence of such canceled Securities to the Issuer at the Issuer's written request. The Issuer may not issue new Securities to replace Securities that it has paid or that have been delivered to the Trustee for cancellation.

SECTION 2.11 Defaulted Interest.

If the Issuer fails to make a payment of interest on any series of Securities, the Issuer shall pay such defaulted interest plus (to the extent lawful) any interest payable on the defaulted interest, in any lawful manner. It may elect to pay such defaulted interest, plus any such interest payable on it, to the Persons who are Holders of such Securities on which the interest is due on a subsequent special record date. The Issuer shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each such Security and the date of the proposed payment. The Issuer shall fix or cause to be fixed any such record date and payment date for such payment; provided, however, that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before any such record date, the Issuer shall mail to Securityholders affected thereby a notice that states the record date, payment date, and amount of such interest to be paid.

SECTION 2.12 Intentionally Omitted.

SECTION 2.13 Global Securities.

(a) Terms of Securities. A Board Resolution, a supplemental indenture hereto or an Officers' Certificate shall establish whether the Securities of a series shall be issued in whole or in part in the form of one or more Global Securities and the Depositary for such Global Security or Securities.

(b) Transfer and Exchange. Notwithstanding any provisions to the contrary contained in Section 2.06 of this Indenture and in addition thereto, any Global Security shall be exchangeable pursuant to Section 2.06 of this Indenture for securities registered in the names of Holders other than the Depositary for such Security or its nominee only if (i) such Depositary notifies the Issuer that it is

unwilling or unable to continue as Depositary for such Global Security or if at any time such Depositary ceases to be a clearing agency registered under the Exchange Act, and, in either case, the Issuer fails to appoint a successor Depositary within 90 days of such event or (ii) the Issuer executes and delivers to the Trustee an Officers' Certificate to the effect that such Global Security shall be so exchangeable. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Securities registered in such names as the Depositary shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms.

Except as provided in this paragraph (b) of this Section, a Global Security may not be transferred except as a whole by the Depositary with respect to such Global Security to a nominee of such Depositary, by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.

(c) Legend. Any Global Security issued hereunder shall bear a legend in substantially the following form:

"Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), New York, New York, 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 such other name as may be requested by an authorized representative of DTC (and any payment is made to Cede & Co. or such other entity as may be requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co. has an interest herein."

"Transfer of this Global Security shall be limited to transfers in whole, but not in part, to nominees of DTC or to a successor thereof or such successor's nominee and limited to transfers made in accordance with the restrictions set forth in the Indenture referred to herein."

(d) Acts of Holders. The Depositary, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Indenture.

(e) Payments. Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.01 hereof, payment of the principal of and interest, if any, on any Global Security shall be made to the Person specified therein.

(f) Consents, Declaration and Directions. Except as provided in paragraph (e) of this Section, the Issuer, the Trustee and any Agent shall treat a Person as the Holder of such principal amount of outstanding Securities of such series represented by a Global Security as shall be specified in a written statement of the Depositary with respect to such Global Security, for purposes of obtaining any consents, declarations or directions required to be given by the Holders pursuant to this Indenture.

SECTION 2.14 CUSIP Numbers.

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

SECTION 2.15 Computation of Interest.

Unless otherwise set forth in a Board Resolution or one or more indentures supplemental hereto, interest on the Securities will be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2.16 Treasury Notes.

In determining whether the Holders of the required principal amount of Securities 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, Securities 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 Securities as to which a responsible officer of the Trustee has received an Officers' Certificate stating that such Securities are so owned shall be so disregarded. Securities 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 Securities and that the pledgee is not the Issuer, a Guarantor, any other obligor on the Securities or any of their respective Affiliates.

SECTION 2.17 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 2.17.

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

(c) The principal amount and serial numbers of Notes held by any Person, and the date of holding the same, shall be proved by the register kept by the Registrar.

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

(e) If the Issuer shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuer shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Securities (as described in Section 2.08) have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities (as described in Section 2.08) shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE 3
REDEMPTION

SECTION 3.01 Notices to Trustee.

If the Issuer elects to redeem Securities of any series pursuant to any optional redemption provisions thereof, it shall furnish to the Trustee at least 45 days, but not more than 60 days before a redemption date, an Officers' Certificate which shall specify (i) the provisions of such Security or this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Securities of that series to be redeemed and (iv) the redemption price.

If the Issuer elects to reduce the principal amount of Securities of any series to be redeemed pursuant to mandatory redemption provisions thereof, it shall notify the Trustee of the amount of, and the basis for, any such reduction. If the Issuer elects to credit against any such mandatory redemption Securities it has not previously delivered to the Trustee for cancellation, it shall deliver such Securities with such notice.

SECTION 3.02 Selection of Securities to be Redeemed

If less than all the Securities of any series are to be redeemed, or purchased in an offer to purchase at any time, the Trustee shall select the Securities of that series to be redeemed or purchased as follows: (1) if the Securities of such series are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Securities of that series are listed or (2) if the Securities of that series are not listed on a national securities exchange, prorate, by lot or by such other method as may be required by DTC's procedures. In the event of a partial redemption or purchase by lot, the particular Securities to be redeemed or purchased will be selected not less than 45 nor more than 60 days prior to the redemption or purchase date by the Trustee from Securities of that series outstanding and not previously called for redemption.

The Trustee shall notify the Issuer promptly in writing of the Securities or portions of Securities to be called for redemption or purchase and, in the case of any Securities selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Except as otherwise provided as to any particular series of Securities, Securities and portions thereof that the Trustee selects shall be in amounts equal to the minimum authorized denomination for Securities of the series to be redeemed or purchased or any integral multiple thereof, except that if all of the Securities of the series are to be redeemed or purchased, the entire outstanding amount of the Securities of the series held by such Holder, even if not equal to the minimum authorized denomination for the Securities of that series, shall be redeemed or purchased. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Issuer may acquire Securities 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.

Except as otherwise provided as to any particular series of Securities, at least 30 days but not more than 60 days before a redemption date, the Issuer shall mail a notice of redemption to each Holder whose Securities are to be redeemed.

The notice shall identify the Securities of the series to be redeemed and shall state:

(1) the redemption date;

(2) the redemption price fixed in accordance with the terms of the Securities of the series to be redeemed, plus accrued interest, if any, to the date fixed for redemption (the "redemption price");

(3) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date, upon surrender of such Security, a new Security or Securities in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Securities;

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

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

(6) that, unless the Issuer defaults in payment of the redemption price, interest on Securities called for redemption ceases to accrue on and after the redemption date;

(7) the CUSIP number, if any, of the Securities to be redeemed;

(8) the paragraph of the Securities and/or the section of the Indenture pursuant to which the Securities called for redemption are being redeemed; and

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

At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at its expense, provided, however, that the Issuer shall have delivered to the Trustee, at least six Business Days prior to the date on which notice is to be given, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph. The notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice of the Holder of any Security shall not affect the validity of the proceeding for the redemption of any other Security.

SECTION 3.04 Effect of Notice of Redemption.

Subject to the subordination provisions of any series of Securities, once notice of redemption is mailed in accordance with Section 3.03 hereof, Securities called for redemption become due and payable on the redemption date for the redemption price. Upon surrender to the Paying Agent, such Securities will be paid at the redemption price.

SECTION 3.05 Deposit of Redemption Price.

On or before 10:00 a.m., New York City time, on the redemption or purchase date, the Issuer shall deposit with the Trustee or Paying Agent (or, if the Issuer or any Affiliate is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption or purchase price of all Securities called for redemption on that date other than Securities that have previously been delivered by the Issuer to the Trustee for cancellation. The Paying Agent shall return to the Issuer any money not required for that purpose.

If the Issuer complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Securities (or the portions thereof) called for redemption or purchase. If a Security is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Securities were registered at the close of business on such record date. If any Securities called for redemption or purchase shall not be so paid upon surrender for redemption because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in accordance with the terms of the Securities of the series to be redeemed.

SECTION 3.06 Securities Redeemed or Purchased in Part.

Upon surrender of a Security that is redeemed or purchased in part, the Issuer shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuer a new Security of same series equal in principal amount to the unredeemed or unpurchased portion of the Security surrendered.

ARTICLE 4
COVENANTS

SECTION 4.01 Payment of Securities.

The Issuer shall pay or cause to be paid the principal of, premium, if any, and interest on the Securities on the dates and in the manner provided in this Indenture and the Securities. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuer or an Affiliate, holds as of 10:00 a.m., New York City time, on that date immediately available funds designated for and sufficient to pay all principal, premium, if any, and interest then due.

To the extent lawful, the Issuer shall pay interest on overdue principal and overdue installments of interest at the rate per annum borne by the applicable series of Securities.

SECTION 4.02 Maintenance of Office or Agency.

The Issuer shall maintain in the City of Minneapolis, State of Minnesota an office or agency (which may be an office of the Trustee or an affiliate of the Trustee or Registrar) where Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuer may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in the City of Minneapolis, State of Minnesota for such purposes. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

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

SECTION 4.03 Reports.

The Issuer shall deliver to the Trustee within 15 days after it files them with the Commission copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) that the Issuer is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act; provided, however, the Issuer shall not be required to deliver to the Trustee any materials for which the Issuer has sought and received confidential treatment by the Commission. The Issuer also shall comply with the other provisions of TIA Section 314(a). For the avoidance of doubt, nothing in this Section 4.03 shall require the Issuer to file any such reports, information or documents with the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 4.04 Compliance Certificate.

(a) The Issuer or any Guarantors shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Issuer, an Officers' Certificate stating that a review of the activities of the Issuer and its Subsidiaries during the preceding fiscal year (which ends December 31) has been made under the supervision of the signing Officers (one of whom shall be the principal executive officer, principal financial officer or principal accounting officer of the Issuer) with a view to determining whether the Issuer has kept, observed, performed and fulfilled its 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 has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuer is taking or proposes 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 Securities is prohibited or if such event has occurred, a description of the event and what action the Issuer is taking or proposes to take with respect thereto.

(b) The Issuer shall, so long as any of the Securities are outstanding, deliver to the Trustee, forthwith upon becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Issuer is taking or proposes to take with respect thereto.

SECTION 4.05 Taxes.

The Issuer shall pay prior to delinquency, all material taxes, assessments and governmental levies except such as are contested in good faith by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of any Securities.

SECTION 4.06 Stay, Extension and Usury Laws.

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

SECTION 4.07 Maintenance of Properties; Insurance; Compliance with Law.

(a) The Issuer shall, and shall cause each of the Guarantors 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 the Guarantors , insurance covering such risks as are usually and customarily insured against by corporations similarly situated in the markets where the Issuer and the Guarantors 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 4.08 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 Securities for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities 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 4.09 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 Guarantor, in accordance with the respective organizational documents (as the same may be amended from time to time) of each Guarantor and the rights (charter and statutory), licenses and franchises of the Issuer and its 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 Guarantor 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 the Guarantors, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders.

ARTICLE 5
SUCCESSORS

SECTION 5.01 When The Issuer May Merge, Etc.

In addition to provisions applicable to a particular series of Securities, the Issuer shall not directly or indirectly: (i) consolidate or merge with or into another Person (whether or not the Issuer is the surviving Person), or (ii) sell, lease, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Subsidiaries in one or more related transactions to any Person unless:

(1) either:

(a) the Issuer is the surviving Person; or

(b) the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, lease, assignment, transfer, conveyance or other disposition shall have been made assumes (by supplemental indenture reasonably satisfactory to the Trustee) all the obligations of the Issuer under the Securities and this Indenture;

and

(2) immediately after the transaction no Default or Event of Default exists.

The Issuer shall deliver to the Trustee on or prior to the consummation of a transaction proposal pursuant to clause 1(b) above an Officers' Certificate to the foregoing effect and an Opinion of Counsel stating that the proposed transaction and such supplemental indenture comply with this Indenture and constitute the legal, valid and binding obligations of the issuer, enforceable against it in accordance with its terms.

SECTION 5.02 Successor Person Substituted.

Upon any consolidation or merger, or any sale, assignment, transfer, conveyance or other disposition (other than by lease) of all or substantially all of the assets of the Issuer in accordance with Section 5.01 hereof, the successor Person formed by such consolidation or into which the Issuer is merged or to which such sale, assignment, transfer, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, conveyance or other disposition, the provisions of this Indenture referring to the "Issuer" shall refer instead to the successor Person and not to the Issuer), and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein; provided, however, that the predecessor Issuer shall not be relieved from the obligation to pay principal of, and interest on, any Securities except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the Issuer's assets that meets the requirements of Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

SECTION 6.01 Events of Default.

Unless as otherwise provided in the establishing Board Resolution, Officers' Certificate or supplemental indenture hereto, an "Event of Default" occurs with respect to Securities of any particular series if:

(1) the Issuer defaults in the payment of interest on any Security of that series when the same becomes due and payable and the Default continues for a period of 30 days;

(2) the Issuer defaults in the payment, when due, of the principal of, or premium, if any, on any Security of that series when the same becomes due and payable at maturity, upon redemption (including in connection with any offer to purchase under the terms of such Securities) or otherwise;

(3) an Event of Default, as defined in the Securities of that series, occurs and is continuing, or the Issuer fails to comply with any of its other agreements in the Securities of that series or in this Indenture with respect to that series and the Default continues for the period and after the notice specified below;

(4) the Issuer pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

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

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property;

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

(E) admits in writing its inability generally to pay its debts as the same become due.

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

(A) is for relief against the Issuer in an involuntary case;

(B) appoints a Custodian of the Issuer or for all or substantially all of its property; or

(C) orders the liquidation of the Issuer; and the order or decree remains unstayed and in effect for 60 days.

(6) any other Event of Default provided with respect to Securities of that series which is specified in a Board Resolution, Officers' Certificate or supplemental indenture establishing that series of Securities.

The term "Bankruptcy Law" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A Default under clause (3) above is not an Event of Default with respect to a particular series of Securities until the Trustee or the Holders of at least 25% in principal amount of the then outstanding Securities of that series notify the Issuer of the Default and the Issuer does not cure the Default within 60 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." Such notice shall be given by the Trustee if so requested in writing by the Holders of 25% of the principal amount of the then outstanding Securities of that series.

SECTION 6.02 Acceleration.

If an Event of Default with respect to Securities of any series (other than an Event of Default specified in clauses (4) and (5) of Section 6.01) occurs and is continuing, the Trustee by written notice to the Issuer, or the Holders of at least 25% in principal amount of the then outstanding Securities of that series by written notice to the Issuer and the Trustee, may, subject to any prior notice requirements set forth in any supplemental indenture, declare the unpaid principal of and any accrued interest on all the Securities of that series to be due and payable on the Securities of that series. Upon such declaration the principal (or such lesser amount) and interest shall be due and payable immediately. If an Event of Default specified in clause (4) or (5) of Section 6.01 occurs, all of such amount shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Holders of a majority in principal amount of the then outstanding Securities of that series by written notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default with respect to that series have been cured or waived except nonpayment of principal (or such lesser amount) or interest that has become due solely because of the acceleration.

SECTION 6.03 Other Remedies.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal or interest on the Securities of that series or to enforce the performance of any provision of the Securities of that series or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder 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. All remedies are cumulative to the extent permitted by law.

SECTION 6.04 Waiver of Past Defaults.

Subject to Sections 6.02, 6.08 and 9.02, the Holders of not less than a majority in aggregate principal amount of the then outstanding Securities of any series, by notice to the Trustee, may on behalf of the Holders of the Securities of that series, waive an existing Default or Event of Default with respect to that series and its consequences except a continuing Default or Event of Default in the payment of the principal (including any mandatory sinking fund or like payment) of, premium, if any, or interest on any Security of that series (including in connection with an offer to purchase); provided, however, that the Holders of a majority in aggregate principal amount of the outstanding Securities of any series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration and its consequences. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 6.05 Control by Majority.

Except as provided in Sections 6.02, 6.06 and 6.08, the Holders of a majority in principal amount of the then outstanding Securities of any series may direct the time, method and place of conducting any proceeding for exercising any remedy with respect to that series available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders of Securities of that series, or that may involve the Trustee in personal liability. The Trustee may take any other action which it deems proper that is not inconsistent with any such direction. Notwithstanding any provision to the contrary in this Indenture, the Trustee shall not be obligated to take any action with respect to the provisions of the Section 6.02 unless directed to do so pursuant to this Section 6.05.

SECTION 6.06 Limitation on Suits.

A Holder of Securities of any series may not pursue a remedy with respect to this Indenture or the Securities unless:

(1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to that series;

(2) the Holders of at least 25% in principal amount of the then outstanding Securities of that series make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer, and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of indemnity; and

(5) during such 60-day period the Holders of a majority in principal amount of the then outstanding Securities of that series do not give the Trustee a direction inconsistent with the request.

No Holder of any series of Securities may use this Indenture to prejudice the rights of another Holder of Securities of that series or to obtain a preference or priority over another Holder of Securities of that series.

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 Securities or this Indenture or of any Guarantor under any guarantee of any Security 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 Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities and any related Security guarantees.

SECTION 6.08 Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of principal, premium, if any, and interest on the Security, on or after the respective due dates expressed in the Security (including in connection with any offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not, except as provided in the subordination provisions, if any, applicable to such Security, be impaired or affected without the consent of the Holder.

SECTION 6.09 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs and is continuing with respect to Securities of any series, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount of principal (or such portion of the principal as may be specified as due upon acceleration at that time in the terms of that series of Securities), premium, if any, and interest, remaining unpaid on the Securities of that series then outstanding, together with (to the extent lawful) interest on overdue principal and interest, and such further amount as shall be sufficient to cover the costs and, to the extent lawful, expenses of collection, including 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 hereof.

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 to the Trustee under Section 7.07 hereof) and the Securityholders allowed in any judicial proceedings relative to the Issuer (or any other obligor on the Securities), its creditors or its property and shall be entitled to and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims, and any custodian in any such judicial proceedings 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 agent and counsel, and any other amounts due the Trustee under Section 7.07 hereof. Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

SECTION 6.11 Priorities.

If the Trustee collects any money with respect to Securities of any series pursuant to this Article, it shall pay out the money in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Securityholders for amounts due and unpaid on the Securities of such series for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities of such series for principal, premium, if any, and interest, respectively and in accordance with the subordination provisions, if any, of the Securities of such series; and

Third: to the Issuer or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Securities of any series pursuant to this Section. The Trustee shall notify the Issuer in writing reasonably in advance of any such record date and payment date.

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 a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defense made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.08 hereof or a suit by Holders of more than 10% in principal amount of the then outstanding Securities of any series.

ARTICLE 7
TRUSTEE

SECTION 7.01 Duties of Trustee.

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

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

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

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

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

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

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

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

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee may refuse to perform any duty or exercise any right or power, including without limitation, the provisions of Section 6.05 hereof, unless it receives security and indemnity satisfactory to it against any loss, liability or expense.

(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. Absent written instruction from the Issuer, the Trustee shall not be required to invest any such money. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

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

SECTION 7.02 Rights of Trustee.

Subject to TIA Section 315(a) through (d) and Section 7.01 of this Indenture:

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(b) Before the Trustee acts or refrains from acting, it shall be entitled to receive an Officers' Certificate and an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

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

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers under the Indenture, unless the Trustee's conduct constitutes negligence.

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

(f) The Trustee may consult with counsel of its selection and may rely upon the advice of such counsel or any Opinion of Counsel.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event that is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities generally or the Securities of a particular series, as the case may be, and this Indenture;

(h) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as duties.

(i) any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Issuer Order.

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

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

SECTION 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Issuer or an Affiliate with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to TIA Sections 310(b) and 311.

SECTION 7.04 Trustee's Disclaimer.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Issuer's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities other than its certificate of authentication.

SECTION 7.05 Notice of Defaults.

If as described in Section 7.02 (g) hereof a Default or Event of Default with respect to the Securities of any series occurs and is continuing and if it is actually known to the Trustee, the Trustee shall mail to all Holders of Securities of that series a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment on any such Security, the Trustee may withhold the notice if and so long as the Trustee in good faith determines that withholding the notice is in the interests of such Securityholders.

SECTION 7.06 Reports by Trustee to Holders.

Within 60 days after January 1 of any year (commencing January 1, 2013), the Trustee with respect to any series of Securities shall mail to Holders of Securities of that series as provided in TIA Section 313(c) a brief report dated as of such January 1 that complies with TIA Section 313(a) (if such report is required by TIA Section 313(a)). The Trustee shall also comply with TIA Section 313(b)(2).

A copy of each report at the time of its mailing to Securityholders shall be mailed to the Issuer and filed with the Commission and each stock exchange on which any of the Securities are listed, as required by TIA Section 313(d). The Issuer shall notify the Trustee when the Securities are listed on any stock exchange, and of any delisting thereof.

SECTION 7.07 Compensation and Indemnity.

The Issuer shall pay to the Trustee from time to time such compensation as shall be agreed upon in writing for its services hereunder (which compensation shall not be limited by any provision of law in regard to compensation of a trustee of an express trust). The Issuer shall reimburse the Trustee upon written request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and out-of-pocket expenses of the Trustee's agents and counsel.

The Issuer shall indemnify and hold harmless each of the Trustee or any predecessor Trustee and each of their directors, officers, employees and agents for any loss, liability, damage, claims or expenses, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred by it, without negligence or willful misconduct on its part, in connection with the acceptance or administration of this Indenture and its duties hereunder including the costs of defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or in connection with enforcing the provisions of this Section. The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. The Trustee may have separate counsel and the Issuer shall pay the reasonable fees and expenses of such counsel. The Issuer need not pay for any settlement made without its consent.

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 willful misconduct. To secure the Issuer's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee in its capacity as Trustee, except money or property held in trust to pay principal and interest on particular Securities. Such lien will survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee. If the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(4) or (5) hereof occurs, the expenses and the compensation for the services will be intended to constitute expenses of administration under any applicable Bankruptcy Law.

This Section 7.07 shall survive the resignation or renewal of the Trustee and the termination of this Indenture.

SECTION 7.08 Replacement of Trustee.

A resignation or removal of the Trustee with respect to one or more or all series of Securities and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign at any time with respect to one or more or all series of Securities by so notifying the Issuer in writing. The Holders of a majority in principal amount of the then outstanding Securities of any series may remove the Trustee as to that series by so notifying the Trustee in writing and may appoint a successor Trustee with the Issuer's consent. The Issuer may remove the Trustee with respect to one or more or all series of Securities if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(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 becomes incapable of acting.

If, as to any series of Securities, 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 for that series. Within one year after the successor Trustee with respect to any series takes office, the Holders of a majority in principal amount of the then outstanding Securities of that series may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer. If a successor Trustee as to a particular series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Holders of at least 10% in principal amount of the then outstanding Securities of that series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10 hereof with respect to any series, any Holder of Securities of that series who satisfies the requirements of TIA Section 310(a) may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee for that series.

A successor Trustee as to any series of Securities shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Immediately after that, the retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee (subject to the lien provided for in Section 7.07 hereof), 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 as to that series. The successor Trustee shall mail a notice of its succession to the Holders of Securities of that series.

Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuer's obligations under Section 7.07 hereof shall continue for the benefit of the retiring trustee.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Issuer, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto or any such other documentation as the retiring Trustee shall require wherein each successor Trustee shall accept such appointment and that (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) shall contain such provisions as shall be necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary or desirable to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; provided, however, that nothing herein or in such supplemental Indenture shall constitute such Trustee co-trustees of the same trust and that each such Trustee shall be trustee of a trust hereunder separate and apart from any trust hereunder administered by any other such Trustee.

Upon the execution and delivery of such supplemental Indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

SECTION 7.09 Successor Trustee by Merger, Etc.

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

SECTION 7.10 Eligibility; Disqualification.

Each series of Securities shall always have a Trustee who satisfies the requirements of TIA Section 310(a)(1) and (2). The Trustee as to any series of Securities shall always have a combined capital and surplus of at least $100,000,000 as set forth in its most recent published annual report of condition. The Trustee is subject to TIA Section 310(b), including, but not limited to, the provision in Section 310(b)(1).

SECTION 7.11 Preferential Collection of Claims Against the Issuer.

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 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 Securities (whether such sums have been paid to it by the Issuer or by any obligor on the Securities) 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 Securities) in the payment of any installment of the principal of, premium, if any, or interest on, the Securities when the same shall be due and payable.

ARTICLE 8
SATISFACTION AND DISCHARGE; DEFEASANCE

SECTION 8.01 Satisfaction and Discharge.

This Indenture will be discharged and will cease to be of further effect with respect to any series of Securities issued hereunder, when either:

(1) all Securities of such series that have been authenticated (except lost, stolen or destroyed Securities that have been replaced or paid and Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer) have been delivered to the Trustee for cancellation; or

(2) (a) all Securities of such series that have not been delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise or will become due and payable within one year and the Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Securities not delivered to the Trustee for cancellation for principal, premium and accrued interest to the date of maturity or redemption,

(b) no Default or Event of Default with respect to such series of Securities shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other material instrument to which the Issuer or any Guarantor is a party to or by which the Issuer or any Guarantor is bound;

(c) the Issuer or any Guarantor has paid or caused to be paid all sums payable by it under this Indenture with respect to such series of Securities; and

(d) the Issuer has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Securities of such series at maturity or the redemption date, as the case may be.

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

Notwithstanding, the satisfaction and discharge of this Indenture with respect to a series of Securities, if money shall have been deposited with the Trustee pursuant to subclause (a) of clause (2) of this Section, the provisions of Section 8.06 shall survive.

SECTION 8.02 Option to Effect Legal Defeasance or Covenant Defeasance.

Unless Section 8.03 or 8.04 is otherwise specified to be inapplicable to Securities of a series, the Issuer may, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, at any time, elect to have either Section 8.03 or 8.04 hereof be applied to all outstanding Securities of any such series upon compliance with the conditions set forth below in this Article Eight.

SECTION 8.03 Legal Defeasance and Discharge.

Upon the Issuer's exercise under Section 8.02 hereof of the option applicable to this Section 8.03, the Issuer and any Guarantor shall, subject to the satisfaction of the conditions set forth in Section 8.05 hereof, be deemed to have been discharged from their respective obligations with respect to all outstanding Securities of any series on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer and any Guarantor shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Securities of a series, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.06 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Securities and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Securities to receive solely from the trust fund described in Section 8.05 hereof, and as more fully set forth in such Section, payments in respect of the principal of, premium and interest on such Securities when such payments are due, (b) the Issuer's obligations with respect to such Securities under Article 2 and Section 4.03 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuer's or any Guarantors' obligations in connection therewith and (d) this Article Eight. Subject to compliance with this Article Eight, the Issuer may exercise its option under this Section 8.03 notwithstanding the prior exercise of its option under Section 8.04 hereof.

SECTION 8.04 Covenant Defeasance.

Upon the Issuer's exercise under Section 8.02 hereof of the option applicable to this Section 8.04, the Issuer or any Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.05 hereof, be released from their respective obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.06, 4.07 and 4.08, and Section 5.01 hereof with respect to the outstanding Securities of any series on and after the date the conditions set forth in Section 8.05 are satisfied (hereinafter, "Covenant Defeasance"), and the Securities of such series shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Securities shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Securities of any series, the Issuer or any Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.02 hereof of the option applicable to this Section 8.04 hereof, subject to the satisfaction of the conditions set forth in Section 8.05 hereof, Sections 6.01(3) through 6.01(6) hereof shall not constitute Events of Default.

SECTION 8.05 Conditions to Legal or Covenant Defeasance.

The following shall be the conditions to the application of either Section 8.03 or 8.04 hereof to the outstanding Securities of any series. In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in United States dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium and interest on the outstanding Securities on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(b) in the case of an election under Section 8.03 hereof, 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 federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Securities will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.04 hereof, 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 of the outstanding Securities will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the incurrence of Indebtedness all or a portion of the proceeds of which will be used to defease the Securities pursuant to this Article Eight concurrently with such incurrence) or insofar as Sections 6.01(4) or 6.01(5) hereof is concerned, at any time in the period ending on the 91st day after the date of deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;

(f) the Issuer shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders over any other creditors of the Issuer or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer; and

(g) the Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

SECTION 8.06 Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions

Subject to Section 8.07 hereof, all money and non-callable U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.06, the "Trustee") pursuant to Section 8.01 or Section 8.05 hereof in respect of the outstanding Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable U.S. Government Obligations deposited pursuant to Section 8.05 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

Anything in this Article Eight to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the request of the Issuer any money or non-callable U.S. Government Obligations held by it as provided in Section 8.05 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.05(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.07 Repayment to the Issuer.

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium, if any, or interest on any Securities and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable shall be paid to the Issuer on its request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Securities shall thereafter look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in the New York Times and The Wall Street Journal (national edition), 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 notification or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

SECTION 8.08 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable U.S. Government Securities in accordance with Sections 8.01, 8.03 or 8.04 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Sections 8.01, 8.03 or 8.04 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Sections 8.01, 8.03 or 8.04 hereof, as the case may be; provided, however, that, if the Issuer makes any payment of principal of, premium, if any, or interest on any Securities following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9
SUPPLEMENTS, AMENDMENTS AND WAIVERS

SECTION 9.01 Without Consent of Holders.

The Issuer and the Trustee as to any series of Securities may supplement or amend this Indenture or the Securities without notice to or the consent of any Securityholder:

(1) to cure any ambiguity, defect or inconsistency;

(2) to comply with Article 5;

(3) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the TIA;

(4) to provide for uncertificated Securities in addition to or in place of certificated Securities;

(5) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities; provided, however, that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no outstanding Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision;

(6) to make any change that does not adversely affect in any material respect the interests of the Securityholders of any series;

(7) to establish additional series of Securities as permitted by Section 2.01 hereof; or

(8) to add a Guarantor

SECTION 9.02 With Consent of Holders.

This Indenture or any series of Securities may be amended with the consent (which may include consents obtained in connection with a tender offer or exchange offer for that series of Securities) of the Holders of at least a majority in aggregate principal amount of the series of the Securities 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 Securities) with the consent (which may include consents obtained in connection with a tender offer or exchange offer for that series of Securities) of the Holders of a majority in aggregate principal amount of the Securities of that series then outstanding; provided that without the consent of each Holder affected, the Issuer and the Trustee may not:

(1) change the maturity of any Security;

(2) reduce the amount, extend the due date or otherwise affect the terms of any scheduled payment of interest on or principal of the Securities;

(3) reduce any premium payable upon optional redemption of the Securities, change the date on which any Securities are subject to redemption or otherwise alter the provisions with respect to the redemption of the Securities;

(4) make any Security payable in money or currency other than that stated in the Securities;

(5) modify or change any provision of this Indenture or the related definitions to affect the ranking of the Securities or any Security 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 Securities;

(7) impair the rights of Holders to receive payments of principal of or interest on the Securities;

(8) release any Guarantor from any of its obligations under its Security guarantee or this Indenture, except as permitted by this Indenture; or

(9) make any change in this Section 9.02.

After an amendment, supplement or waiver under this Section 9.02 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 9.06, the Trustee shall join with the Issuer and the Guarantors in the execution of such supplemental indenture unless such 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 9.03 Compliance with the Trust Indenture Act.

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

SECTION 9.04 Revocation and Effect of Consents.

Until an amendment or waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security; provided, however, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of a Security if the Trustee receives the written notice of revocation before the date on which the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver shall become effective in accordance with its terms and thereafter shall bind every Holder of Securities of that series.

SECTION 9.05 Notation on or Exchange of Securities.

If an amendment, supplement or waiver changes the terms of a Security: (a) the Trustee may require the Holder of the Security to deliver it to the Trustee, the Trustee may, at the written direction of the Issuer and at the Issuer's expense, place an appropriate notation on the Security about the changed terms and return it to the Holder and the Trustee may place an appropriate notation on any Security thereafter authenticated; or (b) if the Issuer or the Trustee so determines, the Issuer in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.06 Trustee to Sign Amendments, Etc.

Subject to the preceding sentence, the Trustee shall sign any amendment of supplement Indenture if the same does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Trustee may, but shall not be obligated to, execute any such amendment, supplement or waiver that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise. The Issuer may not sign an amendment or supplemental Indenture until the Board of Directors approves it. In executing any amended or supplemental Indenture, the Trustee shall be entitled to receive and (subject to Section 7.01) shall be fully protected in relying upon, in addition to the documents required by Section 11.04 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental Indenture is authorized or permitted by this Indenture and constitutes the legal, valid and binding obligation of the issuer, enforceable against it in accordance with its terms.

ARTICLE 10
GUARANTEES

SECTION 10.01 Guarantee.

Any series of Securities may be guaranteed by one or more of the Guarantors. The terms and the form of any such guarantee will be established in the manner contemplated by Section 2.01 for that particular series of Securities.

ARTICLE 11
MISCELLANEOUS

SECTION 11.01 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 provision of TIA Sections 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 11.02 Notices.

Any notice or communication is duly given if in writing and delivered in person or sent by first-class mail (registered or certified, return receipt requested), telecopier or overnight air courier guaranteeing next-day delivery, addressed as follows:

If to the Issuer and/or any Guarantor:

Meritage Homes Corporation
17851 N. 85th Street, Suite 300
Scottsdale, Arizona 85255
Attention: Chief Financial Officer

with a copy to:

Snell & Wilmer L.L.P.
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, AZ 85004-2202
Attention: Jeffrey E. Beck, Esq.

If to the Trustee:

Wells Fargo Bank, National Association
707 Wilshire Blvd., 17th Floor
Los Angeles, CA 90017
Attention: Corporate Trust Division, Meritage Administrator

The Issuer or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if telecopied; and the next business day after timely delivery to the courier, if sent by overnight air courier guaranteeing next-day delivery.

Any notice or communication to a Securityholder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to his address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Security holder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If the Issuer mails a notice or communication to Securityholders, it shall mail a copy to the Trustee at the same time. Any notice or communication shall also be mailed to any Person described in TIA Section 313(c), to the extent required by the TIA.

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

SECTION 11.03 Communication by Holders With Other Holders.

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

SECTION 11.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer to the Trustee to take any action under this Indenture, the Issuer shall furnish to the Trustee:

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

(b) an Opinion of Counsel, in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 11.05 hereof) stating that, in the opinion of such counsel, such action is authorized or permitted by this Indenture and that all such conditions precedent have been complied with.

SECTION 11.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to TIA Section 314(a)(4)) 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, he or she has made such examination or investigation as is necessary to enable him or her 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 condition or covenant has been complied with; provided, however, that with respect to matters of fact an Opinion of Counsel may rely on an officers' certificate or certificates of public officials.

SECTION 11.06 Rules by Trustee and Agents.

The Trustee as to Securities of any series may make reasonable rules for action by or at a meeting of Holders of Securities of that series. The Registrar and any Paying Agent or Authenticating Agent may make reasonable rules and set reasonable requirements for their functions.

SECTION 11.07 Legal Holidays.

A "Legal Holiday" is a Saturday, a Sunday or a day on which banking institutions in the City of New York, New York or at a place of payment are authorized by law, regulation or executive order to remain closed. 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 11.08 No Recourse Against Others.

No past, present or future director, officer, employee, manager, securityholder or incorporator, as such, of the Issuer or any successor Person shall have any liability for any obligations of the Issuer or any Guarantor under any series of Securities, any guarantees thereof, or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration of issuance of the Securities.

SECTION 11.09 Counterparts.

This Indenture may be executed 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. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 11.10 Governing Law.

The internal laws of the State of New York shall govern and be used to construe this Indenture and the Securities (including any guarantees thereof), without giving effect to the applicable principles of conflicts of laws to the extent that the application of the laws of another jurisdiction would be required thereby.

SECTION 11.11 Submission to Jurisdiction; Service of Process; Waiver of Jury Trial

Each party hereto hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State Court sitting in New York City for purposes of all legal proceedings arising out of or relating to this Indenture, the Securities (including any guarantee thereof) or the transactions contemplated hereby and thereby. **EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.** Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the State of New York. Without limiting the foregoing, the parties agree that service of process upon such party at the address referred to in Section 11.02, together with written notice of such service to such party, shall be deemed effective service of process upon such party. **EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES (INCLUDING ANY GUARANTEE THEREOF) OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.**

SECTION 11.12 Severability.

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

SECTION 11.13 Effect of Headings, Table of Contents, Etc.

The Article and Section headings herein and the table of contents are for convenience only and shall not affect the construction hereof.

SECTION 11.14 Successors and Assigns.

All covenants and agreements of the Issuer in this Indenture and the Securities shall bind its successors and assigns. All agreements of the Trustee in this Indenture shall bind its successor. All agreements of any Guarantor in this Indenture shall bind its successors, except as otherwise provided by the terms hereof.

SECTION 11.15 No Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Issuer or any subsidiary or of any Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 11.16 U.S.A. Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

SECTION 11.17 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signature Page Follows]

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

MERITAGE HOMES CORPORATION

By: /s/ Larry W. Seay
Name: Larry W. Seay
Title: Executive Vice President and Chief Financial Officer

MERITAGE PASEO CROSSING, LLC

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

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

MERITAGE PASEO CONSTRUCTION, LLC

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

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

MERITAGE HOMES OF ARIZONA, INC.

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

MERITAGE HOMES CONSTRUCTION, INC.

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

MERITAGE HOMES OF TEXAS HOLDING, INC.

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

MERITAGE HOMES OF CALIFORNIA, INC.

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

MERITAGE HOMES OF TEXAS JOINT VENTURE HOLDING COMPANY, LLC

By: Meritage Homes of Texas, LLC
Its: Sole Member

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOLDINGS, L.L.C.

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOMES OF NEVADA, INC.

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

MTH-CAVALIER, LLC

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

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

MTH GOLF, LLC

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

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

MERITAGE HOMES OF COLORADO, INC.

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

MERITAGE HOMES OF FLORIDA, INC.

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

CALIFORNIA URBAN HOMES, LLC

By: Meritage Homes of California, Inc.
Its: Sole Member and Manager

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

MERITAGE HOMES OF TEXAS, LLC

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOMES OPERATING COMPANY, LLC

By: Meritage Holdings, L.L.C.
Its: Manager

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

WW PROJECT SELLER, LLC

By: Meritage Paseo Crossing, LLC
Its: Sole Member

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

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

MERITAGE HOMES OF NORTH CAROLINA, INC.

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

CAREFREE TITLE AGENCY, INC.

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

M&M FORT MYERS HOLDINGS, LLC

By: Meritage Paseo Crossing, LLC
Its: Sole Member and Manager

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

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

MERITAGE HOMES OF FLORIDA REALTY LLC

By: Meritage Homes of Florida, Inc.
Its: Sole Member and Manager

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

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Maddy Hall
Name: Maddy Hall
Title: Vice President

EXHIBIT 4.2

EXECUTION COPY

MERITAGE HOMES CORPORATION,

as Issuer,

THE GUARANTORS NAMED HEREIN

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

as Trustee

SUPPLEMENTAL INDENTURE NO. 1

DATED AS OF SEPTEMBER 18, 2012

TO INDENTURE

DATED AS OF SEPTEMBER 18, 2012

Relating To

1.875% Convertible Senior Notes Due 2032

TABLE OF CONTENTS

SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE NO. 1, dated as of September 18, 2012 (the "Supplemental Indenture"), to the Indenture (defined below) among Meritage Homes Corporation (the "Issuer"), a Maryland corporation, each of the Guarantors named herein (the "Guarantors"), and Wells Fargo Bank, National Association, as trustee (the "Trustee").

RECITALS

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee an Indenture, dated as of September 18, 2012 (the "Base Indenture"), providing for the issuance from time to time of its notes and other evidences of senior debt securities, to be issued in one or more series as therein provided ("Securities");

WHEREAS, pursuant to the terms of the Base Indenture, the Issuer desires to provide for the establishment of a new series of its Securities to be known as its 1.875% Convertible Senior Notes due 2032 (the "Notes"), the form and substance of such Notes and the terms, provisions and conditions thereof to be set forth as provided in the Base Indenture and this Supplemental Indenture (together, the "Indenture");

WHEREAS, pursuant to the terms of the Notes, the Guarantors will fully and unconditionally guarantee the obligations of the Issuer under the Notes and the Indenture, on a senior and unsubordinated basis (the "Guarantees"); and

WHEREAS, the Issuer has requested that the Trustee execute and deliver this Supplemental Indenture and all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms, and to make the Notes, when executed by the Issuer and authenticated and delivered by the Trustee, the valid obligations of the Issuer, and to make the Guarantees, when executed by the Guarantors and when the Notes are authenticated and delivered by the Trustee, the valid obligations of the Guarantors, and all acts and things necessary have been done and performed to make this Supplemental Indenture enforceable in accordance with its terms, and the execution and delivery of this Supplemental Indenture has been duly authorized in all respects.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the premises contained herein, each party agrees for the benefit of each other party and for the equal and ratable benefit of the Holders, as follows:

ARTICLE ONE

DEFINITIONS

Section 1.01 Capitalized Terms. Capitalized terms used but not defined in this Supplemental Indenture shall have the meanings ascribed to them in the Base Indenture.

Section 1.02 References. References in this Supplemental Indenture to article and section numbers shall be deemed to be references to article and section numbers of this Supplemental Indenture unless otherwise specified.

Section 1.03 Definitions. For purposes of this Supplemental Indenture, the following terms have the meanings ascribed to them as follows:

"Additional Interest" has the meaning provided in Section 7.03.

"Additional Shares" has the meaning provided in Section 5.07(a).

"Adjusted Net Assets" of a Guarantor at any date shall mean the lesser of the amount by which (x) the fair value of the assets of such Guarantor exceeds the total amount of liabilities, including, without limitation, contingent liabilities (after giving effect to all other fixed and contingent liabilities incurred or assumed on such date and after giving effect to any collection from any other Subsidiary of the Guarantor in respect of the Guaranteed Obligations), but excluding liabilities under the Guarantee of the Notes, 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 (after giving effect to all other fixed and contingent liabilities incurred or assumed on such date and after giving effect to any collection from any other Subsidiary of the Issuer in respect of the Guaranteed Obligations of such Guarantor), excluding debt in respect of the Guarantee of the Notes of such Guarantor, as they become absolute and matured.

"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 Issuer 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 Issuer or a Restricted Subsidiary, any member in such Person which is an affiliate of the Issuer or a Restricted Subsidiary, or any other affiliate of the Issuer or a Restricted Subsidiary, or (ii) the Issuer or a Restricted Subsidiary, any member in such Person which is an affiliate of the Issuer or a Restricted Subsidiary, or any other affiliate of the Issuer 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.

"Base Indenture" has the meaning provided in the recitals.

"Beneficial Owner" has the meaning provided in Section 2.03.

"Business Day" means any day other than (x) a Saturday, (y) Sunday or (z) a day on which state or federally chartered banking institutions or the Corporate Trust Office in New York, New York are not required to be open.

"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.

A "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) any Permitted Holder has, or any Permitted Holders have, become the direct or indirect beneficial owners of our common equity representing more than 80%, in the aggregate, of the total outstanding Voting Stock of the Issuer;

(3) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (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;

(4) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, or other property or assets; (B) any consolidation, merger, combination or binding share exchange of the Issuer pursuant to which the Common Stock will be converted into, or exchanged for, cash, stock, other securities, or other property or assets; or (C) any sale, assignment, conveyance, transfer, lease or other disposition, in one transaction or a series of transactions, of all or substantially all of the consolidated assets of the Issuer and its subsidiaries, taken as a whole, to any person other than one of its subsidiaries; *provided* that a transaction described in clause (B) above pursuant to which the persons that "beneficially owned," directly or indirectly, the shares of the Issuer's Voting Stock immediately prior to such transaction "beneficially own," directly or indirectly, shares of Voting Stock representing at least a majority of the total voting power of all outstanding classes of Voting Stock of the surviving or transferee person and such holders' proportional voting power immediately after such transaction vis-à-vis each other with respect to the securities they receive in such transaction will be in substantially the same proportions as their respective voting power *vis- à -vis* each other immediately prior to such transaction will not constitute a "Change of Control"; or

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

However, notwithstanding the foregoing, a "Change of Control" will not be deemed to have occurred if at least 90% of the consideration paid for the Common Stock in a transaction or transactions described under clause (4) of the definition of "Change of Control" above, excluding cash payments for any fractional share and cash payments made pursuant to dissenters' appraisal rights, consists of shares of common stock traded on The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors), or will be so traded immediately following such transaction, and, as a result therefrom, such consideration becomes the Reference Property for the Notes.

"Clause A Distribution" has the meaning provided in 5.05(c)(A).

"Clause B Distribution" has the meaning provided in 5.05(c)(A).

"Clause C Distribution" has the meaning provided in 5.05(c)(A).

"Close of Business" means 5:00 p.m., New York City time.

"Closing Sale Price" of the Common Stock on any date means the closing per share sale price (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) at 4:00 p.m., New York City time, on such date as reported in composite transactions for The New York Stock Exchange or, if the Common Stock is not listed on The New York Stock Exchange, the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading or, if the Common Stock is not listed on a U.S. national or regional securities exchange, as reported by OTC Markets Group Inc. at 4:00 p.m., New York City time, on such date (or in either case the then-standard closing time for regular trading on the relevant exchange or trading system). If the closing sale price of the Common Stock is not so reported, the "Closing Sale Price" will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Issuer for this purpose.

"Common Stock" means the Issuer's common stock, $0.01 par value per share.

"Conversion Agent" has the meaning provided in Section 2.05.

"Conversion Date" means the date a Holder complies with the relevant procedures for conversion.

"Conversion Notice" means a "Conversion Notice" in the form attached to Exhibit B attached hereto.

"Conversion Price" of a Note at any time is equal to $1,000 divided by the Conversion Rate in effect at such time.

"Conversion Rate" shall initially be 17.1985 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment as provided in Article Five.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"Depositary" has the meaning provided in Section 2.03.

"Effective Date" has the meaning provided in Section 5.07(b).

"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.

"Event of Default" has the meaning provided in Section 7.01.

"Ex-Dividend Date" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Issuer or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"Expiration Date" has the meaning provided in Section 5.05(e).

"Expiration Time" has the meaning provided in Section 5.05(e).

"Financial Services Subsidiary" means a Subsidiary engaged exclusively in mortgage banking (including mortgage origination, loan servicing, mortgage brokerage and title and escrow businesses), master servicing and related activities, including, without limitation, a Subsidiary which facilitates the financing of mortgage loans and mortgage-backed securities and the securitization of mortgage-backed bonds and other activities ancillary thereto.

"Fundamental Change" means the occurrence of a Change of Control or a Termination of Trading.

"Fundamental Change Notice" has the meaning provided in Section 3.08(c).

"Fundamental Change Purchase Date" has the meaning provided in Section 3.08(a).

"Fundamental Change Purchase Notice" has the meaning provided in Section 3.08(b).

"Fundamental Change Purchase Price" has the meaning provided in Section 3.08(a).

"Fundamental Change Purchase Right" has the meaning provided in Section 3.08(a).

"Guaranteed Obligations" has the meaning provided in Section 6.01.

"Guarantees" has the meaning provided in the recitals.

"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 the indenture after the Issue Date, in each case, until such Person is released from its guarantee.

"Holder" means a Person in whose name a Note is registered on the Registrar's books.

"Indebtedness" means:

(1) any liability of any person:

(A) for borrowed money, or

(B) evidenced by a bond, note, debenture or similar instrument (including a purchase money obligation) given connection with the acquisition of any businesses, properties or assets of any kind (other than a trade payable or a current liability arising in the ordinary course of business), or

(C) for the payment of money relating to a Capitalized Lease Obligation, or

(D) for all Redeemable Capital Stock valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(2) any liability of others described in the preceding clause (1) that such person has guaranteed or that is otherwise its legal liability*provided*, *however*, that a Springing Guarantee shall not be deemed to be Indebtedness under this clause (2) 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;

(3) all Indebtedness referred to in (but not excluded from) clauses (1) and (2) above of other persons and all dividends of other persons, the payment of which is secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including, without limitation, accounts and contract rights) owned by such person, even though such person has not assumed or become liable for the payment of such Indebtedness; and

(4) any amendment, supplement, modification, deferral, renewal, extension or refunding or any liability of the types referred to in clauses (1), (2) and (3) above.

"Indenture" has the meaning provided in the recitals.

"Interest Payment Date" has the meaning provided in Section 2.04.

"Investment Basket" has the meaning provided in the definition of Unrestricted Subsidiary.

"Issue Date" means September 18, 2012.

"Issuer" has the meaning provided in the preamble.

"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).

"Make-Whole Adjustment Event" means (i) any Change of Control (determined after giving effect to any exceptions or exclusions from such definition but without giving effect to the proviso in clause (4) of the definition thereof) and (ii) any Termination of Trading.

"Make-Whole Conversion Period" has the meaning provided in Section 5.07(a).

"Maturity Date" means September 15, 2032.

"Non-Recourse Land Financing" means any Indebtedness of the Issuer or any Restricted Subsidiary for which the holder of such Indebtedness has no recourse, directly or indirectly, to the Issuer or such Restricted Subsidiary for the principal of, premium, if any, and interest on such Indebtedness, and for which the Issuer or such Restricted Subsidiary is not, directly or indirectly, obligated or otherwise liable for the principal of, premium, if any, and interest on such Indebtedness, except pursuant to mortgages, deeds of trust or other Liens or other recourse obligations or liabilities in respect of specific land or other real property interests of the Issuer or such Restricted Subsidiary; *provided* that recourse obligations or liabilities of the Issuer or such Restricted Subsidiary solely for indemnities, covenants (including, without limitation, performance, completion or similar covenants), or breach of any warranty, representation or covenant in respect of any Indebtedness, including liability by reason of any agreement by the Issuer or any Restricted Subsidiary to provide additional capital or maintain the financial condition of or otherwise support the credit of the Person incurring the Indebtedness, will not prevent Indebtedness from being classified as Non-Recourse Land Financing.

"Notes" has the meaning provided in the recitals.

"Open of Business" means 9:00 a.m., New York City time.

"Optional Repurchase Date" has the meaning provided in Section 3.07(a).

"Optional Repurchase Exercise Notice" has the meaning provided in Section 3.07(b).

"Optional Repurchase Notice" has the meaning provided in Section 3.07(d).

"Optional Repurchase Price" has the meaning provided in Section 3.07(a).

"Optional Repurchase Right" has the meaning provided in Section 3.07(a).

"Permitted Exchange" has the meaning provided in the definition of Termination of Trading.

"Permitted Holders" means Steven J. Hilton, his wife and children, any corporation, limited liability company or partnership in which he has voting control and is the direct and beneficial owner of a majority of the Equity Interests and any trust for the benefit of him or his wife or children.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

"Record Date" means, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock have the right to receive any cash, securities or other property or in which Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or a duly authorized committee thereof, statute, contract or otherwise).

"Redeemable Capital Stock" means any capital stock of the Issuer or any Subsidiary that, either by its terms, by the terms of any security into which it is convertible or exchangeable or otherwise, (1) is or upon the happening of an event or passage of time would be required to be redeemed on or prior to the final stated maturity of the securities or (2) is redeemable at the option of the holder thereof at any time prior to such final stated maturity or (3) is convertible into or exchangeable for debt securities at any time prior to such final stated maturity.

"Redemption Date" has the meaning provided in Section 3.01(a).

"Redemption Notice" has the meaning provided in Section 3.01(b).

"Redemption Price" has the meaning provided in Section 3.01(a).

"Reference Property" has the meaning provided in Section 5.06.

"Regular Record Date" has the meaning provided in Section 2.04.

"Relevant Distribution" has the meaning provided in Section 5.05(c).

"Restricted Subsidiary" means any Subsidiary of the Issuer, which is not: (i) a Financial Services Subsidiary or (ii) an Unrestricted Subsidiary.

"Section 382 Limitation" has the meaning provided in Section 5.02.

"Securities" has the meaning provided in the recitals.

"Settlement Amount" means the shares of Common Stock (along with the cash payment in lieu of any fractional share) the Issuer is required to deliver upon conversion of the Notes.

"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 of 1933 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 (ix) or (x) under "Events of Default" has occurred and is continuing, would constitute a Significant Subsidiary under clause (1) of this definition.

"Spin-Off" has the meaning provided in Section 5.05(c)(B).

"Springing Guarantee" means a guarantee by a Person which by its express terms does not become effective until the occurrence of a Bankruptcy Event.

"Stock Price" has the meaning provided in Section 5.07(b).

"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 or comparable governing body 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 one or more Subsidiaries of such Person (or any combination thereof).

Unless otherwise specified, "Subsidiary" refers to a Subsidiary of the Issuer.

"Successor" has the meaning provided in Article Four.

"Supplemental Indenture" has the meaning provided in the preamble.

"Termination of Trading" means the Common Stock (or Reference Property into which the Notes are convertible) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors, a "Permitted Exchange"), or the announcement by any such exchange on which the Common Stock (or such Reference Property) is trading that the Common Stock (or such Reference Property) will no longer be listed or admitted for trading and will not be immediately relisted or readmitted for trading on any Permitted Exchange.

"Trading Day" means a day on which (i) The New York Stock Exchange or, if the Common Stock is not listed on The New York Stock Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading, in each case, with a scheduled closing time of 4:00 p.m., New York City time, or the then-standard closing time for regular trading on the relevant exchange or market and (ii) a Closing Sale Price for the Common Stock is available on such securities exchange or market. If the Common Stock is not so listed, a "trading day" means any Business Day.

"Trigger Event" has the meaning provided in Section 5.05(c)(A).

"Trustee" has the meaning provided in the preamble.

"Unrestricted Subsidiary" means a Subsidiary designated by the Issuer (evidenced by resolutions of the Board of Directors of the Issuer, delivered to the trustee certifying compliance with this definition) as a Subsidiary resulting from any investment (including any guarantee of indebtedness) made by the Issuer or any Restricted Subsidiary of the Issuer in joint ventures engaged in homebuilding, land acquisition or land development businesses and businesses that are reasonably related thereto or reasonable extensions thereof with unaffiliated third parties; *provided* that the aggregate amount of investments in all Unrestricted Subsidiaries shall not exceed (i) $15 million or (ii) such lesser amount as may be applicable to the corresponding investment limitation in any other capital markets Indebtedness (other than Non-Recourse Land Financing) of the Issuer or any of its Restricted Subsidiaries which is outstanding on the Issue Date (with the amount of each investment being calculated based upon the amount of investments made on or after the date such joint venture becomes a Subsidiary) (the "Investment Basket"); *provided*, *further* that if the Issuer subsequently designates a Subsidiary, which previously had been designated an Unrestricted Subsidiary, to be a Restricted Subsidiary (evidenced by resolutions of the Board of Directors of the Issuer, delivered to the trustee certifying compliance with this definition) and causes such Subsidiary to comply with Section 10.02, then the amount of any investments in such Unrestricted Subsidiary made on or after the date such joint venture became a Subsidiary shall be credited against the Investment Basket (up to a maximum amount of (i) $15 million or (ii) such lesser amount as may be applicable to the corresponding investment limitation in any other capital markets Indebtedness (other than Non-Recourse Land Financing) of the Issuer or any of its Restricted Subsidiaries which is outstanding on the Issue Date). As of the Issue Date, Buckeye Land, L.L.C., Arcadia Ranch L.L.C. and Sundance Buckeye, LLC are designated as Unrestricted Subsidiaries.

"Valuation Period" has the meaning provided in Section 5.05(c).

"Voting Stock" means any class or classes of capital stock pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of any person (irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

"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 1.04 References to Interest. Any reference to interest on, or in respect of, any Note in this Supplemental Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 7.03. Any express mention of the payment of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE TWO

GENERAL TERMS AND CONDITIONS OF THE NOTES

Section 2.01 Designation and Principal Amount.

The Notes are hereby authorized and are designated the "1.875% Convertible Senior Notes due 2032." The Notes issued on the Issue Date pursuant to the terms of this Indenture will be in an aggregate principal amount of up to $126,500,000, which amount shall be set forth in a written order of the Issuer for the authentication and delivery of the Notes pursuant to Section 2.02 of the Base Indenture. In addition, the Issuer may from time to time, without the consent of the Holders, reopen the Indenture and issue additional Notes under the Indenture with the same terms (other than the date of issuance and, in some cases, the date from which interest will initially accrue) as the Notes issued on the Issue Date in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes issued on the Issue Date for U.S. federal income tax purposes, such additional Notes will have a separate CUSIP number.

Section 2.02 Maturity.

The principal amount of the Notes will be payable on the Maturity Date.

Section 2.03 Form and Payment.

The Notes will be issued as global notes, in fully registered book-entry form without coupons in denominations of $2,000 and integral multiples of $1,000.

Principal and/or interest, if any, on the global notes representing the Notes will be made to The Depository Trust Company (the "Depositary").

The global notes representing the Notes will be deposited with, or on behalf of, the Depositary and will be registered in the name of the Depositary or a nominee of the Depositary. No global note may be transferred except as a whole by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or such nominee to a successor of the Depositary or a nominee of such successor.

So long as the Depositary or its nominee is the registered owner of a global note, the Depositary or its nominee, as the case may be, will be the sole Holder of the Notes represented thereby for all purposes under the Indenture. Except as otherwise provided herein, each actual

purchaser of each Note represented by a global note ("Beneficial Owner") will not be entitled to receive physical delivery of certificated Notes and will not be considered the Holders thereof for any purpose under the Indenture, and no global note representing the Notes shall be exchangeable or transferable. Accordingly, each Beneficial Owner must rely on the procedures of the Depositary and, if such Beneficial Owner is not a participant, on the procedures of the participant through which such Beneficial Owner owns its interest in order to exercise any rights of a Holder under such global note or the Indenture.

The global notes representing the Notes will be exchangeable for certificated Notes of like tenor and terms and of differing authorized denominations aggregating a like principal amount, only if (i) the Depositary notifies the Issuer that it is unwilling or unable to continue as Depositary for the global debt securities and a successor to the Depositary is not appointed within 90 days, (ii) the Depositary ceases to be a clearing agency registered under the Exchange Act and a successor to the Depository is not appointed by the Issuer within 90 days or (iii) there shall have occurred and be continuing an Event of Default under the Indenture with respect to the Notes and any Beneficial Owner requests that its Notes be issued in physical, certificated form. Upon any such exchange, the certificated Notes shall be registered in the names of the Beneficial Owners of the global notes representing the Notes, which names shall be provided by the Depositary's relevant participants (as identified by the Depositary) to the Trustee. In such event the Issuer will execute, and subject to Section 2.03 of the Base Indenture, the Trustee, upon receipt of an Officer's Certificate evidencing such determination by the Issuer, will authenticate and deliver the Notes in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the global notes in exchange for such global notes. Upon the exchange of the global notes for such Notes in definitive registered form without coupons, in authorized denominations, the global notes shall be cancelled by the Trustee. Such Notes in definitive registered form issued in exchange for the global notes shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee in writing. The Trustee shall deliver such Notes to the Depositary for delivery to the Persons in whose names such Notes are so registered.

Section 2.04 Interest.

The Notes shall bear interest at a rate equal to 1.875% per year. Interest on the Notes shall accrue from September 18, 2012, or from the most recent Interest Payment Date to which interest has been paid or duly provided upon for the Notes, as the case may be. Interest on the Notes shall be payable semi-annually in arrears on September 15 and March 15 or if any such day is not a Business Day, the immediately succeeding Business Day, commencing March 15, 2013 (each an "Interest Payment Date"), to the persons in whose names the Notes are registered at the Close of Business on September 1 and March 1 (whether or not a Business Day), as the case may be, preceding such Interest Payment Date (a "Regular Record Date").

Section 2.05 Transfer, Exchange and Conversion.

In addition to its obligations under Section 4.02 of the Base Indenture, the Issuer shall also cause to be kept at one of the offices or agencies maintained pursuant to Section 4.02 of the Base Indenture an office where Notes may be presented for conversion (the "Conversion Agent").

The Issuer initially appoints the Trustee as Paying Agent, Registrar and Conversion Agent for the Notes.

The Issuer reserves the right to:

(a) vary or terminate the appointment of the Registrar, Paying Agent or Conversion Agent;

(b) appoint additional Paying Agents or Conversion Agents; or

(c) approve any change in the office through which any Registrar or any Paying Agent or Conversion Agent acts.

The Issuer shall not be required to transfer or exchange any Note surrendered for purchase or conversion except for any portion of that Note not being purchased or converted, as the case may be.

Section 2.06 Purchase and Cancellation.

Each of the Registrar, Paying Agent and Conversion Agent (if other than the Trustee) will forward to the Trustee any Notes surrendered to it by Holders for transfer, exchange, payment or conversion. All Notes delivered to the Trustee shall be cancelled promptly by the Trustee in the manner provided in the Base Indenture and may not be reissued or resold. No Notes shall be authenticated in exchange for any Notes cancelled, except as provided in the Base Indenture.

ARTICLE THREE

REDEMPTION AND REPURCHASE

Section 3.01 Optional Redemption.

(a) Prior to September 20, 2017, the Issuer may not redeem the Notes. On or after September 20, 2017 and prior to the Maturity Date, the Issuer shall have the right, at the Issuer's option, at any time, and from time to time (each such date, a "Redemption Date"), to redeem all or part of the Notes for cash at a price (the "Redemption Price") equal to 100% of the principal amount of the Notes being redeemed, plus accrued and unpaid interest to, but excluding, the applicable Redemption Date (unless the Redemption Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, in which case interest accrued to, but excluding, the Interest Payment Date will be paid to the Holders of such Notes as of the preceding Regular Record Date, and the price the Issuer is required to pay to the Holder of such Notes being redeemed will be equal to 100% of the principal amount of Notes being redeemed and shall not include any accrued and unpaid interest).

(b) At least 30 days but not more than 60 days before a Redemption Date, the Issuer shall mail to the Trustee, the Paying Agent and to each Holder whose securities are to be redeemed a written notice of redemption (the "Redemption Notice"). Such notice shall state certain specified information, including:

(a) the Redemption Date;

(b) the Redemption Price;

(c) the procedures a Holder must follow to have its Notes redeemed;

(d) the paragraph of the Notes pursuant to which the Notes are to be redeemed;

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

(f) the CUSIP number or numbers, as the case may be, of the Notes to be redeemed; and

(g) the name and address of the Paying Agent and the procedures that Holders must follow in order to receive the Redemption Price; and

(h) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and that on and after the Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

(c) At the Issuer's request, upon written notice at least 45 days, but not more than 60 days, prior to the Redemption Date, the Trustee shall mail the Redemption Notice in the Issuer's name and at the Issuer's expense; *provided, however*, that the form and content of such notice shall be prepared by the Issuer.

Section 3.02 Notice to Trustee. If the Issuer elects to redeem Notes pursuant to Section 3.01(a), it shall notify the Trustee of the Redemption Date, the applicable provision of this Indenture pursuant to which the redemption is to be made and the aggregate principal amount of Notes to be redeemed, which notice shall be provided to the Trustee by the Issuer 15 days prior to the mailing of the Redemption Notice (unless a shorter notice period shall be satisfactory to the Trustee).

Section 3.03 Selection of Notes to be Redeemed. If the Issuer has elected to redeem fewer than all the Notes pursuant to Section 3.01(a), the Trustee shall, within five Business Days after receiving the notice specified in Section 3.02, select the Notes to be redeemed by lot, *provided* that so long as the Notes are global Notes, such selection shall be made in accordance with the Depositary's applicable procedures. Notes selected for redemption shall be in amounts of $1,000 principal amount or integral multiples of $1,000. The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption and the principal amount thereof to be redeemed. The Registrar need not register the transfer of or exchange any Notes that have been selected for redemption, except the unredeemed portion of the Notes being redeemed in part.

Section 3.04 Effect of Redemption Notice.

(a) Each Holder of Notes being redeemed shall receive payment of the Redemption Price on the later of (i) the Redemption Date, and (ii) the time of book-entry transfer or the delivery of such Holder's Notes to the Paying Agent (except that, if the Redemption Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, then accrued and unpaid interest on such Notes to, but excluding, such Interest Payment Date will be paid, on such Interest Payment Date to the Holder(s) of such Notes at the Close of Business on such Regular Record Date without any requirement to surrender such Notes to the Paying Agent). The Paying Agent shall return to the Issuer, as soon as practicable and upon receipt of written instructions, any money not required for that purpose. If the Paying Agent holds money on the Redemption Date sufficient to pay the Redemption Price of the Notes being redeemed, then:

(a) such Notes shall cease to be outstanding and interest shall cease to accrue (whether or not book-entry transfer of the Notes has been made or whether or not the Notes have been delivered to the Paying Agent); and

(b) all other rights of the Holders of such Notes shall terminate (other than the right to receive the Redemption Price and, if the Redemption Date is after a Regular Record Date and on or prior to the related Interest Payment Date, the right of the Holder on such Regular Record Date to receive the related interest payment).

(b) If the Issuer calls any or all of the Notes for redemption pursuant to Section 3.01(a), the right to convert the Notes called for redemption in accordance with Article Five of this Supplemental Indenture shall expire at the Close of Business on the second Business Day prior to the Redemption Date, unless the Issuer defaults in the payment of the Redemption Price, in which case a Holder of such Notes may convert them until the Redemption Price has been paid or duly provided for in accordance with Section 3.04(a).

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 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.

Section 3.06 Notes Redeemed in Part.

(a) Any Note that is to be redeemed only in part shall be delivered pursuant to Section 3.03 (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or its attorney duly authorized in writing), and the Issuer shall promptly execute, and the

Trustee shall promptly authenticate and make available for delivery to the Holder of such Note, without service charge to the Holder, a new Note or Notes, of any authorized denomination as requested by such Holder, of the same tenor and in aggregate principal amount equal to the portion of such Note not being redeemed.

(b) If the Trustee (or, in the case of Global Securities, the Depositary) selects a portion of a Holder's Notes for partial redemption pursuant to Section 3.03 and the Holder exchanges a portion of its Notes, the exchanged portion will be deemed to be from the portion selected for redemption.

Section 3.07 Repurchase at Option of Holders.

(a) On each of September 15, 2017, September 15, 2022 and September 15, 2027 (each, an 'Optional Repurchase Date") each Holder shall have the right to require the Issuer to purchase for cash (an "Optional Repurchase Right") all or any portion of such Holder's Notes that is equal to $1,000, or an integral multiple of $1,000, at a purchase price ("Optional Repurchase Price") equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest to, but excluding, the Optional Repurchase Date (unless the Optional Repurchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, in which case interest accrued to, but excluding, the Interest Payment Date shall be paid to the Holders of such Notes as of the preceding Regular Record Date, and the price the Issuer is required to pay to the Holder surrendering the Notes for purchase shall be equal to 100% of the principal amount of Notes subject to purchase and shall not include any accrued and unpaid interest).

(b) To exercise its Optional Repurchase Right, for Notes held in book entry form, in accordance with the Depositary's applicable procedures. For certificated Notes, a Holder must deliver written notice (an "Optional Repurchase Exercise Notice") of its exercise of the Optional Repurchase Right to the Paying Agent , in the form set forth in the global note attached as Exhibit B to this Supplemental Indenture, in each case duly completed and signed, with appropriate signature guarantee, specifying the Notes for which the Optional Repurchase Right is being exercised, at any time from the Open of Business on the date that is 20 Business Days prior to the relevant Optional Repurchase Date until the Close of Business on the Business Day immediately preceding such Optional Repurchase Date. Such Optional Repurchase Exercise Notice shall state:

(a) if such Notes are represented by certificates, the certificate number(s) of the Notes that the Holder will deliver to be repurchased, if such Notes are Global Securities, the Optional Repurchase Exercise Notice must comply with appropriate Depositary procedures;

(b) the portion of the principal amount of Notes to be repurchased, which must be in a minimum principal amount of $1,000 or an integral multiple of $1,000; and

(c) that such Notes are to be repurchased pursuant to the terms and conditions specified in this Section 3.07.

(c) Any Holder that has delivered an Optional Repurchase Exercise Notice in accordance with Section 3.07(b) shall have the right to withdraw such Optional Repurchase Exercise Notice in whole or in part by delivery, at any time prior to Close of Business on the Business Day immediately preceding the Optional Repurchase Date, which withdrawal notice shall state:

(a) the principal amount of the Notes of such Holder to be so withdrawn, which amount must be $1,000 or an integral multiple thereof;

(b) if such Notes are certificated Notes, the certificate number(s) of such Notes to be so withdrawn; if such Notes are Global Securities, the withdrawal notice must comply with appropriate Depositary procedures; and

(c) the principal amount of the Notes that remain subject to the Option Repurchase Exercise Notice, if any, delivered by such Holder in accordance with Section 3.07(b), which amount must be $1,000 or an integral multiple thereof.

(d) The Issuer shall mail to the Trustee, the Paying Agent and to each Holder a written notice of each Holder's Optional Repurchase Right (the "Optional Repurchase Notice") not less than 20 Business Days prior to each Optional Repurchase Date. The Optional Repurchase Notice shall state:

(a) the last date on which a Holder may exercise its Optional Repurchase Right;

(b) the Optional Repurchase Price;

(c) the Optional Repurchase Date;

(d) the procedures required for exercise of the Optional Repurchase Right, and the procedures required for withdrawal of any such exercise; and

(e) the name and address of the Paying Agent.

No failure of the Issuer to give an Optional Repurchase Notice shall limit any Holder's right pursuant hereto to exercise its Optional Repurchase Right.

(e) The Issuer shall be required to purchase Notes that have been validly surrendered for purchase and not withdrawn on the Optional Repurchase Date. Each Holder shall receive payment of the Optional Repurchase Price on the later of (i) the Optional Repurchase Date and (ii) the time of book-entry transfer or the delivery of such Holder's Notes to the Paying Agent (except that, if such Optional Repurchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, then accrued and unpaid interest on such Notes to, but excluding, such Interest Payment Date will be paid on such Interest Payment Date to the Holder(s) of such Notes at the Close of Business on such Regular Record Date without any requirement to surrender such Notes to the Paying Agent). If the Paying Agent holds money on the Optional Repurchase Date sufficient to pay the Optional Repurchase Price of the Notes for which an Optional Repurchase Exercise Notice has been submitted and not validly withdrawn, then:

(a) such Notes shall cease to be outstanding and interest shall cease to accrue (whether or not book-entry transfer of the Notes has been made or whether or not the Notes have been delivered to the Paying Agent); and

(b) all other rights of the Holders of such Notes shall terminate (other than the right to receive the Optional Repurchase Price and, if the Optional Repurchase Date is after a Regular Record Date and on or prior to the related Interest Payment Date, the right of the Holder on such Regular Record Date to receive the related interest payment).

(f) No Notes may be purchased by the Issuer at the option of Holders if the principal amount of the Notes has been accelerated pursuant to Section 7.02, and such acceleration has not been rescinded, on or prior to the Optional Repurchase Date (except in the case of an acceleration resulting from an Event of Default by the Issuer in the payment of the Optional Repurchase Price with respect to such Notes).

(g) In connection with any offer to purchase the Notes on an Optional Repurchase Date, the Issuer shall:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act, to the extent such rules are applicable;

(b) file a Schedule TO or any successor or similar schedule, if required, under the Exchange Act; and

(c) otherwise comply with all applicable federal and state securities laws;

provided that, to the extent that the provisions of such securities laws or regulations conflict with the provisions of this Section 3.07, the Issuer shall comply with such securities laws and regulations and shall not be deemed to have breached its obligations under this Section 3.06 by virtue of such compliance.

Section 3.08 Purchase at Option of Holders Upon a Fundamental Change.

(a) If a Fundamental Change occurs, unless the Issuer has exercised its option to redeem the Notes by notifying the Holders to that effect in accordance with the terms of Section 3.01 of this Supplemental Indenture, each Holder will have the option to require the Issuer to purchase for cash (a "Fundamental Change Purchase Right") all or any portion of such Holder's Notes in a minimum principal amount of $1,000 or an integral multiple of $1,000, on the day of the Issuer's choosing that is not less than 20 or more than 35 Business Days after the occurrence of such Fundamental Change (such day, the "Fundamental Change Purchase Date") at a purchase price (the "Fundamental Change Purchase Price") equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest to, but excluding, the Fundamental Change Purchase Date (unless the Fundamental Change Purchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, in which case interest accrued to the Interest Payment Date will be paid to Holders as of the preceding Regular Record Date, and the price the Issuer is required to pay to the Holder surrendering the Note for purchase will be equal to 100% of the principal amount of Notes subject to purchase and will not include any accrued and unpaid interest).

(b) A Holder must deliver written notice (a "Fundamental Change Purchase Notice") of its exercise of this Fundamental Change Purchase Right to the Paying Agent during the period between the delivery of the Fundamental Change Notice and the Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date in the form set forth in the global note attached as Exhibit B to this Supplemental Indenture, in each case duly completed and signed, with appropriate signature guarantee, specifying the Notes for which the Fundamental Change Purchase Right is being exercised. If a Holder wishes to withdraw this election, it must provide a written notice of withdrawal to the Paying Agent at any time until the Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date. If the Notes are not in certificated form, the notice given by each Holder (and any withdrawal notice) must comply with applicable DTC procedures.

(c) The Issuer shall mail to the Trustee and to each Holder a written notice of a Fundamental Change (a "Fundamental Change Notice") within five Business Days after the occurrence of such Fundamental Change and issue a press release announcing the occurrence of such Fundamental Change (and make a press release available on its website). A Fundamental Change Notice shall state certain specified information, including:

(a) the events causing the Fundamental Change;

(b) the effective date of the Fundamental Change, and whether the Fundamental Change is a Make-Whole Adjustment Event;

(c) the last date on which a Holder may exercise the Fundamental Change Purchase Right;

(d) the Fundamental Change Purchase Price;

(e) the Fundamental Change Purchase Date;

(f) the Conversion Rate and any adjustments to the Conversion Rate, and the procedures required for exercise of a Holder's right to convert its Notes;

(g) the procedures required for exercise of the Fundamental Change Purchase Right, and the procedures required for withdrawal of any such exercise; and

(h) the name and address of the Paying Agent and Conversion Agent.

No failure of the Issuer to give a Fundamental Change Notice shall limit any Holder's right pursuant hereto to exercise their Fundamental Change Purchase Right.

(d) The Issuer shall be required to purchase Notes that have been validly surrendered for purchase and not withdrawn on the Fundamental Change Purchase Date. If the Paying Agent holds money sufficient to pay the Fundamental Change Purchase Price of the Notes for which a Fundamental Change Purchase Notice has been submitted and not validly withdrawn, then:

(a) such Notes shall cease to be outstanding and interest will cease to accrue (whether or not book-entry transfer of the Notes is made or whether or not the Note is delivered to the Paying Agent); and

(b) all other rights of the relevant Holders of such Notes shall terminate (other than the right to receive the Fundamental Change Purchase Price and, if the Fundamental Change Purchase Date is after a Regular Record Date and on or prior to the related Interest Payment Date, the right of the Holder on such Regular Record Date to receive the related interest payment).

(e) No Notes may be purchased by the Issuer at the option of Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated pursuant to Section 7.02, and such acceleration has not been rescinded, on or prior to the Fundamental Change Repurchase Date (except in the case of an acceleration resulting from an Event of Default by the Issuer in the payment of the Fundamental Change Purchase Price with respect to such Notes).

(f) In connection with any Fundamental Change Purchase Right, the Issuer shall, to the extent applicable:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act, to the extent such rules as applicable;

(b) file a Schedule TO or any successor or similar schedule, if required, under the Exchange Act; and

(c) otherwise comply with all applicable federal and state securities laws;

provided that, to the extent that the provisions of such securities laws or regulations conflict with the provisions of this Section 3.08, the Issuer shall comply with such securities laws and regulations and will not be deemed to have breached its obligations under this Section 3.08 by virtue of such compliance.

(g) The Issuer's obligation to pay the Fundamental Change Purchase Price for Notes for which a Fundamental Change Purchase Notice has been delivered and not validly withdrawn is conditioned upon the Holder effecting book–entry transfer of the Notes or delivering certificated Notes, together with necessary endorsements, to the Paying Agent at any time after delivery of the Fundamental Change Purchase Notice. The Issuer shall cause the Fundamental Change Purchase Price to be paid promptly following the later of (i) the Fundamental Change Purchase Date and (ii) the time of book–entry transfer or delivery of certificated notes, together with such endorsements as may be necessary.

Article Three of the Base Indenture shall not apply to the Notes. In addition, no sinking fund is provided for the Notes.

ARTICLE FOUR

CONSOLIDATION, MERGER AND SALE OF ASSETS

Article Five of the Base Indenture is hereby replaced by the following:

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 its 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 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 and the Indenture;

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

Except as provided under Section 6.04, no Guarantor may consolidate with or merge with or into 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 Guarantee of such Guarantor and the Indenture; and

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

The Issuer shall deliver to the Trustee on or prior to the consummation of a transaction proposed pursuant to clause 1(b) of the first or second paragraph of this Section 5.01 an Officer's Certificate and an Opinion of Counsel stating that the proposed transaction and such supplemental indenture comply with this Indenture and constitutes the legal, valid and binding obligation of the Issuer, enforceable against it in accordance with its terms.

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 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 the Indenture, the Notes and the 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 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 Guarantee, if applicable.

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

ARTICLE FIVE

CONVERSION OF NOTES

Section 5.01 Right to Convert.

(a) At any time prior to the Close of Business on the Business Day immediately preceding the Maturity Date, a Holder may convert all or any portion of its Notes at the Conversion Rate in effect on the Conversion Date. A Holder may convert fewer than all of such Holder's Notes so long as the Notes converted are in an integral multiple of $1,000 principal amount.

(b) Upon conversion of a Note, a Holder will not receive any additional cash payment for accrued and unpaid interest, if any, unless such Holder is the Holder on a Regular Record Date and such conversion occurs between such Regular Record Date and the Interest Payment Date to which it relates as described in Section 5.01(c), and the Issuer will not adjust the Conversion Rate to account for accrued and unpaid interest. Except as described in Section 5.01(c), the Issuer's settlement of conversions pursuant to Section 5.03 shall be deemed to satisfy the Issuer's obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the Conversion Date.

(c) Holders at the Close of Business on a Regular Record Date will receive payment of interest payable on the corresponding Interest Payment Date notwithstanding the conversion of such Notes at any time after the Close of Business on the applicable Regular Record Date. Notes surrendered for conversion by a Holder after the Close of Business on any Regular Record

Date but prior to the next Interest Payment Date must be accompanied by payment of an amount equal to the interest that will be payable on the Notes; *provided*, *however*, that no such payment shall be required (1) if the Issuer has specified a Fundamental Change Purchase Date following a Fundamental Change that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (2) with respect to any Notes surrendered for conversion following the Regular Record Date immediately preceding the Maturity Date or (3) only to the extent of overdue interest, if any overdue interest exists at the time of conversion with respect to such Notes.

(d) The Issuer shall pay any documentary, stamp or similar issue or transfer tax due on the issuance of the shares of the Common Stock upon conversion of the Notes, unless the tax is due because the Holder requests such shares of Common Stock to be issued in a name other than the Holder's name, in which case the Holder shall pay the tax.

Section 5.02 Section 382 Limitation on Beneficial Ownership Upon Conversion. Notwithstanding Section 5.01, no Holder will be entitled to receive shares of Common Stock upon conversion, and any purported delivery of shares of Common Stock upon conversion of Notes shall be void and of no effect, to the extent (but only to the extent) that such receipt or delivery would cause (i) such converting Holder to become the owner of 4.9% or more of the Common Stock (as provided in the Issuer's articles of incorporation) or (ii) the Percentage Stock Ownership (as such term is defined in the Issuer's articles of incorporation) in the Issuer of any owner of 4.9% or more of Common Stock to increase, unless such converting Holder has received prior approval of the Board of Directors (the "Section 382 Limitation"). If any delivery of shares of Common Stock owed to a Holder upon conversion of Notes is not made, in whole or in part, as a result of the Section 382 Limitation, the Issuer's obligation to make such delivery shall not be extinguished and the Issuer shall deliver such shares of Common Stock as promptly as practicable after such delivery (i) would not result in such converting Holder becoming an owner of 4.9% or more of Common Stock and (ii) would not cause the Percentage Stock Ownership in the Issuer of any owner of 4.9% or more of Common Stock to increase and such converting Holder gives notice thereof to the Issuer.

Section 5.03 Settlement Upon Conversion.

(a) Upon conversion, the Issuer shall deliver to Holders in respect of each $1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the Close of Business on the relevant Conversion Date. No fractional shares will be issued upon conversion. Instead, the Issuer will pay cash in lieu of any fractional share based on the Closing Sale Price of the Common Stock on the relevant Conversion Date.

(b) Each conversion will be deemed to have been effected as to any Notes surrendered for conversion on the Conversion Date, and with respect to the shares of Common Stock that are issuable upon such conversion, the Person in whose name the certificate or certificates for such shares will be registered shall be treated as the holder of record of such shares as of the Close of Business on the Conversion Date.

(c) The Issuer shall deliver the consideration due in respect of any conversion on the third Business Day immediately following the relevant Conversion Date.

Section 5.04 Conversion Procedures.

(a)(1) If a Note is represented by a certificated security, to exercise its right of conversion, a Holder must:

(a) complete and manually sign the Conversion Notice, with the appropriate signature guarantee, or facsimile of the Conversion Notice and deliver the completed Conversion Notice (which shall be irrevocable) to the Conversion Agent;

(b) surrender the certificated Note to the Conversion Agent;

(c) furnish appropriate endorsements and transfer documents if required by the Registrar or Conversion Agent;

(d) pay all transfer or similar taxes if required pursuant to Section 5.01(d); and

(e) pay funds equal to interest payable on the next Interest Payment Date required by Section 5.01(c), or

(2) If a Note is represented by a global security, to exercise its right of conversion, a Holder must comply with Section 5.04(a)(1)(iv) and Section 5.04(a)(1)(v) above and the Depositary's procedures for converting a beneficial interest in a global security.

(b) If a Holder has submitted its Notes for purchase upon a Fundamental Change, such Holder may only convert its Notes if it withdraws its Fundamental Change Purchase Notice prior to the Fundamental Change Purchase Date, pursuant to Section 3.07(b). If such Holder's Notes are submitted for purchase upon a Fundamental Change, such Holder's right to withdraw its Fundamental Change Purchase Notice and convert its Notes that are subject to purchase will terminate at the Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date.

Section 5.05 Conversion Rate Adjustments. The Conversion Rate shall be subject to adjustment from time to time, without duplication, upon the occurrence of any of the following events:

(a) If the Issuer issues solely shares of Common Stock as a dividend or distribution on all or substantially all of its shares of Common Stock, or if the Issuer subdivides or combines Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such subdivision or combination of Common Stock, as the case may be;

CR = the Conversion Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date of such subdivision or combination of Common Stock, as the case may be;

$OS_{0'}$ = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such subdivision or combination of Common Stock, as the case may be; and

OS = the number of shares of Common Stock that would be outstanding immediately after giving effect to such dividend or distribution, or immediately after the effective date of such subdivision or combination of Common Stock, as the case may be.

Any adjustment made under this Section 5.05(a) shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date of such subdivision or combination of Common Stock, as the case may be. If such dividend, distribution, subdivision or combination described in this Section 5.05(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such subdivision or combination, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or subdivision or combination had not been announced.

(b) If an Ex-Dividend Date occurs for a distribution to all or substantially all holders of Common Stock of any rights, options or warrants entitling such holders for a period of not more than 60 calendar days from the announcement date for such distribution to subscribe for or purchase shares of Common Stock, at a price per share less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;

CR = the Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Closing Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution.

Any increase made under this Section 5.05(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the Close of Business on the Record Date for such distribution. To the extent that shares of Common Stock are not delivered after the exercise of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if the Record Date for such distribution had not occurred.

For purposes of this Section 5.05(b), in determining whether any rights, options or warrants entitle the Holders to subscribe for or purchase shares of Common Stock at a price that is less than the average of the Closing Sale Prices of the Common Stock over the applicable 10 consecutive Trading Day period, there shall be taken into account any consideration the Issuer receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration if other than cash to be determined in good faith by the Board of Directors.

(c)(A) If an Ex-Dividend Date occurs for a distribution (a "Relevant Distribution") of shares of the Issuer's capital stock, evidences of the Issuer's indebtedness or other assets or property of the Issuer or rights, options or warrants to acquire the Issuer's capital stock or other securities, to all or substantially all holders of the Common Stock (excluding (i) dividends or distributions and rights, options or warrants as to which an adjustment was effected under Section 5.05(a) or Section 5.05(b) above; (ii) dividends or distributions paid exclusively in cash covered under Section 5.05(d); and (iii) Spin-Offs), then the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;

CR = the Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;

SP_0 = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined in good faith by the Board of Directors) of the shares of capital stock, evidences of indebtedness, assets or property or rights, options or warrants distributed with respect to each outstanding share of Common Stock as of the Open of Business on the Ex-Dividend Date for such distribution.

Any increase made under the above portion of this Section 5.05(c) shall become effective immediately after the Close of Business on the Record Date for such distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if such distribution is not so paid or made, the Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP$_0$" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock, without having to convert its Notes, the amount and kind of the Relevant Distribution that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for the distribution.

For purposes of this Section 5.05(c)(A) (and subject in all respects to Section 5.05(f)):

(1) Rights, options or warrants distributed by the Issuer to all or substantially all holders of the Common Stock entitling them to subscribe for or purchase shares of the Issuer's capital stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (a "Trigger Event"):

(a) are deemed to be transferred with such shares of the Common Stock;

(b) are not exercisable; and

(c) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 5.05(c) (and no adjustment to the Conversion Rate under this Section 5.05(c) shall be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 5.05(c).

(2) If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Issue Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and the Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof).

(3) In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event of the type described in the immediately preceding clause (2) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 5.05(c) was made:

(a) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution pursuant to Section 5.05(d), equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(b) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

(4) For purposes of Section 5.05(a), Section 5.05(b) and this Section 5.05(c), if any dividend or distribution to which this Section 5.05(c) is applicable includes one or both of:

(a) a dividend or distribution of shares of Common Stock to which Section 5.05(a) is applicable (the "Clause A Distribution"); or

(b) an issuance of rights, options or warrants to which Section 5.05(b) is applicable (the "Clause B Distribution"),

then:

(1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 5.05(c) is applicable (the "Clause C Distribution") and any Conversion Rate adjustment required by this Section 5.05(c) with respect to such Clause C Distribution shall then be made; and

(2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 5.05(a) and Section 5.05(b) with respect thereto shall then be made, except that, if determined by the Issuer (I) the "Record Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be

deemed not to be "outstanding immediately prior to the Close of Business on the Record Date or immediately prior to the Open of Business on such effective date" within the meaning of Section 5.05(a) or "outstanding immediately prior to the Close of Business on the Record Date" within the meaning of Section 5.05(b).

(B) With respect to an adjustment pursuant to this Section 5.05(c) where there has been an Ex-Dividend Date for a dividend or other distribution on the Common Stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "Spin-Off"), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for the Spin-Off;

CR = the Conversion Rate in effect immediately after the Close of Business on the Record Date for the Spin-Off;

FMV = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock (determined by reference to the definition of "Closing Sale Price" as if references therein to Common Stock were to such capital stock or similar equity interest) over the first 10 consecutive Trading Day period commencing on, and including, the effective date for the Spin-Off (such period, the "Valuation Period"); and

MP_0 = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5.05(c) shall be determined on the last day of the Valuation Period but will be given effect immediately after the Close of Business on the Record Date for the Spin-Off. In respect of any conversion during the Valuation Period for any Spin-Off, references within this Section 5.05(c)(B) related to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-Off to, but excluding, the relevant Conversion Date.

(d) If an Ex-Dividend Date occurs for a cash dividend or distribution to all or substantially all holders of the Common Stock (other than any dividend or distribution in connection with the Issuer's liquidation, dissolution or winding up), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;

CR = the Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;

SP_0 = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

C = the amount in cash per share of Common Stock the Issuer pays, or distributes, to all or substantially all holders of the Common Stock.

Any increase made under this Section 5.05(d) shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if any dividend or distribution described in this Section 5.05(d) is declared but not so paid or made, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of Common Stock, without having to convert its Notes, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

(e) If the Issuer or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock and, if the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (OS \times SP)}{OS_0 \times SP}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Trading Day next succeeding the Expiration Date;

CR = the Conversion Rate in effect immediately after the Open of Business on the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "Expiration Time") such tender or exchange offer expires (prior to giving effect to such tender or exchange offer);

OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to such tender or exchange offer); and

SP = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate under this Section 5.05(e) shall be determined at the Close of Business on the tenth Trading Day immediately following, but excluding, the Expiration Date but shall be given effect at the Open of Business on the Trading Day next succeeding the Expiration Date. In respect of any conversion during the 10 Trading Days commencing on the Trading Day next succeeding the Expiration Date, references within this Section 5.05(e) to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the relevant Conversion Date. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate.

(f) To the extent that the Issuer has a rights plan in effect upon conversion of the Notes, the Holders shall receive, in addition to the Common Stock received in connection with such conversion, the rights under the rights plan, unless prior to any conversion, the rights have separated from the Common Stock, in which case the Conversion Rate will be adjusted at the time of separation as if the Issuer distributed to all holders of Common Stock, shares of the Issuer's capital stock, evidences of indebtedness or other assets or property as described in Section 5.05(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(g) To the extent permitted by applicable law and applicable listing rules of The New York Stock Exchange and any other securities exchange on which the Issuer's securities are then listed, (i) the Issuer is permitted to increase the Conversion Rate of the Notes by any amount for a period of at least 20 Business Days so long as the increase is irrevocable during the period and the Board of Directors determines that such increase would be in the Issuer's best interest and (ii) the Issuer may (but is not required to) increase the Conversion Rate to avoid or diminish income tax to holders of the Common Stock or rights to purchase shares of the Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar events. The Issuer must give at least 15 days' prior notice of any such increase in the Conversion Rate.

(h) Adjustments to the Conversion Rate will be calculated to the nearest 1/10,000th of a share of Common Stock. Notwithstanding anything in this Section 5.05 to the contrary, the Issuer shall not be required to adjust the Conversion Rate unless the adjustment would result in a

change of at least 1% of the Conversion Rate. However, the Issuer shall carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustments (1) when the cumulative net effect of all adjustments not yet made will result in a change of at least 1% of the Conversion Rate or (2) regardless of whether the aggregate adjustment is less than 1%, (i) upon any required purchases of the Notes in connection with a Fundamental Change and (ii) upon any conversion of Notes.

(i) Whenever any provision of this Indenture requires the Issuer to calculate the Closing Sale Prices or the Stock Price for the purposes of a Make-Whole Adjustment Event over a span of multiple days, the Board of Directors make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Record Date, , the Expiration Date or the Effective Date of the event occurs, at any time during the period from which such Closing Sale Prices or Stock Prices are to be calculated.

(j) No adjustment to the Conversion Rate need be made for a given transaction if Holders of the Notes will be entitled to participate in that transaction, without conversion of the Notes, on the same terms and at the same time as a holder of a number of shares of Common Stock equal to the principal amount of a Holder's Notes divided by $1,000 and multiplied by the Conversion Rate would be entitled to participate.

(k) If the Issuer issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events, then (i) the Issuer will not adjust the Conversion Rate pursuant to the above provisions until the earliest of these triggering events occurs; and (ii) the Issuer will readjust the Conversion Rate to the extent any of these rights, options or warrants are not exercised before they expire.

(l) If the Issuer adjusts the Conversion Rate pursuant to the above provisions, the Issuer shall deliver to the Conversion Agent a certificate setting forth the Conversion Rate, detailing the calculation of the Conversion Rate and describing the facts upon which the adjustment is based. In addition, the Issuer shall issue a press release containing the relevant information (and make the press release available on its website).

Section 5.06 Recapitalizations, Reclassifications and Changes to the Common Stock. In the event of:

(a) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);

(b) a consolidation, merger, combination or binding share exchange involving the Issuer; or

(c) a sale, assignment, conveyance, transfer, lease or other disposition to another Person of the Issuer's property and assets as an entirety or substantially as an entirety,

in each case, in which holders of Common Stock are entitled to receive cash, securities or other property for their shares of Common Stock ("Reference Property"), the Issuer or the successor or purchasing company, as the case may be, shall execute with the Trustee a supplemental indenture, providing that, at and after the effective time of such transaction, Holders of each $1,000 principal amount of Notes will be entitled to convert their Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive upon such transaction. The supplemental indenture shall also provide for anti-dilution and other adjustments that are as nearly equivalent as possible to the adjustments described under Section 5.05. If the Reference Property in respect of any such transaction includes shares of stock, securities or other property or assets of a company other than the successor or purchasing corporation, as the case may be, in such transaction, such other company shall also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the Holders, including the right of Holders to require the Issuer to purchase their Notes upon a Fundamental Change as described in Section 3.08, as the Board of Directors thereof reasonably considers necessary by reason of the foregoing. If the Notes become convertible into Reference Property, the Issuer shall notify the Trustee and issue a press release containing the relevant information (and make the press release available on its website).

For purposes of the foregoing, the type and amount of consideration that holders of the Common Stock are entitled to in the case of recapitalizations, reclassifications, changes of the Common Stock, consolidations, mergers, combinations, binding share exchanges, sales, assignments, conveyances, transfers, leases or other dispositions that cause the Common Stock to be converted into or exchanged for the right to receive more than a single type of consideration because the holders of Common Stock have the right to elect the type of consideration they receive will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election. The Issuer shall notify Holders of the weighted average as soon as practicable after such determination is made. The Issuer shall not become a party to any such transaction unless its terms are consistent with the foregoing.

Section 5.07 Adjustment to Conversion Rate upon Conversion upon a Make-Whole Adjustment Event.

(a) If the Effective Date of a Make-Whole Adjustment Event occurs prior to September 20, 2017 and if any Holder elects to convert its Notes at any time from, and including, the Effective Date of a Make-Whole Adjustment Event to, and including, the Business Day immediately preceding the related Fundamental Change Purchase Date, or if a Make-Whole Adjustment Event does not also constitute a Fundamental Change, the 40th scheduled Trading Day immediately following the Effective Date of such Make-Whole Adjustment Event (the "Make-Whole Conversion Period"), the Conversion Rate will be increased by an additional number of shares of Common Stock (these shares being referred to as the "Additional Shares") pursuant to Section 5.07(b) below. The Issuer will notify the Holders, the Trustee and the Conversion Agent of the anticipated Effective Date of such Make-Whole Adjustment Event and issue a press release as soon as practicable after the Issuer first determines the anticipated Effective Date of such Make-Whole Adjustment Event (and make the press release available on its website). The Issuer will use its commercially reasonable efforts to give notice to Holders of the anticipated Effective Date for a Make-Whole Adjustment Event at least 30 scheduled Trading Days prior to the anticipated Effective Date.

(b) The number of Additional Shares, if any, by which the Conversion Rate will be increased for conversions in connection with a Make-Whole Adjustment Event will be determined by reference to the table below, based on the date on which the Make-Whole Adjustment Event occurs or becomes effective (the "Effective Date") and (1) the price paid per share of the Common Stock in the Change of Control in the case of a Make-Whole Adjustment Event described in clause (2) of the definition of "Change of Control," in the event that the Common Stock is acquired for cash, or (2) the average of the Closing Sale Prices of the Common Stock over the five Trading Day period ending on the Trading Day immediately preceding the Effective Date of such other Make-Whole Adjustment Event, in the case of any other Make-Whole Adjustment Event. The amount determined under the first or second clause of the preceding sentence, as applicable, is referred to as the "Stock Price."

The Stock Prices set forth in the first row of the table below (i.e., column headers) and the number of Additional Shares in the table below will be adjusted as of any date on which the Conversion Rate of the Notes is adjusted pursuant to Section 5.05. The adjusted Stock Prices will equal the Stock Prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares will be adjusted in the same manner and at the same time as the Conversion Rate pursuant to Section 5.05.

The following table sets forth the number of Additional Shares by which the Conversion Rate for each $1,000 principal amount of Notes shall be increased based on the Stock Price and the Effective Date:

Stock Price

Effective Date	$ 39.42	$ 45.00	$ 50.00	$ 60.00	$ 70.00	$ 80.00	$ 90.00	$100.00	$110.00	$120.00	$130.00
September 18, 2012	8.1693	6.4183	5.0963	3.3115	2.2322	1.5502	1.1118	0.8219	0.6342	0.5120	0.4348
September 15, 2013	8.1693	6.3042	4.9365	3.1134	2.0287	1.3607	0.9437	0.6791	0.5142	0.4138	0.3550
September 15, 2014	8.1693	6.1310	4.7099	2.8428	1.7635	1.1232	0.7411	0.5150	0.3854	0.3134	0.2716
September 15, 2015	8.1693	5.8647	4.3703	2.4557	1.3995	0.8135	0.4919	0.3240	0.2445	0.2106	0.1869
September 15, 2016	8.1693	5.4458	3.8227	1.8384	0.8585	0.3994	0.2048	0.1411	0.1226	0.1087	0.0970
September 20, 2017	8.1693	5.0237	2.8015	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(c) The exact Stock Price and Effective Date may not be set forth in the table in Section 5.07(b), in which case if the Stock Price is:

(a) between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates based on a 365-day year, as applicable;

(b) in excess of $130.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above), the Conversion Rate will not be increased; and

(c) less than $39.42 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above), the Conversion Rate will not be increased.

(d) Notwithstanding anything herein to the contrary, the Issuer may not increase the Conversion Rate to more than 25.3678 shares per $1,000 principal amount of Notes, *provided* that the Issuer will adjust such number of shares for the same events for which the Issuer will adjust the Conversion Rate pursuant to Section 5.05.

Section 5.08 Reserved Shares. The Issuer shall at all times reserve out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion, in accordance herewith, of all of the Notes (assuming, for such purposes, that at the time of computation of such number of shares, all such Notes would be converted by a single Holder). The shares of Common Stock due upon conversion of a global note shall be delivered by the Issuer in accordance with the Depositary's customary practices.

All shares of Common Stock issued upon conversion of the Notes shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim that arises from the action or inaction of the Issuer.

The Issuer shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of the Notes and shall list such shares on each national securities exchange or automated quotation system on which the shares of Common Stock are listed on the applicable Conversion Date.

Section 5.09 Trustee Adjustment Disclaimer.

The Trustee has no duty to determine when an adjustment under this Article Five should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of the Notes. The Trustee shall not be responsible for making any calculations hereunder nor the Issuer's failure to comply with this Article Five. Each Conversion Agent (other than the Issuer or an affiliate of the Issuer) shall have the same protection under this Section 5.09 as the Trustee.

ARTICLE SIX

GUARANTEE OF NOTES

Section 6.01 Guarantee.

Subject to the provisions of this Article Six, each Guarantor, by execution of this Supplemental 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 and this Supplemental Indenture, 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 (the "Guaranteed Obligations"). Each Guarantor, by execution of this Supplemental 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 Supplemental Indenture, any failure to enforce the provisions of any such Note or this Supplemental Indenture, 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.

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 Section 7.02 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 Section 7.02, such obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of this Guarantee.

The Guarantees with respect to a Note are not convertible and shall automatically terminate when that Note is converted into Common Stock.

Section 6.02 Execution and Delivery of Guarantee.

To further evidence the Guarantee set forth in Section 6.01, each Guarantor hereby agrees that a notation of such Guarantee, substantially in the form included in Exhibit A 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 6.01 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 Supplemental Indenture on behalf of the Guarantor.

Section 6.03 Limitation of Guarantee.

The obligations of each Guarantor under its Guarantee 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 not constituting a fraudulent conveyance or fraudulent transfer under federal or state law. Each Guarantor that makes a payment or distribution under its 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 6.04 Release of Guarantor.

(a) A Guarantor shall be released from all of its obligations under its Guarantee if:

(a) all of the assets of such Guarantor have been sold or otherwise disposed of in a transaction in compliance with the terms of this Supplemental Indenture (including Article Four); or

(b) all of the Equity Interests held by the Issuer and the Subsidiaries of such Guarantor have been sold or otherwise disposed of in a transaction in compliance with the terms of this Supplemental Indenture (including Article Four);

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.

Section 6.05 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 Supplemental 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 credited and applied upon the Notes, whether matured or unmatured, in accordance with the terms of this Supplemental Indenture. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Supplemental Indenture and that the waiver set forth in this Section 6.05 is knowingly made in contemplation of such benefits.

Section 6.06 Costs and Expenses.

Each Guarantor shall pay on demand by the Trustee any and all costs and expenses (including counsel fees and expenses) incurred by the Trustee or the Holders in enforcing any rights under Guarantees.

ARTICLE SEVEN

EVENTS OF DEFAULT

Section 7.01 Events of Default. The first paragraph of Section 6.01 of the Base Indenture is hereby replaced by the following:

Each of the following shall constitute an "Event of Default" under this Supplemental Indenture:

(a) the Issuer fails to pay the principal of any Note when due;

(b) the Issuer fails to deliver the Settlement Amount owing upon conversion of any Note within five calendar days;

(c) the Issuer fails to pay any interest on any Note when due, and such failure continues for 30 calendar days;

(d) the Issuer fails to pay the Fundamental Change Purchase Price of any Note when due;

(e) the Issuer fails to provide timely notice of a Fundamental Change or a Make-Whole Adjustment Event in accordance with the terms of this Supplemental Indenture;

(f) the Issuer fails to perform any other covenant required of it in this Supplemental Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (i) through (v) above) and such failure continues for 30 days after notice of the failure has been given the Issuer by the Trustee or by the holders of at least 25% of the aggregate principal amount of the notes then outstanding;

(g) 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 (other than Non-Recourse Land Financing) of the Issuer or any Restricted Subsidiary, whether such Indebtedness exists on the Issue Date 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 (i) $15.0 million or more or (ii) such lesser amount as may be applicable to the corresponding event of default in any other capital markets Indebtedness (other than Non-Recourse Land Financing) of the Issuer or any of its Restricted Subsidiaries which is outstanding on the Issue Date;

(h) one or more judgments or orders that exceed (i) $15.0 million or (ii) such lesser amount as may be applicable to the corresponding event of default in any other capital market Indebtedness (other than Non-Recourse Land Financing) of the Issuer or any of its Restricted Subsidiaries which is outstanding on the Issue Date, in each case, 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;

(i) 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;

(j) 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

(k) any Guarantee of any Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Guarantee and the Indenture) or is declared null and void and unenforceable or found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor from its Guarantee in accordance with the terms of this Supplemental Indenture and the Guarantee).

Section 7.02 Acceleration. The following paragraph shall replace Section 6.02 of the Base Indenture:

If an Event of Default (other than an Event of Default specified in clause (i) or (j) of Section 7.01 with respect to the Issuer), shall have occurred and be continuing under the Indenture, 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, under certain circumstances, 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 Supplemental Indenture. If an Event of Default specified in clause (i) or (j) of Section 7.01 with respect to the Issuer occurs, all outstanding Notes shall become due and payable without any further action or notice.

Section 7.03 Additional Interest. Notwithstanding anything else in this Supplemental Indenture to the contrary, if the Issuer so elects, the sole remedy under the Indenture for an Event of Default relating to (i) the Issuer's failure to file with the Trustee pursuant to Section 314(a)(1) of the Trust Indenture Act any documents or reports that the Issuer is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act or (ii) the Issuer's failure to comply with its reporting obligations to the Trustee and the Commission, pursuant to Section 10.01, will, for the 180 days after the occurrence of such an Event of Default, consist exclusively of the right to receive additional interest on the Notes ("Additional Interest") at a rate equal to 0.25% of the principal amount of the Notes per annum for each day during the first 90 days after the occurrence of such Event of Default and 0.50% of the aggregate principal amount of the Notes per annum for each day from the 91st day through the 180th day following the occurrence of such Event of Default. The Additional Interest will accrue on all outstanding Notes from, and

including, the date on which an Event of Default relating to a failure to comply with the reporting obligations in the Indenture first occurs to, but excluding, the 181st day thereafter (or such earlier date on which the Event of Default relating to the reporting obligations shall have been cured or waived). Any such Additional Interest will be payable in the same manner and on the same dates as the stated interest payable on the Notes. If the Event of Default is continuing on the 181st day after an Event of Default relating to a failure to comply with the reporting obligations described above first occurs, the Notes will be subject to acceleration as provided in Article Seven of this Supplemental Indenture.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of an Event of Default relating to the Issuer's failure to comply with the reporting obligations set forth in clauses (i) or (ii) of the immediately preceding paragraph, the Issuer must notify all Holders and the Trustee and Paying Agent in writing of such election on or before the Close of Business on the fifth Business Day prior to the date on which such Event of Default would otherwise occur. Upon the Issuer's failure to timely give such notice or pay Additional Interest, the Notes will be immediately subject to acceleration as provided above and in Section 7.02 of this Supplemental Indenture.

Section 7.04 Suits. The following shall be added to the end of Section 6.07 of the Base Indenture:

However, the limitations of Section 6.07 of the Base Indenture do not apply to a suit instituted by a Holder for the enforcement of payment of the principal of or interest on any Note on or after the applicable due date, the right to convert the Note or to receive the consideration due upon conversion or the right of a Beneficial Owner to exchange its beneficial interest in a global security representing Notes for a physical note if an Event of Default has occurred and is continuing, in each case, in accordance with this Indenture.

Section 7.05 Notice of Default. Section 7.05 of the Base Indenture shall be replaced with the following:

The Trustee shall, within 30 days after the occurrence of any Default with respect to the Notes, give the Holders written 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 Article Four, the Trustee shall be protected in withholding such notice if and so long as it in good faith determines that the withholding of such notice is in the interest of the Holders.

Payments of the Fundamental Change Purchase Price, principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate plus one percent from the required payment date.

ARTICLE EIGHT

DISCHARGE

Section 8.01 Discharge.

Section 8.01 of the Base Indenture is hereby replaced as follows:

This Indenture shall upon Issuer Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of the Notes expressly provided for, rights under Section 2.07 of the Base Indenture, and the right to receive payment pursuant to the first paragraph of Section 8.07 of the Base Indenture), and the Trustee on Issuer Request, and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07 of the Base Indenture and (ii) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 2.04 of the Base Indenture) have been delivered to the Trustee for cancellation; or

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

(a) have become due and payable, or

(b) will become due and payable at their stated maturity within one year, or

(c) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and

the Issuer, in the case of (a), (b), or (c) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount in cash and/or (in the case of conversion) shares of Common Stock sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest, if any, to the date of such deposit (in the case of Notes which have become due and payable) or to the stated maturity, at any Optional Repurchase Date or Fundamental Change Purchase Date, on a Redemption Date or has satisfied the Issuer's conversion obligations upon conversion (and determination of related Settlement Amounts), as the case may be; *provided*, *however*, in the event a petition for relief under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, is filed with respect to the Issuer within 91 days after the deposit and the Trustee is required to return the deposited money to the Issuer, the obligations of the Issuer under this Indenture with respect to such Notes shall not be deemed terminated or discharged;

(2) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer; and

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

Section 8.02 No Defeasance. Sections 8.02, 8.03 and 8.04 of the Base Indenture shall not apply to the Notes.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 9.01 Supplemental Indentures Without Consent of Holders. Section 9.01 of the Base Indenture shall be replaced with the following:

Without the consent of any Holder, the Issuer, when authorized by a Board Resolution or Officers' Certificate, the Guarantors and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) cure any ambiguity, omission, defect or inconsistency that does not adversely affect Holders of the Notes;

(b) provide for the assumption by a successor corporation of the Issuer's obligations under this Indenture;

(c) add additional Guarantees with respect to the Notes;

(d) secure the Notes;

(e) add to the Issuer's covenants for the benefit of the Holders or surrender any right or power conferred upon the Issuer;

(f) make any change that does not adversely affect the rights of any Holder as determined in good faith by the Board of Directors and evidenced by an Officer's Certificate delivered to the Trustee;

(g) comply with any requirement of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act; or

(h) conform the provisions of this Indenture to the "Description of Notes" section in the preliminary prospectus supplement dated September 12, 2012 relating to the offering of the Notes, as supplemented by the related pricing term sheet dated September 12, 2012 to the extent that the Trustee receives an Officer's Certificate stating that such provisions of this Indenture were intended to be a verbatim recitation of the applicable language in such "Description of Notes" and that the variance between the two was unintended.

Section 9.02 Supplemental Indenture with Consent of Holder. The first paragraph of Section 9.02 of the Base Indenture shall be replaced with the following:

With the consent of the Holders of a majority in aggregate principal amount of the outstanding Notes affected by such supplemental indenture (which may include consents obtained in connection with a tender offer or exchange offer for notes) by Act of said Holders delivered to the Issuer and the Trustee, the Issuer, when authorized by a Board Resolution or Officers' Certificate, the Guarantors and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, waiving any existing default in the Issuer's compliance with any provision of the Indenture or changing in any manner or eliminating any of the provisions of this Supplemental Indenture or of modifying in any manner the rights of the Holders of Notes under this Supplemental Indenture; *provided*, *however*, that no such supplemental indenture shall, without the consent of the Holder of each outstanding Note affected thereby,

(a) change the stated maturity of the principal of or any interest on the Notes;

(b) reduce the principal amount of or interest on the Notes;

(c) reduce the amount of principal payable upon acceleration of the maturity of the Notes;

(d) change the currency of payment of principal of or interest on the Notes or change any Note's place of payment;

(e) impair the right of any Holder to receive payment of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on, or with respect to, the Notes;

(f) modify the provisions with respect to the Fundamental Change Purchase Right of the Holders pursuant to Section 3.02 of this Supplemental Indenture in a manner adverse to Holders of Notes;

(g) change the ranking of the Notes;

(h) adversely affect the right of Holders to convert Notes, or reduce the Conversion Rate; or

(i) reduce the percentage required for modification, amendment or waiver of any provisions of this Supplemental Indenture.

ARTICLE TEN

COVENANTS

Section 10.01 Reports. The first paragraph of Section 4.03 of the Base Indenture is replaced with the following:

So long as any Notes are outstanding, the Issuer shall (i) file with the Commission within the time periods prescribed by its rules and regulations and (ii) furnish to the Trustee and the Holders within 15 days after the date on which the Issuer would be required to file the same with the Commission pursuant to its rules and regulations (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), all quarterly and annual financial information required to be contained in Forms 10-Q and 10-K and, with respect to the annual consolidated financial statements only, a report thereon by the Issuer's independent auditors. The Issuer shall not be required to file any report or other information with the Commission if the Commission does not permit such filing, although such reports will be required to be furnished to the Trustee. Documents filed by the Issuer with the Commission via the EDGAR system will be deemed to have been furnished to the Trustee and the Holders as of the time such documents are filed via EDGAR.

Delivery of reports, information and documents to the Trustee under this Indenture is for informational purposes only and the information and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein, or determinable from information contained herein (as to which the Trustee is entitled to rely exclusively on the Officer's Certificate).

Section 10.02 Additional Note Guarantees. If, after the Issue Date, the Issuer or any Restricted Subsidiary shall acquire or create another Restricted Subsidiary, then the Issuer shall cause such Subsidiary to:

(1) execute and deliver to the Trustee (a) a supplemental indenture pursuant to which such Restricted Subsidiary shall unconditionally guarantee all of the Issuer's obligations under the Notes and the Indenture and (b) a notation of guarantee in respect of its 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 and enforceable obligation of such Restricted Subsidiary in accordance with its terms.

ARTICLE ELEVEN

MISCELLANEOUS

Section 11.01 Form of Notes. The Notes and the Trustee's Certificates of Authentication to be endorsed thereon are to be substantially in the form of Exhibit B, which form is hereby incorporated in and made a part of this Supplemental Indenture.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Supplemental Indenture, and the Issuer and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 11.02 Ratification of Base Indenture. The Base Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Base Indenture in the manner and to the extent herein and therein provided.

Section 11.03 Trust Indenture Act Controls. If any provision hereof limits, qualifies or conflicts with the duties imposed by Section 310 through 317 of the Trust Indenture Act, the imposed duties shall control.

Section 11.04 Conflict with Indenture. To the extent not expressly amended or modified by this Supplemental Indenture, the Base Indenture shall remain in full force and effect. If any provision of this Supplemental Indenture relating to the Notes is inconsistent with any provision of the Base Indenture, the provision of this Supplemental Indenture shall control.

Section 11.05 Governing Law. THIS SUPPLEMENTAL INDENTURE, THE NOTES AND THE GUARANTEES AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE, THE NOTES OR THE GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. The Issuer and each of the Guarantors submits to the jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, City of New York, and of the United States District Court for the Southern District of New York, in any action or proceeding to enforce any of their obligations under this Supplemental Indenture, and agrees not to seek a transfer of any such action or proceeding on the basis of inconvenience of the forum or otherwise (but neither the Issuer nor any of the Guarantors shall be prevented from removing any such action or proceeding from a state court to the United States District Court for the Southern District of New York). The Issuer and each of the Guarantors agree that process in any such action or proceeding may be served upon it by registered mail or in any other manner permitted by the rules of the court in which the action or proceeding is brought.

Section 11.06 Successors. All agreements of the Issuer in the Base Indenture, this Supplemental Indenture and the Notes shall bind its successors. All agreements of the Guarantors in this Supplemental Indenture and in the Guarantee shall bind their successors. All agreements of the Trustee in the Base Indenture and this Supplemental Indenture shall bind its successors.

Section 11.07 Counterparts. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 11.08 Waiver of Jury Trial. EACH OF THE COMPANY, THE SUBSIDIARY GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO

TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 11.09 Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances. In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 11.10 Calculations in Respect of the Notes. The Issuer and its agents shall be responsible for making the calculations called for under this Supplemental Indenture and the Notes. These calculations include, but are not limited to, determinations of the Closing Sale Price of the Common Stock, any adjustments to the Conversion Rate, the consideration deliverable in respect of any conversion and accrued interest payable on the Notes. The Issuer will make all these calculations in good faith and, absent manifest error, the Issuer's calculations will be final and binding on the Holders. The Issuer shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Issuer's calculations without independent verification. The Trustee will forward the Issuer's calculations to any Holder upon the request of that Holder.

Section 11.11 Notices. Except as otherwise provided in this Supplemental Indenture, notice to registered Holders shall be given to the addresses as they appear in the register of securities. Notices shall be deemed to have been given on the date of such mailing or electronic delivery. Whenever a notice is required to be given by the Issuer, such notice may be given by the Trustee on the Issuer's behalf (and the Issuer will make any notice it is required to give to Holders available on its website).

Section 11.12 No Personal Liability of Directors, Officers, Employees and Shareholders. No director, officer, employee, incorporator or stockholder of the Issuer will have any liability for any obligations of the Issuer under the Notes, the 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.

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

MERITAGE HOMES CORPORATION

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

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By: /s/ Maddy Hall
Name: Maddy Hall
Title: Vice President

GUARANTORS:

MERITAGE PASEO CROSSING, LLC

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

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

MERITAGE PASEO CONSTRUCTION, LLC

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

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

MERITAGE HOMES OF ARIZONA, INC.

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

MERITAGE HOMES CONSTRUCTION, INC.

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

MERITAGE HOMES OF TEXAS HOLDING, INC.

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

MERITAGE HOMES OF CALIFORNIA, INC.

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

MERITAGE HOMES OF TEXAS JOINT VENTURE HOLDING COMPANY, LLC

By: Meritage Homes of Texas, LLC
Its: Sole Member

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOLDINGS, L.L.C.

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOMES OF NEVADA, INC.

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

MTH-CAVALIER, LLC

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

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

MTH GOLF, LLC

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

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

MERITAGE HOMES OF COLORADO, INC.

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

MERITAGE HOMES OF FLORIDA, INC.

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

CALIFORNIA URBAN HOMES, LLC

By: Meritage Homes of California, Inc.
Its: Sole Member and Manager

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

MERITAGE HOMES OF TEXAS, LLC

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

MERITAGE HOMES OPERATING COMPANY, LLC

By: Meritage Holdings, L.L.C.
Its: Manager

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

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

WW PROJECT SELLER, LLC

By: Meritage Paseo Crossing. LLC
Its: Sole Member

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

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

MERITAGE HOMES OF NORTH CAROLINA, INC.

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

CAREFREE TITLE AGENCY, INC.

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

M&M FORT MYERS HOLDINGS, LLC

By: Meritage Paseo Crossing, LLC
Its: Sole Member and Manager

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

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

MERITAGE HOMES OF FLORIDA REALTY LLC

By: Meritage Homes of Florida, Inc.
Its: Sole Member

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

EXHIBIT A

[FORM OF GUARANTEE]

Each of the undersigned (the "Guarantors") hereby jointly and severally unconditionally guarantees, to the Holders of the 1.875% Convertible Senior Notes due 2032 (the "Notes") issued pursuant to the indenture dated as of September 18, 2012 (the "Base Indenture") by and between Meritage Homes Corporation. (the "Issuer") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), as supplemented by the Supplemental Indenture No. 1, dated as of September 18, 2012, among the Issuer, the Guarantors named therein and the Trustee, as amended or supplemented (the "Supplemental Indenture"), and subject to the provisions of the Supplemental 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 Issuer to the Holders or the Trustee, all in accordance with the terms set forth in Article Six of the Supplemental 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 Six of the Supplemental Indenture, and reference is hereby made to the Supplemental 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]

IN WITNESS WHEREOF, each Guarantor has caused this Guarantee to be duly executed.

Dated: [•]

GUARANTORS:

MERITAGE PASEO CROSSING, LLC

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

By: _____
Name: Larry W. Seay
Title: Executive Vice President, Chief Financial Officer and Assistant Secretary

MERITAGE PASEO CONSTRUCTION, LLC

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

By: _____
Name: Larry W. Seay
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MERITAGE HOMES OF ARIZONA, INC.

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Name: Larry W. Seay
Title: Executive Vice President, Chief Financial Officer and Assistant Secretary

MERITAGE HOMES CONSTRUCTION, INC.

By: _____
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Title: Executive Vice President, Chief Financial Officer and Assistant Secretary

MERITAGE HOMES OF TEXAS HOLDING, INC.

By: _____
Name: Larry W. Seay
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MERITAGE HOMES OF CALIFORNIA, INC.

By: _____
Name: Larry W. Seay
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By: Meritage Homes of Texas, LLC
Its: Sole Member

By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

By: _____
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Title: Executive Vice President, Chief Financial Officer and Assistant Secretary

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By: Meritage Homes of Texas Holding, Inc.
Its: Sole Member

By: _____
Name: Larry W. Seay
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MERITAGE-HOMES OF NEVADA, INC.

By: _____
Name: Larry W. Seay
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By: Meritage Homes Construction, Inc.
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Its: Sole Member and Manager

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

By: _____
Name: Larry W. Seay
Title: Executive Vice President, Chief Financial Officer and Assistant Secretary

MERITAGE HOMES OF FLORIDA REALTY LLC

By: Meritage Homes of Florida, Inc.
Its: Sole Member

By: _____
Name: Larry W. Seay
Title: Executive Vice President, Chief Financial Officer and Assistant Secretary

EXHIBIT B

[FORM OF NOTE]

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO ANOTHER NOMINEE OF THE DEPOSITARY OR TO THE DEPOSITARY OR BY ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITORY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO 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 IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

MERITAGE HOMES CORPORATION

1.875% Convertible Senior Notes due 2032

CUSIP [•]
ISIN [•]

No. [•] **$[•]**

MERITAGE HOMES CORPORATION, a Maryland corporation (herein called the "Issuer," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum **[•]** on September 15, 2032, at the office or agency of the Issuer referred to below, and to pay interest thereon, accruing from [•], on March 15 and September 15 in each year commencing **[•]**, at the rate of 1.875% per annum until the principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security is registered at the Close of Business on the Regular Record Date for such interest, which shall be March 1 or September 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security is registered at the Close of Business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice whereof shall be given to Holders of the Securities of this series not less than 10 days prior to such special record date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Payment of the principal of, and interest on, this Security will be made at the office appointed by the Issuer in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Issuer payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the register of securities or (ii) by wire transfer to an account maintained by the Person entitled thereto.

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

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

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed under its corporate seal.

Dated: **[•]**

MERITAGE HOMES CORPORATION

By: _____
[ ]

Attest:

_____
[ ]
Secretary

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Wells Fargo Bank, National Association, as Trustee

By: _____
Authorized Signatory

REVERSE OF SECURITY

This Security is one of a duly authorized issue of securities of the Issuer (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of September 18, 2012 (herein called the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as Trustee, herein called the "Trustee" (which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Issuer, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. The terms of this Security include the covenants and terms established by Supplemental Indenture No. 1, dated as of September 18, 2012, among the Issuer, the Guarantors named therein and the Trustee, pursuant to the authority granted under the Indenture (such terms and covenants shall be referred to herein collectively with the terms and covenants set out in the Indenture that are applicable to the Securities of this series as the "Indenture Terms"). Defined terms used herein that are not otherwise defined shall have the meanings given such terms in the Indenture Terms. This Security is one of the series designated on the face hereof, in an aggregate principal amount of $**[•]**. The Issuer may subsequently issue additional securities as part of this series of Securities under the Indenture.

Prior to September 20, 2017, the Issuer may not redeem the Securities. On or after September 20, 2017 and prior to the Maturity Date, the Issuer shall have the right, at the Issuer's option, at any time and from time to time, to redeem all or part of the Securities at a price payable in cash equal to the Redemption Price. No sinking fund is provided for the Securities and the Securities will not be subject to defeasance.

Subject to the Indenture Terms, on each Optional Repurchase Date, each Holder of the Securities shall have the right to require the Issuer to purchase such Holder's Securities including any portion thereof which is $1,000 in principal amount or any integral multiple of $1,000 at a price payable in cash equal to the Optional Repurchase Price

Subject to the Indenture Terms, in the event of a Fundamental Change, each Holder of the Securities shall have the right, at the Holder's option, to require the Issuer to repurchase such Holder's Securities including any portion thereof which is $1,000 in principal amount or any integral multiple of $1,000 on the Fundamental Change Purchase Date at a price payable in cash equal to the Fundamental Change Purchase Price.

The Securities shall be convertible into shares of Common Stock in accordance with Article Five of the Supplemental Indenture. To convert a Security, a Holder must satisfy the requirements of Section 5.04 of the Supplemental Indenture. A Holder may convert a portion of a Security if the portion is $1,000 principal amount or any integral multiple of $1,000 principal amount.

Upon conversion of a Security, the Holder thereof shall be entitled to receive shares of Common Stock payable upon conversion in accordance with Article Five of the Supplemental Indenture, at the Conversion Rate specified in the Supplemental Indenture, as adjusted from time to time as provided in the Supplemental Indenture.

No Holder will be entitled to receive shares of Common Stock upon conversion, and any purported delivery of shares of Common Stock upon conversion of Securities shall be void and of no effect, to the extent (but only to the extent) that such receipt or delivery would cause (i) such converting Holder to become the owner of 4.9% or more of the Common Stock (as provided in the Issuer's articles of incorporation) or (ii) the Percentage Stock Ownership (as such term is defined in the Issuer's articles of incorporation) in the Issuer of any owner of 4.9% or more of Common Stock to increase, unless such convert

ing Holder has received prior approval of the Board of Directors. If any delivery of shares of Common Stock owed to a Holder upon conversion of Securities is not made, in whole or in part, as a result of the Section 382 Limitation, the Issuer's obligation to make such delivery shall not be extinguished and the Issuer shall deliver such shares of Common Stock as promptly as practicable after such delivery (i) would not result in such converting Holder becoming an owner of 4.9% or more of the Common Stock and (ii) would not cause the Percentage Stock Ownership in the Issuer of any owner of 4.9% or more of the Common Stock to increase and such converting Holder gives notice thereof to the Issuer.

The following constitute Events of Default: the Issuer fails to pay the principal of any Security when due; the Issuer fails to deliver the Settlement Amount owing upon conversion of any Security within five calendar days; the Issuer fails to pay any interest on any Security when due, and such failure continues for 30 calendar days; the Issuer fails to pay the Fundamental Change Purchase Price of any Security when due; the Issuer fails to provide timely notice of a Fundamental Change or a Make-Whole Adjustment Event in accordance with the terms of the Supplemental Indenture; the Issuer fails to perform any other covenant required of it in the Supplemental Indenture and such failure continues for 30 days after notice of the failure has been given the Issuer by the Trustee or by the holders of at least 25% of the aggregate principal amount of the Securities then outstanding; 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 (other than Non-Recourse Land Financing) of the Issuer or any Restricted Subsidiary, whether such Indebtedness exists on the Issue Date 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 (i) $15.0 million or more or (ii) such lesser amount as may be applicable to the corresponding event of default in any other capital markets Indebtedness (other than Non-Recourse Land Financing) of the Issuer or any of its Restricted Subsidiaries which is outstanding on the Issue Date; one or more judgments or orders that exceed (i) $15.0 million or (ii) such lesser amount as may be applicable to the corresponding event of default in any other capital market Indebtedness (other than Non-Recourse Land Financing) of the Issuer or any of its Restricted Subsidiaries which is outstanding on the Issue Date, in each case, 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; 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; 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 any Guarantee of any Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Guarantee and the Indenture) or is declared null and void and unenforceable or found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor from its Guarantee in accordance with the terms of this Supplemental Indenture and the Guarantee).

If any Event of Default occurs and is continuing (other than an Event of Default specified in Clause (ix) or (x) of Section 7.01 of the Supplemental Indenture with respect to the Issuer), the Trustee, by written notice to the Issuer, or the Holders of at least 25% in aggregate principal amount of the Securities of this series then outstanding may declare all amounts owing under Securities of this series to be due and payable immediately. Upon such declaration of acceleration, the aggregate principal of and accrued and unpaid interest on the outstanding Securities of this series 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 Securities may, under certain circumstances, 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 the Supplemental Indenture. If an Event of Default specified in clause (ix) or (x) of Section 7.01 of the Supplemental Indenture with respect to the Issuer occurs, all outstanding Securities shall become due and payable without any further action or notice. Holders of Securities may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Securities. Subject to certain limitations, Holders of a majority in principal amount of the Securities of this series may direct the Trustee in its exercise of any trust or power conferred upon the Trustee with respect to such Securities. The Trustee may withhold from Holders of the Securities of this series notice of any continuing default (except a default in payment of principal or interest) if it determines that withholding notice is in their interests. The Issuer must furnish an annual compliance certificate to the Trustee.

The Supplemental Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the Holders of the Securities at any time by the Issuer, the Guarantors and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time outstanding. Without the consent of any Holder of Securities, the Indenture or the Securities may be amended to cure any ambiguity, omission, defect or inconsistency or to make any change that does not adversely affect the rights of any Holder of Securities in any material respect. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities of each series at the time outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holders of this Security shall be conclusive and binding upon such Holders and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture Terms and no provision of this Security or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of and any premium and interest on this Security at the times, places and rates, and in the coin or currency, herein prescribed.

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

The Securities of this series are issuable only in registered form without coupons in denominations of $2,000.00 and integral multiples of $1,000.00 in excess thereof. As provided in the Indenture Terms and subject to certain limitations set forth therein, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

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

A director, officer, employee or stockholder, as such, of the Issuer shall not have any liability for any obligations of the Issuer under the Securities or the Indenture Terms or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder of Securities of this series by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Securities of this series.

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

No recourse shall be had for the payment of the principal of (and premium, if any) or interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture Terms or any indenture supplemental thereto, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Issuer or of any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

Wells Fargo Bank, National Association, the Trustee under the Indenture, or any banking institution serving as successor Trustee thereunder, in its individual or any other capacity, may make loans to, accept deposits from and perform services for the Issuer or its affiliates, and may otherwise deal with the Issuer or its affiliates as if it were not Trustee.

The Issuer will furnish to any Holder of the Securities of this series upon written request and without charge a copy of the Indenture. Requests may be made to: Meritage Homes Corporation, 17851 N. 85th Street, Suite 300, Scottsdale, Arizona 85255, Attention: Chief Financial Officer.

FORM OF CONVERSION NOTICE

MERITAGE HOMES CORPORATION

1.875% Convertible Senior Notes due 2032

To convert this Security in accordance with the Indenture, check the box:☐

To convert only part of this Security, state the principal amount to be converted (must be in multiples of $1,000):

$ _____

If you want the stock certificate representing the Common Stock issuable upon conversion made out in another person's name, fill in the form below:

(Insert other person's soc. sec. or tax I.D. no.)

(Print or type other person's name, address and zip code)

Date: _____ Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Security)

Signature(s) guaranteed
by:

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

FORM OF REPURCHASE NOTICE

MERITAGE HOMES CORPORATION

1.875% Convertible Senior Notes due 2032

Certificate No. of Security: _____

If you want to elect to have this Security purchased by the Issuer pursuant to Section 3.07 of the Supplemental Indenture, check the box:☐

If you want to elect to have only part of this Security purchased by the Issuer pursuant to Section 3.06 of the Supplemental Indenture, state the principal amount to be so purchased by the Issuer:

$ _____

(in an integral multiple of $1,000)

Date: _____ Signature(s): _____

(Sign exactly as your name(s) appear(s) on this Security)

Signature(s) guaranteed
by:

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

Exhibit 5.1

September 18, 2012

Meritage Homes Corporation
17851 North 85th Street, Suite 300
Scottsdale, Arizona 85255

Re: Registration Statement on Form S-3 (No. 333-180685)

Ladies and Gentlemen:

We have acted as counsel to Meritage Homes Corporation, a Maryland corporation (the "Company"), Meritage Paseo Crossing, LLC, an Arizona limited liability company, Meritage Paseo Construction, LLC, an Arizona limited liability company, Meritage Homes of Arizona, Inc., an Arizona corporation, Meritage Homes Construction, Inc., an Arizona corporation, Meritage Homes of Texas Holding, Inc., an Arizona corporation, Meritage Homes of California, Inc., a California corporation, Meritage Homes of Texas Joint Venture Holding Company, LLC, a Texas limited liability company, Meritage Holdings, L.L.C., a Texas limited liability company, Meritage Homes of Nevada, Inc., an Arizona corporation, MTH-Cavalier, LLC, an Arizona limited liability company, MTH Golf, LLC, an Arizona limited liability company, Meritage Homes of Colorado, Inc., an Arizona corporation, Meritage Homes of Florida, Inc., a Florida corporation, California Urban Homes, LLC, a California limited liability company, Meritage Homes of Texas, LLC, an Arizona limited liability company, Meritage Homes Operating Company, LLC, an Arizona limited liability company, WW Project Seller, LLC, an Arizona limited liability company, Meritage Homes of North Carolina, Inc., an Arizona corporation, Carefree Title Agency, Inc., a Texas corporation, M&M Fort Myers Holdings, LLC, a Delaware limited liability company, and Meritage Homes of Florida Realty LLC, a Florida limited liability company (collectively, the "Guarantors"), in connection with the registration of the underwritten public offering and sale of $126,500,000 aggregate principal amount of the Company's 1.875% Convertible Senior Notes due 2032 (the "Notes"), and related guarantees (the "Guarantees"), pursuant to the above-referenced Registration Statement, and all amendments thereto (collectively, the "Registration Statement"), filed by the Company with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act").

For purposes of this opinion, (i) the term "Texas Guarantors" means Meritage Homes of Texas Joint Venture Holding Company, LLC, a Texas limited liability company, Meritage Holdings, L.L.C., a Texas limited liability company, and Carefree Title Agency, Inc., a Texas corporation, and (ii) the term "Florida Guarantors" means Meritage Homes of Florida, Inc., a Florida corporation, and Meritage Homes of Florida Realty LLC, a Florida limited liability company.

In our examination, we have reviewed and are familiar with the following documents (collectively, the "Documents"):

• the Registration Statement and exhibits thereto, including the prospectus comprising a part thereof;

• the prospectus supplement in the form filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act (the "Prospectus Supplement");

• the Underwriting Agreement, dated September 12, 2012 (the "Underwriting Agreement"), by and among the Company, the Guarantors, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (together, the "Underwriters");

• the Indenture, dated September 18, 2012 (the "Base Indenture"), by and among the Company, the Guarantors, and Wells Fargo Bank National Association, as trustee (the "Trustee"), relating to the Notes and the Guarantees;

• the Supplemental Indenture No. 1, dated September 18, 2012 (the "Supplemental Indenture" and together with the Base Indenture, the "Indenture"), by and among the Company, the Guarantors and the Trustee, relating to the Notes and the Guarantees;

• the Notes;

• the Guarantees;

• the articles of incorporation, articles of organization, certificate of formation, bylaws, operating agreement, regulations and/or other applicable governing documents of the Guarantors, as in effect as of the date hereof;

• minutes of meetings of, and resolutions adopted by, the boards of directors, members, managers or other applicable governing bodies of the Company and the Guarantors relating to (i) the authorization of the Underwriting Agreement and Indenture and (ii) the authorization and issuance of the Guarantees; and

• a good standing certificate for the Company and each of the Guarantors, dated as of a recent date.

For the purpose of rendering our opinions, we have also made such factual and legal examinations as we deemed necessary under the circumstances, and in that connection we have examined, among other things, originals or copies, certified or otherwise identified to our

satisfaction, of such documents, corporate or limited liability company records, certificates of public officials, certificates of officers or other representatives of the Company or the Guarantors, and other instruments and have made such inquiries as we have deemed appropriate for the purpose of rendering this opinion.

In our examination, we have assumed without independent verification (i) the legal capacity and competency of all natural persons, (ii) that each of the parties to the Documents (other than the Company and the Guarantors) has duly authorized and has duly and validly executed and delivered each of the Documents and each instrument, agreement and other document executed in connection with the Documents to which such party is a signatory, (iii) the genuineness of all signatures, (iv) the authenticity of all documents submitted to us as originals, (v) the conformity to original documents of all documents submitted to us as conformed or photostatic copies and the authenticity of the originals of such latter documents, and (vi) the power and authority of all persons signing such documents to execute, deliver and perform under such documents, and the valid authorization, execution and delivery of such documents by such persons. As to any facts material to the opinions expressed herein which were not independently established or verified, we have relied upon oral or written statements and representations of officers or other representatives of the Company, the Guarantors and others.

On the basis of, and in reliance on, the foregoing examination and subject to the assumptions, exceptions, qualifications and limitations contained herein, we are of the opinion that:

1. The Notes have been duly executed and delivered by the Company in accordance with the terms of the Underwriting Agreement and the Indenture.

2. The Notes are valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and entitled to the benefits of the Indenture.

3. Each of the Guarantors (other than the Texas Guarantors and the Florida Guarantors) is a corporation or limited liability company duly incorporated or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its organization.

4. The Guarantees have been duly authorized by all necessary corporate or limited liability company action, as applicable, of the Guarantors (other than the Texas Guarantors and the Florida Guarantors), and have been duly executed and delivered by the Guarantors (other than the Texas Guarantors and the Florida Guarantors) in accordance with the terms of the Underwriting Agreement and the Indenture.

5. The Guarantees are valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms and entitled to the benefits of the Indenture.

The opinions set forth herein are subject to the following further assumptions, qualifications, limitations and exceptions:

A. We do not express any opinion herein concerning any laws other than the laws of the States of New York, Arizona and California, and the statutory provisions of the Delaware Limited Liability Company Act, which, in our experience, are normally applicable to transactions of the type contemplated by the Underwriting Agreement and the Indenture, and, to the extent that judicial or regulatory orders or decrees or consents, approvals, licenses, authorizations, validations, filings, recordings or registrations with governmental authorities are relevant, to those required under such laws (all of the foregoing being referred to as "Opined on Law"). We do not express any opinion with respect to the law of any jurisdiction other than Opined on Law or as to the effect of any such non-Opined on Law on the opinion herein. Insofar as the opinions expressed herein relates to matters governed by laws other than those set forth in the preceding sentence, we have assumed, without having made any independent investigation, that such laws do not affect any of the opinions set forth herein. The opinions expressed herein are subject to the effect of judicial decisions which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

B. We express no opinion as to compliance with the securities (or "blue sky") laws of any jurisdiction.

C. Our opinions set forth above are subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors generally (including, without limitation, the effect of statutory or other laws regarding fraudulent transfers or preferential transfers), and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies, regardless of whether enforceability is considered in a proceeding in equity or at law. With respect to such opinions, we express no opinion regarding the effectiveness of (x) any waiver of stay, extension or usury laws or of unknown future rights; (y) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to federal or state securities laws; or (z) provisions purporting to grant a power of attorney.

D. This opinion is limited to the matters set forth herein, and no other opinion should be inferred beyond the matters expressly stated. With respect to the opinion expressed in paragraph 2 above, we have relied with permission on the opinions of Venable LLP dated as of

the date hereof concerning the due authorization of the Notes by the Company and certain related matters. With respect to the opinion expressed in paragraph 5 above, we have relied with permission on (i) the opinions of Gardere Wynne Sewell LLP dated as of the date hereof concerning the due authorization, execution and delivery of the Guarantee by the Texas Guarantors and certain related matters, and (ii) the opinions of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. dated as of the date hereof concerning the due authorization, execution and delivery of the Guarantee by the Florida Guarantors and certain related matters. Such opinions have also been submitted to the Commission as exhibits to the Current Report (as defined below).

This opinion is being furnished to you solely for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the offering of the Notes (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Current Report and the said incorporation by reference and to the use of the name of our firm therein. We also consent to the reference to our firm under the heading "Legal Matters" in the Prospectus Supplement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Snell & Wilmer L.L.P.

Exhibit 5.2

VENABLE LLP
750 East Pratt Street, Suite 900
Baltimore, Maryland 21202
Telephone 410-244-7400
Facsimile 410-244-7742
www.venable.com

September 18, 2012

Meritage Homes Corporation
17851 North 85th Street
Suite 300
Scottsdale, Arizona 85255

Re: Registration Statement on Form S-3 (File No. 333-180685)

Ladies and Gentlemen:

We have served as Maryland counsel to Meritage Homes Corporation, a Maryland corporation (the "Company"), in connection with certain matters of Maryland law arising out of the issuance by the Company of $126,500,000 aggregate principal amount of its 1.875% Convertible Senior Notes due 2032 (the "Notes"), covered by the above-referenced Registration Statement, and all amendments thereto (the "Registration Statement"), filed by the Company with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"). The Notes are to be issued in an underwritten public offering pursuant to a Prospectus Supplement, dated September 12, 2012 (the "Prospectus Supplement").

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement, and the related form of prospectus included therein, in the form filed by the Company with the Commission under the 1933 Act;

2. The Prospectus Supplement, in the form filed by the Company with the Commission pursuant to Rule 424(b) under the 1933 Act;

3. The charter of the Company (the "Charter"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");

4. The Bylaws of the Company, certified as of the date hereof by an officer of the Company;

5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;

6. Resolutions adopted by the Board of Directors of the Company (the "Resolutions") relating to the authorization of the issuance of the Notes, certified as of the date hereof by an officer of the Company;

7. A certificate executed by an officer of the Company, dated as of the date hereof; and

8. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.

2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.

3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

5. Upon the issuance of any shares of common stock, $.01 par value per share (the "Common Stock"), of the Company issuable upon conversion of the Notes (the "Conversion Shares"), the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Notes has been duly authorized by the Company.

3. The issuance of the Conversion Shares has been duly authorized by the Company and, when issued and delivered by the Company upon conversion of the Notes in accordance with the Registration Statement, the Resolutions, and the terms of the Notes, the Conversion Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning any other law. We express no opinion as to compliance with any federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the offering of the Notes (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Current Report and the said incorporation by reference and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act. Snell & Wilmer L.L.P., counsel to the Company, may rely on this opinion in connection with an opinion to be issued by it of even date herewith relating to the issuance of the Notes.

Very truly yours,

/s/ Venable LLP

EXHIBIT 5.3

September 18, 2012

Meritage Homes Corporation
17851 North 85th Street, Suite 300
Scottsdale, Arizona 85255

Re: Registration Statement on Form S-3 (No. 333-180685)

Ladies and Gentlemen:

At the request of Meritage Homes Corporation, a Maryland corporation (the ***"Company***"), we have acted as special Texas counsel to the Texas Guarantors (as defined below) in connection with the guarantee (the "***Guarantee***") of the Texas Guarantors related to up to $126,500,000 aggregate principal amount of the Company's 1.875% Convertible Senior Notes due 2032 (the ***"Notes***") that are the subject of the underwritten public offering and sale registered pursuant to the above-referenced Registration Statement, and all amendments thereto (collectively, the "***Registration Statement***"), filed by the Company with the United States Securities and Exchange Commission (the "***Commission***") under the Securities Act of 1933, as amended (the "***Securities Act***").

As used in this opinion letter, "***Texas Guarantors***" means, collectively, Meritage Holdings, L.L.C., a Texas limited liability company (acting for and on behalf of itself and not as a general partner or in any other capacity acting for or on behalf of any other entity) ("***Meritage Holdings***"), Meritage Homes of Texas Joint Venture Holding Company, LLC, a Texas limited liability company ("***Meritage Homes***"), and Carefree Title Agency, Inc., a Texas corporation ("***Carefree Title***").

In the capacity stated above, we have examined originals or copies of the following:

(a) the Registration Statement and exhibits thereto, including the prospectus constituting a part thereof and the prospectus supplement relating to the offering and sale of the Notes;

(b) the Underwriting Agreement, dated September 12, 2012 (the "***Underwriting Agreement***"), by and among the Company, the Guarantors (as defined in the Underwriting Agreement), and Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the underwriters named in Schedule A to the Underwriting Agreement (collectively, the ***"Underwriters"***);

(c) the Indenture, dated September 18, 2012 (the ***"Base Indenture***"), by and among the Company, the Guarantors, and Wells Fargo Bank, National Association, as trustee (the ***"Trustee***"), relating to the Notes and the Guarantee;

(d) the Supplemental Indenture No. 1, dated September 18, 2012 (the ***"Supplemental Indenture***" and, together with the Base Indenture, the ***"Indenture***"), by and among the Company, the Guarantors and the Trustee, relating to the Notes and the Guarantee;

(e) the Guarantee;

(f) a certified copy of the current Articles of Organization of Meritage Holdings issued by the Secretary of the State of Texas as of a recent date;

(g) a certified copy of the current Restated Certificate of Formation of Meritage Homes issued by the Secretary of the State of Texas as of a recent date;

(h) a certified copy of the current Certificate of Formation of Carefree Title issued by the Secretary of the State of Texas as of a recent date;

(i) a copy of the current Regulations of Meritage Holdings, certified as in effect as of the date hereof by an officer of Meritage Holdings;

(j) a copy of the current Amended and Restated Company Agreement of Meritage Homes, certified as in effect as of the date hereof by an officer of Meritage Homes;

(k) a copy of the current Bylaws of Carefree Title, certified as in effect as of the date hereof by an officer of Carefree Title;

(l) a copy of all of the resolutions adopted by or on behalf of each Texas Guarantor authorizing its execution and delivery of the Indenture and the Guarantee and related matters, certified as being in effect as of the date hereof by an officer of each Texas Guarantor;

(m) certificates of (i) the Secretary of State of the State of Texas, each dated September 11, 2012, with respect to the status of each Texas Guarantor as a limited liability company or for-profit corporation, as applicable, existing under the laws of the State of Texas; and (ii) the Comptroller of Public Accounts of the State of Texas, each dated September 18, 2012, with respect to the tax good standing of each Texas Guarantor under the laws of the State of Texas (collectively, the ***"Texas Governmental Certificates"***); and

(n) certificates as to various factual matters, each dated as of the date hereof, with respect to the Texas Guarantors, each executed by an officer of such Texas Guarantor.

In addition, we have examined originals or copies of such limited liability company or corporate records of the Texas Guarantors and such other documents as we consider necessary or advisable for the purpose of rendering the opinions set forth below. We have not independently established any of the facts stated therein, and we have assumed, without investigation or verification, the accuracy of the statements or other information contained therein. Except for obtaining the Texas Governmental Certificates, we have not conducted any search or review of any index, docket or other record of any governmental authority.

For purposes of rendering the opinions set forth below, we have further assumed, without independent verification of any kind, (a) that the signatures of all persons signing all documents we have examined are genuine; (b) the legal capacity of all natural persons; (c) that all documents submitted to us as originals or duplicate originals are authentic and complete; (d) that all documents submitted to us as copies, whether certified or not, conform to authentic original documents; and (e) that each of the Texas Governmental Certificates on which we have relied that is dated earlier than the date hereof continues to remain accurate from that date through and including the date hereof.

On the basis of, and in reliance on, the foregoing and subject to the assumptions, exceptions, qualifications and limitations contained herein, we are of the opinion that:

1. Each of the Texas Guarantors is a limited liability company or a for-profit corporation, as applicable, validly existing and in good standing under the laws of the State of Texas.

2. Each of the Texas Guarantors has all requisite limited liability company or corporate power and authority, as applicable, to execute, deliver and perform its obligations under the Indenture and the Guarantee.

3. The Indenture and the Guarantee have been duly authorized by all necessary limited liability company or corporate action, as applicable, of the Texas Guarantors and have been duly executed and delivered by the Texas Guarantors in accordance with the terms of the Underwriting Agreement.

The opinions expressed above also are subject to the following exceptions, limitations and qualifications:

A. The opinions expressed herein are limited to the current laws and regulations of the State of Texas. We assume no responsibility as to the applicability or the effect of any other laws or regulations, including (without limitation) any of the federal laws or regulations of the United States of America or any of the state laws or regulations of any other state.

B. The opinions expressed herein are limited to the matters specifically addressed, and no opinion is implied or may be inferred beyond the matters so specifically addressed.

C. The opinions expressed herein are based on laws in effect on the date hereof, which laws are subject to change with possible retroactive effect, and we disclaim any undertaking to advise of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

This opinion letter is for your benefit and use in connection with the Registration Statement and may be relied upon by your counsel, Snell & Wilmer L.L.P., for the purpose of giving its Exhibit 5.1 legal opinion in connection with the Registration Statement.

This opinion letter is being furnished to you solely for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the offering of the Notes (the "***Current Report***"), which is incorporated by reference in the Registration Statement. We hereby consent to such filing of this opinion letter as an exhibit to the Current Report and such incorporation by reference and to the reference to our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act.

Very truly yours,

GARDERE WYNNE SEWELL LLP

By: /s/ Richard A. Tulli
Richard A. Tulli, Partner

EXHIBIT 5.4

Lowndes Drosdick Doster & Kantor & Reed, P.A.

ATTORNEYS AT LAW

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MERITAS LAW FIRMS WORLDWIDE

September 18, 2012

Meritage Homes Corporation
17851 North 85th Street, Ste. 300
Scottsdale, AZ 85255

Re: Registration Statement on Form S-3 (No. 333-180685)

Ladies and Gentleman:

At the request of Meritage Homes Corporation, a Maryland corporation (the "Company"), we have acted as counsel to the Florida Guarantors (as defined below), in connection with the guarantee (the "Guarantee") of the Florida Guarantors related to $126,500,000 aggregate principal amount of the Company's 1.875% Convertible Senior Notes due 2032 (the "Notes") that are the subject of the underwritten public offering and sale registered pursuant to the above-referenced Registration Statement, and all amendments thereto (collectively, the "Registration Statement"), filed by the Company with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act").

As used in this opinion letter, "Florida Guarantors" means, collectively, Meritage Homes of Florida, Inc., a Florida corporation ("Meritage Homes"), and Meritage Homes of Florida Realty LLC, a Florida limited liability company ("Realty LLC").

In the capacity stated above, we have examined originals or copies of the following:

(a) the Registration Statement and exhibits thereto, including the prospectus constituting a part thereof and the prospectus supplement relating to the offering and sale of the Notes;

(b) the Underwriting Agreement, dated September 12, 2012 (the "Underwriting Agreement"), by and among the Company, the Guarantors (as defined in the Underwriting Agreement), Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the underwriters named in Schedule A to the Underwriting Agreement (collectively, the "Underwriters");

(c) the Indenture, dated September 18, 2012 (the "Base Indenture"), by and among the Company, the Guarantors, and Wells Fargo Bank National Association, as trustee (the "Trustee"), relating to the Notes and the Guarantees;

(d) the Supplemental Indenture No. 1, dated September 18, 2012 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), by and among the Company, the Guarantors and the Trustee, relating to the Notes and the Guarantees;

(e) the Guarantee;

(f) a copy of the current Articles of Organization and Operating Agreement of Realty LLC certified as true and correct by the Secretary of Meritage Homes, the manager and sole member of Realty LLC as of a recent date;

(g) a copy of the current Articles of Incorporation and Bylaws of Meritage Homes certified as true and correct by the Secretary of Meritage Homes as of a recent date;

(h) a copy of all of the resolutions adopted by or on behalf of each Florida Guarantor authorizing its execution and delivery of the Indenture and the Guarantee and related matters, certified as being in effect as of the date hereof by an officer of each Florida Guarantor;

(i) certificates of (i) the Secretary of State of the State of Florida, each dated September 17, 2012, with respect to the status of each Florida Guarantor as a limited liability company or for-profit corporation, as applicable, existing under the laws of the State of Florida. (collectively, the "Florida Governmental Certificates"); and

(j) certificates as to various factual matters, each dated as of the date hereof, with respect to the Florida Guarantors, each executed by an officer of such Florida Guarantor.

In addition, we have examined originals or copies of such limited liability company or corporate records of the Florida Guarantors and such other documents as we consider necessary or advisable for the purpose of rendering the opinions set forth below. We have not independently established any of the facts stated therein, and we have assumed, without investigation or verification, the accuracy of the statements or other information contained therein. Except for obtaining the Florida Governmental Certificates, we have not conducted any search or review of any index, docket or other record of any governmental authority.

For purposes of rendering the opinions set forth below, we have further assumed, without independent verification of any kind, (a) that the signatures of all persons signing all documents we have examined are genuine; (b) the legal capacity of all natural persons; (c) that all documents submitted to us as originals or duplicate originals are authentic and complete; (d) that all documents submitted to us as copies, whether certified or not, conform to authentic original documents; and (e) that each of the Florida Governmental Certificates on which we have relied that is dated earlier than the date hereof continues to remain accurate from that date through and including the date hereof.

On the basis of, and in reliance on, the foregoing and subject to the assumptions, exceptions, qualifications and limitations contained herein, we are of the opinion that:

1. Each of the Florida Guarantors is a limited liability company or a for-profit corporation, as applicable, validly existing and in good standing under the laws of the State of Florida.

2. Each of the Florida Guarantors has all requisite limited liability company or corporate power and authority, as applicable, to execute, deliver and perform its obligations under the Indenture and the Guarantee.

3. The Indenture and the Guarantee have been duly authorized by all necessary limited liability company or corporate action, as applicable, of the Florida Guarantors and have been duly executed and delivered by the Florida Guarantors in accordance with the terms of the Underwriting Agreement.

The opinions expressed above also are subject to the following exceptions, limitations and qualifications:

A. The opinions expressed herein are limited to the current laws and regulations of the State of Florida. We assume no responsibility as to the applicability or the effect of any other laws or regulations, including (without limitation) any of the federal laws or regulations of the United States of America or any of the state laws or regulations of any other state.

B. The opinions expressed herein are limited to the matters specifically addressed, and no opinion is implied or may be inferred beyond the matters so specifically addressed.

C. The opinions expressed herein are based on laws in effect on the date hereof, which laws are subject to change with possible retroactive effect, and we disclaim any undertaking to advise of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

This opinion letter is for your benefit and use in connection with the Registration Statement and may be relied upon by your counsel, Snell & Wilmer L.L.P., for the purpose of giving its Exhibit 5.1 legal opinion in connection with the Registration Statement.

This opinion is being furnished to you solely for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the offering of the Notes (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Current Report and the said incorporation by reference and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act.

Very truly yours,

LOWNDES, DROSDICK, DOSTER, KANTOR & REED, P.A.

By: /s/ William A. Beckett
William A. Beckett

Exhibit 99.1

FOR IMMEDIATE RELEASE

Contacts: Brent Anderson, VP Investor Relations
(972) 580-6360 (office)
Brent.Anderson@meritagehomes.com

Meritage Homes Announces Offering of Convertible Senior Notes

SCOTTSDALE, Ariz., September 12, 2012 (GLOBENEWSWIRE) — Meritage Homes Corporation (NYSE:MTH), a leading U.S. homebuilder, today announced that it has commenced an underwritten registered public offering of $100 million aggregate principal amount of its Convertible Senior Notes due 2032, subject to market and other conditions. The notes will be convertible into shares of the Company's common stock at any time prior to maturity and will be guaranteed fully, unconditionally, and jointly and severally initially by all of the Company's direct and indirect 100% owned subsidiaries. The interest rate, conversion rate, and certain other terms of the offering will be determined at the time of pricing. The offering is subject to market conditions, and there can be no assurance as to whether or when the offering will be completed, or as to the actual size or terms of the offering. The Company plans to use the proceeds received from the offering for general corporate purposes.

The notes are being offered pursuant to an effective shelf registration statement that was previously filed by the Company with the Securities and Exchange Commission. A preliminary prospectus supplement and accompanying prospectus describing the terms of the offering has been filed with the Securities and Exchange Commission.

Citigroup, JP Morgan, Deutsche Bank and BofA Merrill Lynch acted as joint book-running managers for the offering. Printed copies of the preliminary prospectus supplement relating to this offer and accompanying prospectus may be obtained by contacting Citigroup, Brooklyn Army Terminal, 140 58th Street, Brooklyn, New York 11220 or by Telephone: (800) 831-9146 or by email at batprospectusdept@citigroup.com; J.P. Morgan Securities LLC at 1-212-834-4533 or by mail to Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, New York 11717, Attention: Post-Sale Fulfillment; Deutsche Bank Securities Inc., Attn: Prospectus Group, 60 Wall Street, New York, New York 10005-2836 or by telephone at:

(800) 503-4611, or by email at: prospectus.CPDG@db.com; or Merrill Lynch, Pierce, Fenner & Smith Incorporated at BofA Merrill Lynch, Attention: Prospectus Department, 222 Broadway, 7th Floor, New York, New York 10038 or by emailing: dg.prospectus_requests@baml.com. An electronic copy of the preliminary supplement and accompanying prospectus may also be obtained at no charge at the Securities and Exchange Commission's website at www.sec.gov.

This release shall not constitute an offer to sell or the solicitation of an offer to buy any of these securities, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state. The offering of notes will be made only by means of a prospectus supplement and related base prospectus.

About Meritage Homes Corporation

Meritage Homes is the ninth-largest public homebuilder in the United States based on homes closed in 2011. Meritage builds a variety of homes across Southern and Western states to appeal to a wide range of buyers, including first-time, move-up, luxury and active adults. As of June 30, 2012, the company had 151 actively selling communities in 15 metropolitan areas, including Northern California, East Bay/Central Valley and Southern California, Houston, Dallas/Ft. Worth, Austin, San Antonio, Phoenix/Scottsdale, Tucson, Las Vegas, Denver, Orlando, Tampa and Raleigh-Durham. In 2012, Meritage also announced its entry into the Charlotte market.

Meritage is an industry leader in innovation and energy efficiency. Meritage was the first national homebuilder to be 100 percent ENERGY STAR® qualified in every home it builds, and far exceeds ENERGY STAR standards in most of its communities. Meritage has designed and built more than 75,000 homes in its 27-year history, and has a reputation for its distinctive style, quality construction, and positive customer experience.

For more information, visit meritagehomes.com.

The Meritage Homes Corporation logo is available at http://www.globenewswire.com/newsroom/prs/?pkgid=2624

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include those regarding the Company's proposed offering of convertible notes, including its anticipated use of proceeds therefrom, which are subject to significant risks and uncertainties. The Company makes no commitment, and disclaims any duty, to update or revise any forward-looking statements to reflect future events or changes in these expectations.

Meritage's business is subject to a number of risks and uncertainties. As a result of those risks and uncertainties, the Company's stock and note prices may fluctuate dramatically. The risks and uncertainties include but are not limited to the following: weakness in the homebuilding market resulting from economic conditions; interest rates and changes in the availability and pricing of residential mortgages; adverse changes in tax laws that benefit our homebuyers; the ability of our potential buyers to sell their existing homes; cancellation rates and home prices in our markets; availability of materials and labor and resulting inflation in the cost to construct homes; the adverse effect of slower order absorption rates; potential write-downs or write-offs of assets, including pre-acquisition costs and deposits; the availability of finished lots and undeveloped land; our potential exposure to natural disasters; the liquidity of our joint ventures and the ability of our joint venture partners to meet their obligations to us and the joint venture; competition; the success of our strategies in the current homebuilding market and economic environment; the adverse impacts of cancellations resulting from small deposits relating to our sales contracts; construction defect and home warranty claims; our success in prevailing on contested tax positions; the impact of deferred tax valuation allowances and our ability to preserve our operating loss carryforwards; our ability to obtain performance bonds in connection with our development work; the loss of key personnel; our failure to comply with laws and regulations; our lack of geographic diversification; fluctuations in quarterly operating results; the Company's financial leverage and level of indebtedness; our ability to take certain actions because of restrictions contained in the indentures for the Company's senior and senior subordinated notes and our ability to raise additional capital when and if needed; our credit ratings; successful integration of future acquisitions; government regulations and legislative or other initiatives that seek to restrain growth or new housing construction or similar measures; acts of war; the replication of our "Green" technologies by our competitors; our exposure to information technology failures and security breaches; and other factors identified in documents filed by the Company with the Securities and Exchange Commission, including those set forth in our Form 10-K for the year ended December 31, 2011 and most recent 10-Q under the caption "Risk Factors," which can be found on our website.

# # #

Exhibit 99.2

FOR IMMEDIATE RELEASE

Contacts: Brent Anderson, VP Investor Relations
(972) 580-6360 (office)
Brent.Anderson@meritagehomes.com

Meritage Homes Announces Pricing of 1.875% Convertible Senior Notes Due 2032

SCOTTSDALE, Ariz., September 12, 2012 (GLOBENEWSWIRE) -- Meritage Homes Corporation (NYSE:MTH), a leading U.S. homebuilder, today announced that it has priced an underwritten public offering of $110 million aggregate principal amount of 1.875% Convertible Senior Notes due 2032, which was upsized from the previously announced $100 million offering. The Company granted the underwriters a 30-day option to purchase up to an additional $16.5 million aggregate principal amount of notes from the Company. The offering is expected to close on September 18, 2012, subject to customary closing conditions.

The notes will be the Company's general unsecured senior obligations. The notes will pay interest on March 15 and September 15, beginning on March 15, 2013, at a rate of 1.875% per year, and will mature on September 15, 2032. The notes will be guaranteed unconditionally, jointly and severally, initially by all of the Company's direct and indirect 100% owned subsidiaries.

The notes will initially be convertible into shares of common stock at a conversion rate of 17.1985 shares of the Company's common stock per $1,000 principal amount of notes, corresponding to an initial conversion price of approximately $58.14 per share of common stock, or approximately 47.5% above the last reported sale price of $39.42 per share of the Company's common stock on the New York Stock Exchange on September 12, 2012. The conversion rate will be subject to adjustment upon the occurrence of certain events.

The Company intends to use the net proceeds from this offering for general corporate purposes.

The notes are being offered pursuant to an effective shelf registration statement that was previously filed by the Company with the Securities and Exchange Commission. A preliminary prospectus supplement and accompanying prospectus describing the terms of the offering has been filed with the Securities and Exchange Commission.

Citigroup, JP Morgan, Deutsche Bank and BofA Merrill Lynch acted as joint book-running managers for the offering. JMP Securities acted as co-manager. Printed copies of the preliminary prospectus supplement relating to this offer and accompanying prospectus may be obtained by contacting Citigroup, Brooklyn Army Terminal, 140 58th Street, Brooklyn, New York 11220 or by telephone: (800) 831-9146 or by email at batprospectusdept@citigroup.com; J.P. Morgan Securities LLC at 1-212-834-4533 or by mail to Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, New York 11717, Attention: Post-Sale Fulfillment; Deutsche Bank Securities Inc., Attn: Prospectus Group, 60 Wall Street, New York, New York 10005-2836 or by telephone at: (800) 503-4611, or by email at: prospectus.CPDG@db.com; Merrill Lynch, Pierce, Fenner & Smith Incorporated at BofA Merrill Lynch, Attention: Prospectus Department, 222 Broadway, 7th Floor, New York, New York 10038 or by emailing: dg.prospectus_requests@baml.com; or JMP Securities LLC, Attn: Prospectus Department, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, or by telephone: 415-835-8985 or by email at ccornell@jmpsecurities.com. An electronic copy of the preliminary supplement and accompanying prospectus may also be obtained at no charge at the Securities and Exchange Commission's website at www.sec.gov.

About Meritage Homes Corporation

Meritage Homes is the ninth-largest public homebuilder in the United States based on homes closed in 2011. Meritage builds a variety of homes across Southern and Western states to appeal to a wide range of buyers, including first-time, move-up, luxury and active adults. As of June 30, 2012, the company had 151 actively selling communities in 15 metropolitan areas, including Northern California, East Bay/Central Valley and Southern California, Houston, Dallas/Ft. Worth, Austin, San Antonio, Phoenix/Scottsdale, Tucson, Las Vegas, Denver, Orlando, Tampa and Raleigh-Durham. In 2012, Meritage also announced its entry into the Charlotte market.

Meritage is an industry leader in innovation and energy efficiency. Meritage was the first national homebuilder to be 100 percent ENERGY STAR® qualified in every home it builds, and far exceeds ENERGY STAR standards in most of its communities. Meritage has designed and built more than 75,000 homes in its 27-year history, and has a reputation for its distinctive style, quality construction, and positive customer experience.

For more information, visit meritagehomes.com.

The Meritage Homes Corporation logo is available at http://www.globenewswire.com/newsroom/prs/?pkgid=2624

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include those regarding the Company's offering of convertible notes, including its anticipated use of proceeds therefrom, which are subject to significant risks and uncertainties. The Company makes no commitment, and disclaims any duty, to update or revise any forward-looking statements to reflect future events or changes in these expectations.

Meritage's business is subject to a number of risks and uncertainties. As a result of those risks and uncertainties, the Company's stock and note prices may fluctuate dramatically. The risks and uncertainties include but are not limited to the following: weakness in the homebuilding market resulting from economic conditions; interest rates and changes in the availability and pricing of residential mortgages; adverse changes in tax laws that benefit our homebuyers; the ability of our potential buyers to sell their existing homes; cancellation rates and home prices in our markets; availability of materials and labor and resulting inflation in the cost to construct homes; the adverse effect of slower order absorption rates; potential write-downs or write-offs of assets, including pre-acquisition costs and deposits; the availability of finished lots and undeveloped land; our potential exposure to natural disasters; the liquidity of our joint ventures and the ability of our joint venture partners to meet their obligations to us and the joint venture; competition; the success of our strategies in the current homebuilding market and economic environment; the adverse impacts of cancellations resulting from small deposits relating to our sales contracts; construction defect and home warranty claims; our success in prevailing on contested tax positions; the impact of deferred tax valuation allowances and our ability to preserve our operating loss carryforwards; our ability to obtain performance bonds in connection with our development work; the loss of key personnel; our failure to comply with laws and regulations; our lack of geographic diversification; fluctuations in quarterly operating results; the Company's financial leverage and level of indebtedness; our ability to take certain actions because of restrictions contained in the indentures for the Company's senior and senior subordinated notes and our ability to raise additional capital when and if needed; our credit ratings; successful integration of future acquisitions; government regulations and legislative or other initiatives that seek to restrain growth or new housing construction or similar measures; acts of war; the replication of our "Green" technologies by our competitors; our exposure to information technology failures and security breaches; and other factors identified in documents filed by the Company with the Securities and Exchange Commission, including those set forth in our Form 10-K for the year ended December 31, 2011 and most recent 10-Q under the caption "Risk Factors," which can be found on our website.

# # #

EXHIBIT 99.3

FOR IMMEDIATE RELEASE

Contacts: Brent Anderson, VP Investor Relations
(972) 580-6360 (office)
Brent.Anderson@meritagehomes.com

Meritage Homes Completes Offering of 1.875% Convertible Senior Notes

SCOTTSDALE, Ariz., September 18, 2012 (GLOBENEWSWIRE) — Meritage Homes Corporation (NYSE:MTH), a leading U.S. homebuilder, today announced that it has completed its offering and sale of $126.5 million aggregate principal amount of 1.875% Convertible Senior Notes due 2032. This amount includes the exercise in full by the underwriters of their option to purchase an additional $16.5 million aggregate principal amount of notes.

The notes will be the Company's general unsecured senior obligations. The notes will pay interest on March 15 and September 15, beginning on March 15, 2013, at a rate of 1.875% per year, and will mature on September 15, 2032. The notes will initially be guaranteed unconditionally, jointly and severally by all of the Company's direct and indirect 100% owned subsidiaries. The notes will initially be convertible into shares of common stock at a conversion rate of 17.1985 shares of the Company's common stock per $1,000 principal amount of notes, corresponding to an initial conversion price of approximately $58.14 per share of common stock.

The Company intends to use the net proceeds of approximately $123 million from this offering for general corporate purposes.

The notes are being offered pursuant to an effective shelf registration statement that was previously filed by the Company with the Securities and Exchange Commission. A preliminary prospectus supplement and accompanying prospectus describing the terms of the offering has been filed with the Securities and Exchange Commission.

Citigroup, JP Morgan, Deutsche Bank and BofA Merrill Lynch acted as joint book-running managers for the offering. JMP Securities acted as co-manager. Printed copies of the preliminary prospectus supplement relating to this offer and accompanying prospectus may be obtained by contacting Citigroup, Brooklyn Army Terminal, 140 58th Street, Brooklyn, New York 11220 or by telephone: (800) 831-9146 or by email at batprospectusdept@citigroup.com;

J.P. Morgan Securities LLC at 1-212-834-4533 or by mail to Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, New York 11717, Attention: Post-Sale Fulfillment; Deutsche Bank Securities Inc., Attn: Prospectus Group, 60 Wall Street, New York, New York 10005-2836 or by telephone at: (800) 503-4611, or by email at: prospectus.CPDG@db.com; Merrill Lynch, Pierce, Fenner & Smith Incorporated at BofA Merrill Lynch, Attention: Prospectus Department, 222 Broadway, 7th Floor, New York, New York 10038 or by emailing: dg.prospectus_requests@baml.com; or JMP Securities LLC, Attn: Prospectus Department, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, or by telephone: 415-835-8985 or by email at ccornell@jmpsecurities.com. An electronic copy of the preliminary supplement and accompanying prospectus may also be obtained at no charge at the Securities and Exchange Commission's website at www.sec.gov.

About Meritage Homes Corporation

Meritage Homes is the ninth-largest public homebuilder in the United States based on homes closed in 2011. Meritage builds a variety of homes across Southern and Western states to appeal to a wide range of buyers, including first-time, move-up, luxury and active adults. As of June 30, 2012, the company had 151 actively selling communities in 15 metropolitan areas, including Northern California, East Bay/Central Valley and Southern California, Houston, Dallas/Ft. Worth, Austin, San Antonio, Phoenix/Scottsdale, Tucson, Las Vegas, Denver, Orlando, Tampa and Raleigh-Durham. In 2012, Meritage also announced its entry into the Charlotte market.

Meritage is an industry leader in innovation and energy efficiency. Meritage was the first national homebuilder to be 100 percent ENERGY STAR® qualified in every home it builds, and far exceeds ENERGY STAR standards in most of its communities. Meritage has designed and built more than 75,000 homes in its 27-year history, and has a reputation for its distinctive style, quality construction, and positive customer experience.

For more information, visit meritagehomes.com.

The Meritage Homes Corporation logo is available at
http://www.globenewswire.com/newsroom/prs/?pkgid=2624

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include those regarding the Company's offering of convertible notes, including its anticipated use of proceeds therefrom, which are subject to significant risks and uncertainties. The Company makes no commitment, and disclaims any duty, to update or revise any forward-looking statements to reflect future events or changes in these expectations.

Meritage's business is subject to a number of risks and uncertainties. As a result of those risks and uncertainties, the Company's stock and note prices may fluctuate dramatically. The risks and uncertainties include but are not limited to the following: weakness in the homebuilding market resulting from economic conditions; interest rates and changes in the availability and pricing of residential mortgages; adverse changes in tax laws that benefit our homebuyers; the ability of our potential buyers to sell their existing homes; cancellation rates and home prices in our markets; availability of materials and labor and resulting inflation in the cost to construct homes; the adverse effect of slower order absorption rates; potential write-downs or write-offs of assets, including pre-acquisition costs and deposits; the availability of finished lots and undeveloped land; our potential exposure to natural disasters; the liquidity of our joint ventures and the ability of our joint venture partners to meet their obligations to us and the joint venture; competition; the success of our strategies in the current homebuilding market and economic environment; the adverse impacts of cancellations resulting from small deposits relating to our sales contracts; construction defect and home warranty claims; our success in prevailing on contested tax positions; the impact of deferred tax valuation allowances and our ability to preserve our operating loss carryforwards; our ability to obtain performance bonds in connection with our development work; the loss of key personnel; our failure to comply with laws and regulations; our lack of geographic diversification; fluctuations in quarterly operating results; the Company's financial leverage and level of indebtedness; our ability to take certain actions because of restrictions contained in the indentures for the Company's senior and senior subordinated notes and our ability to raise additional capital when and if needed; our credit ratings; successful integration of future acquisitions; government regulations and legislative or other initiatives that seek to restrain growth or new housing construction or similar measures; acts of war; the replication of our "Green" technologies by our competitors; our exposure to information technology failures and security breaches; and other factors identified in documents filed by the Company with the Securities and Exchange Commission, including those set forth in our Form 10-K for the year ended December 31, 2011 and most recent 10-Q under the caption "Risk Factors," which can be found on our website.

# # #