

# SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

## FORM 10-K

(Mark One)

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

For the fiscal year ended September 30, 2003

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

Commission file number: 001-12822

### Beazer Homes USA, Inc.

(Exact name of Registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**58-2086934**

(I.R.S. Employer Identification No.)

**1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328**

(Address of principal executive offices) (Zip code)

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

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

Title of Securities

Exchanges on which Registered

Common Stock, \$.01 par value per share  
Preferred Share Purchase Rights

New York Stock Exchange  
New York Stock Exchange

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

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

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

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

The aggregate market value of the registrant's Common Stock held by non-affiliates of the registrant (12,601,760 shares) as of March 31, 2003, based on the closing sale price per share as reported by the New York Stock Exchange on such date, was \$741,109,506.

The number of shares outstanding of the registrant's Common Stock as of December 12, 2003 was 13,614,895.

#### DOCUMENTS INCORPORATED BY REFERENCE

Part of 10-K  
where incorporated

Beazer Homes' internet website address is [www.beazer.com](http://www.beazer.com). Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act are available free of charge through our website as soon as reasonably practicable after we electronically file with or furnish them to the Securities and Exchange Commission and are available in print to any stockholder who requests a printed copy.

**BEAZER HOMES USA, INC.**  
**FORM 10-K**  
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**PART I**

**Item 1. Business**

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

We design, sell and build single family homes in the following locations within the United States:

Region/State	Market(s)/Year Entered
<b>Southeast Region:</b>	
Florida	Jacksonville (1993), Fort Myers/Naples (1996), Tampa/St. Petersburg (1996), Treasure Coast (1995), Orlando (1997)
Georgia	Atlanta (1985)
North Carolina	Charlotte (1987), Raleigh (1992), Greensboro (1999)
South Carolina	Charleston (1987), Columbia (1993), Greenville (1998), Myrtle Beach (2002)
Tennessee/Mississippi	Nashville (1987), Memphis (2002), Northern Mississippi (2002)
<b>West Region:</b>	
Arizona	Phoenix (1993)
California	Los Angeles County (1993), Orange County (1993), Riverside & San Bernadino Counties (1993), San Diego County (1992), Ventura County (1993), Sacramento (1993)
Colorado	Denver (2001), Fort Collins (2001)
Nevada	Las Vegas (1993)

**Central Region:**

Texas	Dallas (1995), Houston (1995)
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**Mid-Atlantic Region:**

Maryland/Delaware	Baltimore (1998), Metro-Washington DC (1998), Delaware (2003)
New Jersey/ Pennsylvania	Central and Southern New Jersey (1998), Bucks County, PA (1998)
Virginia	Fairfax County (1998), Loudoun County (1998), Prince William County (1998)

**Midwest Region:**

Indiana	Indianapolis (2002), Lafayette (2002), Ft. Wayne (2002)
Kentucky	Lexington (2002)
Ohio	Columbus (2002), Cincinnati/Dayton (2002)

We design our homes to appeal primarily to entry-level and first time move-up homebuyers. Our objective is to provide our customers with homes that incorporate quality and value while seeking to maximize our return on invested capital. To achieve this objective, we have developed a business strategy which focuses on the following elements:

**Geographic Diversity and Growth Markets.** We compete in a large number of geographically diverse markets in an attempt to reduce our exposure to any particular regional economy. Most of the markets in which we operate have experienced significant population growth in recent years. Within these markets, we build homes in a variety of projects, typically with fewer than 150 homesites.

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**Quality Homes for Entry-Level and First Time Move-Up Homebuyers.** We seek to maximize customer satisfaction by offering homes which incorporate quality materials, distinctive design features, convenient locations and competitive prices. We focus on entry-level and first time move-up homebuyers because we believe they represent the largest segment of the homebuilding market. During fiscal year 2003, the average sales price of our homes sold was approximately \$201,300.

**Additional Products and Services for Homebuyers.** In order to maximize our profitability and provide our homebuyers with the additional products and services that they desire, we have incorporated design centers and mortgage origination operations into our business. Recognizing that homebuyers want to choose certain components of their new home, we offer limited customization through the use of design centers in most of our markets. These design centers allow the homebuyer to select certain non-structural customizations for their homes such as cabinetry, flooring, fixtures, appliances and wallcoverings. Additionally, recognizing the homebuyer's desire to simplify the financing process, we originate mortgages on behalf of our customers through our subsidiaries Beazer Mortgage Corporation, or Beazer Mortgage, and Crossmann Mortgage Corp., or Crossmann Mortgage. Beazer Mortgage and Crossmann Mortgage originate, process and broker mortgages to third party investors. Beazer Mortgage and Crossmann Mortgage generally do not retain or service the mortgages that they broker. We also provide title services to our homebuyers in many of our markets.

**Decentralized Operations with Experienced Management.** We believe our in-depth knowledge of our local markets enables us to better serve our customers. Our local managers, who have significant experience in both the homebuilding industry and the markets they serve, are responsible for operating decisions regarding design, construction and marketing. We combine these decentralized operations with a centralized corporate-level management which controls decisions regarding overall strategy, land acquisitions and financial matters.

**Conservative Land Policies.** We seek to maximize our return on capital by limiting our investment in land and by focusing on inventory turnover. To implement this strategy and to reduce the risks associated with investments in land, we use options to control land whenever possible. In addition, we do not speculate in land which is not generally subject to entitlements providing basic development rights to the owner.

**Value Created.** We evaluate our financial performance and the financial performance of our operations using *Value Created*, a variation of economic profit or economic value added. *Value Created* measures the extent to which we exceed our cost of capital. It is calculated as earnings before interest and taxes ("EBIT"), less a charge for all of the capital employed multiplied by our estimate of our minimum weighted average cost of capital.

**Company History**

In March 1994, we completed a concurrent initial public offering of common stock and issuance of senior notes (the "IPO"). Prior to our IPO, we were an indirect wholly-owned subsidiary of Hanson PLC ("Hanson"), a company registered in the United Kingdom. Hanson currently does not hold any investment, or ongoing interest, in us.

In January 2002, we signed an agreement to merge with Crossmann Communities, Inc., or Crossmann. Operating in eleven markets in Indiana, Kentucky, Mississippi, Ohio, North Carolina, South Carolina and Tennessee, Crossmann primarily targeted entry-level and first time move-up homebuyers. Pursuant to the merger agreement, on April 17, 2002, Crossmann merged into our wholly owned subsidiary, Beazer Homes Investment Corp.

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**Markets and Product Description**

We evaluate a number of factors in determining which geographic markets to enter or in which markets to concentrate our homebuilding activities. We attempt to anticipate swings in economic and real estate conditions by evaluating such statistical information as:

- the historical and projected growth of the population;
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the number of new jobs created or projected to be created;

- the number of housing starts in previous periods;
- building lot availability and price;
- housing inventory;
- level of competition; and
- home sale absorption rates.

We generally seek to differentiate ourselves from our competition in a particular market with respect to product type and maintain the flexibility to alter our product mix within a given market depending on market conditions. In determining our product mix we consider demographic trends, demand for a particular type of product, margins, timing and the economic strength of the market. While remaining responsive to market opportunities within the industry, in recent years we have focused, and intend to continue to focus, our business primarily on entry-level and first time move-up housing in the form of single family detached homes and townhouses. Entry-level homes generally are those homes priced at the lower end of the market and target first time homebuyers, while first time move-up homes generally are priced in the mid-to-upper price range and target a wide variety of homebuyers as they progress in income and family size. Although some of our move-up homes are priced at the upper end of the market and we offer a selection of amenities, we generally do not build "custom homes." The prices of our first time move-up homes generally are well below the prices of custom homes in most areas. We attempt to maximize efficiency by using standardized design plans whenever possible.

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The following table summarizes certain operating information regarding our markets as of and for the year ended September 30, 2003 (*dollars in thousands*):

State	Number of Active Subdivisions	Number of Homes Closed	Average Closing Price	Units in Backlog at Year End	Dollar Value of Backlog at Year End
Arizona	29	1,351	\$ 158.4	707	\$ 148,724
California	32	2,041	305.6	701	242,346
Colorado	18	271	423.4	143	54,273
Florida	45	1,464	236.7	755	177,908
Georgia	19	480	162.7	188	42,047
Indiana	101	2,197	138.8	908	133,990
Kentucky	6	187	124.7	119	15,837
Maryland/Delaware	12	246	332.3	274	73,131
Nevada	18	1,025	204.4	736	160,370
New Jersey/Pennsylvania	9	276	314.9	213	72,039
North & South Carolina	87	2,554	139.7	1,119	161,789
Ohio	33	700	157.8	278	46,859
Tennessee/Mississippi	27	662	180.6	259	44,569
Texas	39	1,239	155.6	396	62,200
Virginia	19	716	332.5	630	208,732
Total Company	494	15,409	\$ 201.3	7,426	\$ 1,644,814

Through fiscal 2002, our homebuilding and marketing activities were conducted under the name of Beazer Homes in each of our markets except in Colorado (Sanford Homes), Indiana (Crossmann Communities, Trinity Homes and Deluxe Homes), Kentucky (Cutter Homes), Ohio (Crossmann Communities and Deluxe Homes) and Tennessee (Phillips Builders). In October 2003, we launched a branding strategy that aims to build a unified consumer brand across all regions in which we operate. Our new national branding strategy presents us as one company with one name, one logo, one message and one purpose. We believe that a national branding strategy will differentiate us from our competitors by promoting qualities that lead to good recommendations, referrals to family and friends, and repeat purchases by loyal customers. We feel that a strengthened, national brand identity will better position us to consistently address the needs of our customers across all of our markets.

### Corporate Operations

We perform the following functions at a centralized level:

- evaluate and select geographic markets;
- allocate capital resources to particular markets, including with respect to land acquisitions;
- maintain our relationship with lenders to regulate the flow of financial resources and develop consistent relationships with our lenders;
- maintain centralized information systems; and
- monitor the decentralized operations of our subsidiaries and divisions.

We allocate capital resources necessary for new projects in a manner consistent with our overall operating strategy. We utilize **Value Created**, return on capital employed and profit margin as criteria for our allocation of capital resources. We will vary the capital allocation based on market conditions, results of

operations and other factors. Capital commitments are determined through consultation among selected executive and operational personnel, who play an important role in ensuring that new

projects are consistent with our strategy. Centralized financial controls are also maintained through the standardization of accounting and financial policies and procedures.

Structurally, we operate through separate divisions, which are generally located within the areas in which they operate. Each division is managed by executives with substantial experience in the division's market. In addition, each division is equipped with the skills to complete the functions of land acquisition, map processing, land development, construction, marketing, sales and product service.

### Land Acquisition and Development

Substantially all of the land we acquire is purchased only after necessary entitlements have been obtained so that we have the right to begin development or construction as market conditions dictate. In certain situations, we will purchase property without all necessary entitlements where we perceive an opportunity to build on such property in a manner consistent with our strategy. The term "entitlements" refers to development agreements, tentative maps or recorded plats, depending on the jurisdiction within which the land is located. Entitlements generally give a developer the right to obtain building permits upon compliance with conditions that are usually within the developer's control. Although entitlements are ordinarily obtained prior to the purchase of land, we are still required to obtain a variety of other governmental approvals and permits during the development process.

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

- internal and external demographic and marketing studies;
- suitability for development during the time period of one to five years from the beginning of the development process to the last closing;
- financial review as to the feasibility of the proposed project, including projected *Value Created*, profit margins and returns on capital employed;
- the ability to secure governmental approvals and entitlements;
- environmental and legal due diligence;
- competition in the area;
- proximity to local traffic corridors and amenities; and
- management's judgment as to the real estate market and economic trends and our experience in a particular market.

We generally purchase land or obtain an option to purchase land, which, in either case, requires certain site improvements prior to construction. Where required, we then undertake or, in the case of land under option, the grantor of the option then undertakes, the development activities (through contractual arrangements with local developers) which include site planning and engineering, as well as constructing road, sewer, water, utilities, drainage and recreational facilities and other amenities. When available in certain markets, we also buy finished lots that are ready for construction.

We strive to develop a design and marketing concept for each of our projects, which includes determination of size, style and price range of the homes, layout of streets, layout of individual lots and overall community design. The product line offered in a particular project depends upon many factors, including the housing generally available in the area, the needs of a particular market and our cost of lots in the project. We are, however, often able to use standardized design plans.

The development and construction of each project are managed by our operating divisions, each of which is generally led by a president who, in turn, reports directly or indirectly to our Chief Operating Officer and our Chief Executive Officer. At the development stage, a manager (who may be assigned to several projects and reports to the president of the division) supervises development of buildable lots.

In addition, a field superintendent is responsible for each project site to supervise actual construction, and each division has one or more customer service and marketing representatives assigned to projects operated by that division.

The following table sets forth, by state, land controlled by us as of September 30, 2003:

	Lots Owned					Lots Under Contract(3)			
	Undeveloped Lots(1)	Lots Under Development	Finished Lots	Homes Under Construction(2)	Total Lots Owned	Undeveloped Lots	Finished Lots	Total Lots Under Contract	Total Land Controlled
<b>Southeast Region:</b>									
Georgia	—	109	151	310	570	—	1,420	1,420	1,990
Florida	—	852	496	659	2,007	1,760	2,899	4,659	6,666
North & South Carolina	60	2,092	1,568	993	4,713	2,831	4,273	7,104	11,817
Tennessee/Mississippi	—	1,404	277	289	1,970	517	1,728	2,245	4,215

<b>West Region:</b>									
Arizona	—	2,447	410	390	3,247	1,401	1,047	2,448	5,695
California	130	1,671	807	861	3,469	2,023	1,155	3,178	6,647
Colorado	—	137	165	227	529	—	695	695	1,224
Nevada	—	988	1,117	390	2,495	1,126	1,250	2,376	4,871
<b>Central Region:</b>									
Texas	—	2,316	1,402	439	4,157	432	1,039	1,471	5,628
<b>Mid-Atlantic Region:</b>									
Maryland/Delaware	—	222	55	127	404	—	2,843	2,843	3,247
New Jersey/Pennsylvania	—	8	396	150	554	1,384	246	1,630	2,184
Virginia	—	62	543	257	862	1,735	496	2,231	3,093
<b>Midwest Region:</b>									
Indiana	130	5,796	1,150	865	7,941	2,963	3,909	6,872	14,813
Kentucky	—	259	182	109	550	992	—	992	1,542
Ohio	639	1,581	949	298	3,467	1,792	825	2,617	6,084
<b>Total</b>	<b>959</b>	<b>19,944</b>	<b>9,668</b>	<b>6,364</b>	<b>36,935</b>	<b>18,956</b>	<b>23,825</b>	<b>42,781</b>	<b>79,716</b>

- (1) "Undeveloped Lots" consists of raw land that is expected to be developed into the respective number of lots reflected in this table.
- (2) The category "Homes Under Construction" represents lots on which construction of a home has commenced.
- (3) The classification within Lots Under Contract for this schedule is based upon level of completion at delivery as stated in the option contract.

**Option Contracts:** We acquire certain lots by means of option contracts. Option contracts generally require the payment of a cash deposit or issuance of a letter of credit for the right to acquire lots during a specified period of time at a certain price. Our option contracts have expiration periods ranging from one to sixty months.

Under option contracts, both with and without specific performance, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Our obligation with respect to options with specific performance is included on our consolidated balance sheet in other liabilities at September 30, 2003. At September 30, 2003, we are committed to future amounts under option contracts with specific performance obligations that aggregated \$21.7 million. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, letters of credit and other non-refundable amounts incurred, which aggregated approximately \$137.3 million at September 30, 2003. This amount includes letters of credit of approximately \$38.9 million. At September 30, 2003, future amounts under option contracts without specific performance obligations aggregated approximately \$1.4 billion.

## Construction

We act as the general contractor for the construction of our projects. Our project development operations are controlled by our subsidiaries and divisions, whose employees supervise the construction of each project, coordinate the activities of subcontractors and suppliers, subject their work to quality and cost controls and assure compliance with zoning and building codes. We specify that quality,

durable materials be used in the construction of our homes. Our subcontractors follow design plans prepared by architects and engineers who are retained by us and whose designs are geared to the local market. Subcontractors typically are retained on a project-by-project basis to complete construction at a fixed price. Agreements with our subcontractors and materials' suppliers are generally entered into after competitive bidding, and we do not have any long-term contractual commitments with any of our subcontractors or suppliers. In connection with this competitive bid process, we obtain information from prospective subcontractors and vendors with respect to their financial condition and ability to perform their agreements with us. We do not maintain significant inventories of construction materials except for materials being utilized for homes under construction. We have numerous suppliers of raw materials and services used in our business, and such materials and services have been and continue to be available. Material prices may fluctuate, however, due to various factors, including demand or supply shortages, which may be beyond the control of our vendors. From time to time we enter into regional and national supply contracts with certain of our vendors. We believe that our relationships with our suppliers and subcontractors are good. We are actively exploring ways in which we can use our Internet presence to maximize business to business e-commerce applications with our suppliers and subcontractors.

Construction time for our homes depends on the availability of labor, materials and supplies, product type and location. Homes are designed to promote efficient use of space and materials, and to minimize construction costs and time. In all of our markets, construction of a home is typically completed within three to six months following commencement of construction. At September 30, 2003, we had 1,100 finished homes (excluding models), of which 738 were sold and included in backlog at such date.

## Warranty Program

We provide a variety of warranties in connection with our homes, spanning from one to ten years in length. We provide a one-year limited warranty of workmanship and materials with each of our homes, which generally includes home inspection visits with the customer during the first year following the purchase of a home. We subcontract our homebuilding work to subcontractors who provide us with an indemnity and a certificate of insurance prior to receiving payments for their work and, therefore, claims relating to workmanship and materials are generally the primary responsibility of our subcontractors. In addition, the first year of our warranty covers defects in plumbing, electrical, heating, cooling and ventilation systems, and major structural defects; the second year of such warranty covers major structural defects and certain defects in plumbing, electrical, heating, cooling and ventilation systems of the home (exclusive of defects in appliances, fixtures and equipment); and the final eight years of protection cover only major structural defects.

We record a reserve of approximately 0.5% to 1.0% of the sales price of a home to cover warranty expenses, although this allowance is subject to adjustment in special circumstances. Our historical experience is that such warranty expenses generally fall within the amount established for such allowance.

We self-insure our structural warranty obligations through our wholly-owned risk retention groups, United Home Insurance Company, A Risk Retention Group ("UHIC") and Meridian Structural Insurance, Risk Retention Group Inc. ("Meridian"). We believe this results in cost savings as well as increased control over the warranty process. As of September 30, 2003, Meridian was merged into UHIC.

In addition, we maintain third party insurance for most construction defects which we encounter in the normal course of business. We believe that our accruals and third party insurance are adequate to cover the ultimate resolution of our potential liabilities associated with known and anticipated warranty and construction defects related claims and litigation.

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There can be no assurance, however, that the terms and limitations of the limited warranty will be effective against claims made by the homebuyers, that we will be able to renew our insurance coverage or renew it at reasonable rates, that we will not be liable for damages, the cost of repairs, and/or the expense of litigation surrounding possible construction defects, soil subsidence or building related claims or that claims will not arise out of uninsurable events or circumstances not covered by insurance and not subject to effective indemnification agreements with our subcontractors.

### **Marketing and Sales**

We make extensive use of advertising and other promotional activities, including our website (<http://www.beazer.com>), newspaper advertisements, brochures, direct mail and the placement of strategically located signboards in the immediate areas of our developments.

We normally build, decorate, furnish and landscape between one and five model homes for each project and maintain on-site sales offices. At September 30, 2003, we maintained 606 model homes, of which 508 were owned and 98 were leased from third parties pursuant to sale and leaseback agreements. We believe that model homes play a particularly important role in our marketing efforts. Consequently, we expend a significant effort in creating an attractive atmosphere at our model homes. Interior decorations are undertaken by both in-house and local third-party design specialists, and vary within our models based upon the lifestyles of targeted homebuyers. The purchase of furniture, fixtures and fittings is coordinated to ensure that manufacturers' bulk discounts are utilized to the maximum extent. Structural changes in design from the model homes are not generally permitted, but homebuyers may select various optional amenities. We also use a cross-referral program that encourages our personnel to direct customers to other Beazer Homes subdivisions based on the customers' needs.

We generally sell our homes through commissioned employees (who typically work from the sales offices located at the model homes used in the subdivision) as well as through independent brokers. Our personnel are available to assist prospective homebuyers by providing them with floor plans, price information and tours of model homes and in connection with the selection of options. The selection of interior features is a principal component of our marketing and sales efforts. Sales personnel are trained by us and attend periodic meetings to be updated on sales techniques, competitive products in the area, the availability of financing, construction schedules, marketing and advertising plans, which management believes result in a sales force with extensive knowledge of our operating policies and housing products. Our policy also provides that sales personnel be licensed real estate agents where required by law. We also build a number of homes for which no signed sales contract exists at the time of commencement of construction. The use of an inventory of such homes is necessary to satisfy the requirements of relocated personnel and of independent brokers, who often represent customers who require a completed home within 60 days. At September 30, 2003, excluding models, we had 1,726 homes at various stages of completion (of which 362 were completed) for which we had not received a sales contract.

We sometimes use various sales incentives (such as landscaping and certain interior home options and upgrades) in order to attract homebuyers. The use of incentives depends largely on local economic and competitive market conditions.

### **Customer Financing**

We provide customer financing through Beazer Mortgage and Crossmann Mortgage. They provide mortgage origination services only, and generally do not retain or service the mortgages that they originate. These mortgages are generally funded by one of a network of mortgage lenders. Beazer Mortgage and Crossmann Mortgage can provide qualified homebuyers numerous financing options, including a wide variety of conventional, FHA and VA financing programs. In certain situations we will

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seek to assist our homebuyers in obtaining financing from outside mortgage lenders and, in certain limited circumstances, we may attempt to minimize potential risks relating to the availability of customer financing by purchasing mortgage financing commitments that lock in the availability of funds and interest rates at specified levels for a certain period of time. Because substantially all homebuyers utilize long-term mortgage financing to purchase a home, adverse economic conditions, increases in unemployment and high mortgage interest rates may deter and eliminate a substantial number of potential homebuyers from our markets in the future.

### **Competition and Market Factors**

The development and sale of residential properties is highly competitive and fragmented. We compete for residential sales on the basis of a number of interrelated factors, including location, reputation, amenities, design, quality and price, with numerous large and small homebuilders, including some homebuilders with nationwide operations and greater financial resources and/or lower costs than us. We also compete for residential sales with individual resales of existing homes, available rental housing and, to a lesser extent, resales of condominiums. We believe that we compare favorably to other builders in the markets in which we operate, due primarily to:

- our experience within our geographic markets and breadth of product line, which allows us to vary our regional product offerings to reflect changing market conditions;
- our responsiveness to market conditions, enabling us to capitalize on the opportunities for advantageous land acquisitions in desirable locations; and

- our reputation for quality design, construction and service.

The housing industry is cyclical and is affected by consumer confidence levels and prevailing economic conditions generally, including interest rate levels. A variety of other factors affect the housing industry and demand for new homes, including the availability of labor and materials and increases in the costs thereof, changes in costs associated with home ownership such as increases in property taxes and energy costs, changes in consumer preferences, demographic trends and the availability of and changes in mortgage financing programs.

### **Government Regulation and Environmental Matters**

Substantially all of our land is purchased with entitlements, giving us the right to obtain building permits upon compliance with specified conditions, which generally are within our control. Upon compliance with such conditions, we must obtain building permits. The length of time necessary to obtain such permits and approvals affects the carrying costs of unimproved property acquired for the purpose of development and construction. In addition, the continued effectiveness of permits already granted is subject to factors such as changes in policies, rules and regulations and their interpretation and application. Several governmental authorities have imposed impact fees as a means of defraying the cost of providing certain governmental services to developing areas. To date, the governmental approval processes discussed above have not had a material adverse effect on our development activities, and indeed all homebuilders in a given market face the same fees and restrictions. There can be no assurance, however, that these and other restrictions will not adversely affect us in the future.

We may also be subject to periodic delays or may be precluded entirely from developing communities due to building moratoriums or "slow-growth" or "no-growth" initiatives or building permit allocation ordinances which could be implemented in the future in the states and markets in which we operate. Substantially all of our land is entitled and, therefore, the moratoriums generally would only adversely affect us if they arose from health, safety and welfare issues such as insufficient water or sewage facilities. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction. These fees are normally established,

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however, when we receive recorded final maps and building permits. We are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning the protection of health and the environment. These laws may result in delays, cause us to incur substantial compliance and other costs, and prohibit or severely restrict development in certain environmentally sensitive regions or areas.

### **Bonds and Other Obligations**

We are frequently required, in connection with the development of our projects, to obtain letters of credit and performance, maintenance and other bonds in support of our related obligations with respect to such developments. The amount of such obligations outstanding at any time varies in accordance with our pending development activities. In the event any such bonds or letters of credit are drawn upon, we would be obligated to reimburse the issuer of such bonds or letters of credit. At September 30, 2003, we had outstanding approximately \$40.3 million and \$336.1 million of outstanding letters of credit and performance bonds, respectively, related to our obligations to local governments to construct roads and other improvements in various developments in addition to outstanding letters of credit of approximately \$38.9 million related to our land option contracts. We do not believe that we will be required to draw upon any such bonds or letters of credit.

### **Employees and Subcontractors**

At September 30, 2003, we employed 2,986 persons, of whom 652 were sales and marketing personnel, 1,017 were executive, management and administrative personnel, 1,103 were involved in construction and 214 were personnel of Beazer Mortgage and Crossmann Mortgage. Although none of our employees are covered by collective bargaining agreements, certain of the subcontractors engaged by us are represented by labor unions or are subject to collective bargaining arrangements. We believe that our relations with our employees and subcontractors are good.

## **Item 2. Properties**

We lease approximately 39,000 square feet of office space in Atlanta, Georgia to house our corporate headquarters. We also lease an aggregate of approximately 425,000 square feet of office space for our subsidiaries' operations at various locations. We own approximately 18,500 square feet of manufacturing space and 6,800 square feet of office space in Nashville, Tennessee.

## **Item 3. Legal Proceedings**

The Company and certain of its subsidiaries have been named as defendants in various claims, complaints and other legal actions, including relating to moisture intrusion and related mold claims, construction defects and product liability. Certain of the liabilities resulting from these actions are covered by insurance. In our opinion, the ultimate resolution of these matters will not have a material adverse effect on our financial condition or results of operations.

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

No matters were submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise.

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## **SEPARATE ITEM: EXECUTIVE OFFICERS OF THE REGISTRANT**

Name

Age

Position

## Executive Officers

Ian J. McCarthy	50	President, Chief Executive Officer and Director
Michael H. Furlow	53	Executive Vice President, Chief Operating Officer
James O'Leary	40	Executive Vice President, Chief Financial Officer
John Skelton	54	Senior Vice President, Forward Planning
C. Lowell Ball	46	Senior Vice President, General Counsel
Michael T. Rand	41	Senior Vice President, Corporate Controller
Jonathan P. Smoke	34	Senior Vice President, Chief Information Officer

## Business Experience

**IAN J. McCARTHY.** Mr. McCarthy is the President and Chief Executive Officer of Beazer Homes and has served as a director of Beazer Homes since the initial public offering of common stock in March 1994 ("the IPO"). Mr. McCarthy has served as President of predecessors of Beazer Homes since January 1991 and was responsible for all United States residential homebuilding operations in that capacity. During the period May 1981 to January 1991, Mr. McCarthy was employed in Hong Kong and Thailand becoming a director of Beazer Far East and from January 1980 to May 1981 was employed by Kier, Ltd., a company engaged in the United Kingdom construction industry which became an indirect, wholly-owned subsidiary of Beazer PLC. Mr. McCarthy is a Chartered Civil Engineer with a Bachelor of Science degree from The City University, London. Mr. McCarthy currently serves as Chairman of HomeAid's National Advisory Board, a member of the Metro Atlanta Chamber Board of Directors, and a Trustee for the Woodruff Arts Center, Atlanta, Georgia.

**MICHAEL H. FURLOW.** Mr. Furlow joined us in October 1997 as the Executive Vice President for Operations. In this capacity the Division Presidents report to Mr. Furlow and he is responsible for the performance of those operating divisions. During the 12 years prior to joining Beazer Homes, Mr. Furlow was with Pulte Home Corporation in various field and corporate roles, most recently as a Regional President. Mr. Furlow received a Bachelor of Arts degree with honors in accounting from the University of West Florida and initially worked as a Certified Public Accountant for Arthur Young & Company.

**JAMES O'LEARY.** Mr. O'Leary joined us in June 2002 as Executive Vice President, Corporate Development. In August 2003 he was appointed Executive Vice President and Chief Financial Officer. Mr. O'Leary was previously with U.S. Industries, Inc. from 1995 to 2002. From 2000 to 2002, Mr. O'Leary was Chairman and CEO of LCA Group, Inc., U.S. Industries' global lighting subsidiary. He also served as Executive Vice President of U.S. Industries from 1999 to 2002, Senior Vice President and Chief Financial Officer from 1998 to 1999 and Vice President and Corporate Controller from 1995 to 1998. Mr. O'Leary held various financial and operational positions at Hanson PLC., U.S. Industries' former parent company, from 1993 to 1995 at which time U.S. Industries was spun off to Hanson's shareholders. Mr. O'Leary was with Deloitte & Touche from 1985 to 1993. Mr. O'Leary holds a Master of Business Administration degree from the Wharton School of the University of Pennsylvania and a Bachelor of Business Administration degree from Pace University. Mr. O'Leary is a licensed Certified Public Accountant.

**JOHN SKELTON.** Mr. Skelton served as Senior Vice President, Operations from the IPO through fiscal 1998, was appointed Senior Vice President, Financial Planning in fiscal 1999 and appointed Senior Vice President, Forward Planning in fiscal 2003. Mr. Skelton served as Vice President and Chief Financial Officer of Beazer Homes, Inc., a subsidiary of Beazer, since 1985 and Vice President and Chief Financial Officer of Beazer Homes Holdings, Inc., a subsidiary of Beazer, since April 1993.

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During the period 1977 to 1985, Mr. Skelton served as Finance Director of Leech Homes, a subsidiary of Leech PLC which was acquired by Beazer PLC in 1985. After graduating with a Bachelor's degree from Durham University in the United Kingdom, he was employed by Deloitte & Touche and is a Fellow of the Institute of Chartered Accountants in England and Wales.

**C. LOWELL BALL.** Mr. Ball joined us in August 2000 as Senior Vice President and General Counsel. From 1992 to August 2000, Mr. Ball held equivalent positions with commercial real estate investment, development-operating companies, including Regent Partners, Inc., Compass Management and Leasing, Inc. and Dutch Institutional Holding Company. Prior to 1992, Mr. Ball practiced law for ten years with two major Atlanta law firms: Long, Aldridge & Norman and Sutherland, Asbill & Brennan. Mr. Ball graduated with honors from the University of North Carolina School of Law where he served on the Board of Editors of the *North Carolina Law Review*. He also received his undergraduate degree from the University of North Carolina where he was a Morehead Scholar.

**MICHAEL T. RAND.** Mr. Rand joined us in November 1996 as Vice President, Operational and Accounting Controls and was promoted to Vice President, Corporate Controller in June of 1998. Mr. Rand was promoted to Senior Vice President, Corporate Controller in October 2002. Prior to joining Beazer Homes, Mr. Rand was with the firm KPMG Peat Marwick from 1984 to 1996, at which time he served as a Senior Audit Manager. Mr. Rand holds a Bachelors degree in Commerce from the University of Virginia and is a licensed Certified Public Accountant.

**JONATHAN P. SMOKE.** Mr. Smoke joined us in March 2001 as Vice President, eBusiness, was appointed Chief Information Officer in April 2002, and was promoted to Senior Vice President in September 2003. Mr. Smoke was previously with Lend Lease Corporation from 1999 to 2001 where he was responsible for ebusiness strategy and initiatives. Mr. Smoke was a management consultant with Deloitte & Touche from 1993 to 1999. Mr. Smoke holds a Master of Business Administration degree from the McCombs School of Business at the University of Texas at Austin and a Bachelor of Arts degree from Rhodes College.

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## PART II

### Item 5. Market for Registrant's Common Equity and Related Stockholder Matters

#### Market Information

The Company lists its common shares on the New York Stock Exchange (NYSE) under the symbol "BZH." On December 12, 2003, the last reported sales price of the Company's common stock on the NYSE was \$101.05. On December 12, 2003, Beazer Homes USA, Inc. had approximately 96 shareholders of record and 13,614,895 shares of common stock outstanding. The following table sets forth, for the quarters indicated, the range of high and low trading for the Company's common stock during fiscal 2003 and 2002.

Quarter ended	September 30		June 30		March 31		December 31	
<b>2003 Period:</b>								
High	\$	87.94	\$	94.90	\$	63.93	\$	70.40
Low	\$	75.57	\$	58.18	\$	52.49	\$	51.40
<b>2002 Period:</b>								
High	\$	80.75	\$	92.48	\$	95.05	\$	77.10
Low	\$	54.25	\$	70.91	\$	66.31	\$	41.00

## Dividends

The Company's Board of Directors on November 4, 2003 declared an initial quarterly cash dividend of \$0.10 per common share payable December 22, 2003 to shareholders of record at the close of business on December 10, 2003.

The Company historically has not paid dividends on its common stock. However, commencing with the quarterly dividend described above, the Company expects to continue paying regular cash dividends on a quarterly basis. However, the Board of Directors will periodically reconsider the declaration of dividends and the Company will pay dividends at the discretion of the Board of Directors. The continuation of payments, the amount of such dividends, and the form in which the dividends are paid (cash or stock) depends upon the results of operations, the financial condition of the Company and other factors which the Board of Directors deems relevant. The indentures under which our senior notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At September 30, 2003, under the most restrictive covenants of each indenture, approximately \$229.5 million of our retained earnings was available for cash dividends and for share repurchases.

The following table provides information as of September 30, 2003 with respect to our shares of common stock that may be issued under our existing equity compensation plans, all of which have been approved by our stockholders:

Plan Category	Number of Common Shares to be Issued Upon Exercise of Outstanding Options	Weighted-Average Exercise Price of Outstanding Options	Number of Common Shares Remaining Available for Future Issuance Under Equity Compensation Plans (excluding Common Shares Reflected in Column (a))
	(a)	(b)	(c)
Equity compensation plans approved by stockholders	792,715	\$ 41.48	181,177

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## Item 6. Selected Financial Data

### Selected Financial Data

	Year Ended September 30,				
	2003	2002	2001	2000	1999
(dollars in thousands, except per share amounts)					
<b>Statement of Operations Data:</b>					
	(iii)				
Total revenue	\$ 3,177,408	\$ 2,641,173	\$ 1,805,177	\$ 1,527,865	\$ 1,394,074
Operating income	279,155	193,174	121,027	75,623	61,800
Net income	172,745	122,634	74,876	43,606	36,934
Net income per common share:					
Basic	13.41	11.64	9.19	5.28	4.59
Diluted	12.78	10.74	8.18	5.05	4.15
<b>Balance Sheet Data (end of year):</b>					
Cash	\$ 73,372	\$ 124,989	\$ 41,678	\$ —	\$ —
Inventory	1,723,483	1,364,133	844,737	629,663	532,559
Total assets	2,212,034	1,892,847	995,289	696,228	594,568
Total debt	741,365	739,100	395,238	252,349	215,000
Stockholders' equity	993,695	799,515	351,195	270,538	234,662
<b>Supplemental Financial Data:</b>					
Cash provided by/(used in):					
Operating activities	\$ (40,978)	\$ 59,464	\$ (25,578)	\$ (18,726)	\$ 34,080
Investing activities	(6,552)	(314,633)	(72,835)	(11,805)	(98,004)
Financing activities	(4,087)	338,480	140,091	30,531	(3,684)
<b>EBIT (i)</b>	340,980	245,060	155,983	99,189	86,013
<b>EBITDA (i)</b>	354,200	254,513	165,236	106,041	91,521
<b>Interest incurred</b>	65,295	51,171	35,825	30,897	26,874

<b>EBIT/interest incurred</b>	5.22x	4.79x	4.35x	3.21x	3.20x
<b>EBITDA/interest incurred</b>	5.42x	4.97x	4.61x	3.43x	3.41x
<b>Financial Statistics (ii):</b>					
Total debt as a percentage of total debt and stockholders' equity	42.7%	48.0%	53.0%	48.3%	47.8%
Asset Turnover	1.55x	1.83x	2.13x	2.37x	2.49x
EBIT Margin	10.7%	9.3%	8.6%	6.5%	6.2%
Return on average assets (pre-tax)	16.6%	17.0%	18.4%	15.4%	15.4%
Return on average capital (pre-tax)	20.8%	21.4%	24.6%	20.4%	19.9%
Return on average equity	19.3%	21.3%	24.1%	17.3%	17.0%

(i) EBIT and EBITDA: EBIT (earnings before interest and taxes) equals net income before (a) previously capitalized interest amortized to costs and expenses; and (b) income taxes. EBITDA (earnings before interest, taxes, depreciation and amortization) is calculated by adding depreciation and amortization for the period to EBIT. EBIT and EBITDA are not generally accepted accounting principles (GAAP) financial measures. EBIT and EBITDA should not be considered alternatives to net income determined in accordance with GAAP as an indicator of operating performance, nor an alternative to cash flows from operating activities determined in accordance with GAAP as a measure of liquidity. Because some analysts and companies may not calculate EBIT and EBITDA in the same manner as Beazer Homes, the EBIT and EBITDA information presented above may not be comparable to similar presentations by others.

EBITDA is a measure commonly used in the homebuilding industry and is presented to assist in understanding the ability of our operations to generate cash in addition to the cash needed to service existing interest requirements and ongoing tax obligations. By providing a measure of available cash, management believes that this non-GAAP measure enables holders of our outstanding senior indebtedness to better understand our cash performance and our ability to service our debt obligations as they currently exist and as additional indebtedness is incurred in the future. The measure is useful in

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budgeting and determining capital expenditure levels because it enables management to evaluate the amount of cash that will be available for discretionary spending.

A reconciliation of EBITDA and EBIT to cash provided/(used) by operations, the most directly comparable GAAP measure, is provided below for each period presented:

	Year Ended September 30,				
	2003	2002	2001	2000	1999
Net cash provided/(used) by operating activities	\$ (40,978)	\$ 59,464	\$ (25,578)	\$ (18,726)	\$ 34,080
Increase in inventory	328,893	152,990	153,668	97,104	23,129
Provision for income taxes	112,784	79,425	47,872	27,879	23,610
Interest amortized to cost of sales	55,451	43,001	33,235	27,704	25,469
Increase in accounts payable and other liabilities	(96,224)	(71,781)	(38,721)	(39,654)	(26,058)
Change in book overdraft	—	—	(20,095)	11,219	8,876
Increase (decrease) in accounts receivable and other assets	14,702	(2,010)	16,837	1,671	4,467
Loss on early extinguishment of debt	(7,570)	—	(1,202)	—	—
Tax benefit from stock transactions	(11,502)	(12,235)	(3,837)	—	—
Other	(1,356)	5,659	3,057	(1,156)	(2,052)
<b>EBITDA</b>	<b>354,200</b>	<b>254,513</b>	<b>165,236</b>	<b>106,041</b>	<b>91,521</b>
Less depreciation and amortization	13,220	9,453	9,253	6,852	5,508
<b>EBIT</b>	<b>\$ 340,980</b>	<b>\$ 245,060</b>	<b>\$ 155,983</b>	<b>\$ 99,189</b>	<b>\$ 86,013</b>

(ii) Asset turnover = (total revenue divided by average total assets); EBIT margin = (EBIT divided by total revenues); Return on average assets = (EBIT divided by average total assets); Return on average capital = (EBIT divided by average total debt plus stockholders' equity); Return on average equity = (net income divided by average stockholders' equity).

(iii) As discussed in Item 7 below and in Note 2 to the Consolidated Financial Statements, Beazer Homes acquired Crossmann Communities effective April 17, 2002.

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

### General

**Homebuilding:** We design, sell and build single-family homes in the following regions and states:

Southeast	West	Central	Mid-Atlantic	Midwest
Florida	Arizona	Texas	Delaware	Indiana
Georgia	California		Maryland	Kentucky
Mississippi	Colorado		New Jersey	Ohio
North Carolina	Nevada		Pennsylvania	
South Carolina			Virginia	
Tennessee				

We intend, subject to market conditions, to expand in our current markets through focused product expansion and price point diversification and to consider entering new markets either through expansion from existing markets or through acquisitions of established regional homebuilders. We seek to be one of the five largest builders in each of the markets that we serve.

Most of our homes are designed to appeal to entry-level and first time move-up homebuyers, and are generally offered for sale in advance of their construction. Once a sales contract has been signed, we classify the transaction as a "new order" and include the home in "backlog." Such sales contracts are usually subject to certain contingencies such as the buyer's ability to qualify for financing. We do not recognize revenue on homes in backlog until the sales are closed and the risk of ownership has been transferred to the buyer.

**Crossmann Acquisition:** On April 16, 2002, our stockholders and the stockholders of Crossmann Communities, Inc. ("Crossmann") approved the merger of Crossmann into one of our wholly owned subsidiaries, and the merger became effective on April 17, 2002. Crossmann built single-family homes in Indiana—its home base—with operations in Kentucky, Mississippi, North Carolina, Ohio, South Carolina and Tennessee and was a leading regional builder in these markets prior to the merger. We have included Crossmann's operating results in our consolidated financial statements since April 1, 2002, less an imputed interest charge on the cash portion of the merger consideration for the period April 1, 2002 through April 16, 2002.

The aggregate merger consideration we paid consisted of approximately 3.9 million shares of our common stock (approximately \$308.6 million) and \$191.6 million in cash. In connection with the merger, we also repaid approximately \$125.4 million of Crossmann debt. The cash portion of the merger consideration and the repayment of Crossmann debt upon the merger were funded from proceeds from our issuance of \$350 million 8<sup>3</sup>/<sub>8</sub>% Senior Notes due 2012 in a private placement on April 17, 2002.

**Ancillary Businesses:** We have established several businesses to support our core homebuilding operations. We operate design studios in the majority of our markets. Through design studios, homebuyers can choose non-structural upgrades and options for their new home. We also provide mortgage origination services for our homebuyers through Beazer Mortgage Corporation, or Beazer Mortgage and Crossmann Mortgage Corp., or Crossmann Mortgage. Beazer Mortgage and Crossmann Mortgage originate, process and broker mortgages to third party investors. Beazer Mortgage and Crossmann Mortgage generally do not retain or service the mortgages that they broker. We also provide title services to our homebuyers in many of our markets. We will continue to evaluate opportunities to provide other ancillary services to our homebuyers.

**Critical Accounting Policies:** Some of our critical accounting policies require the use of judgment in their application or require estimates of inherently uncertain matters. Although our accounting

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policies are in compliance with accounting principles generally accepted in the United States of America, a change in the facts and circumstances of the underlying transactions could significantly change the application of the accounting policies and the resulting financial statement impact. Listed below are those policies that we believe are critical and require the use of complex judgment in their application.

#### *Inventory Valuation*

Housing projects and land held for development and sale are stated at cost (including direct construction costs, capitalized indirect costs, capitalized interest and real estate taxes) unless facts and circumstances indicate that the carrying value of the assets may be impaired. We assess these assets for recoverability in accordance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets". SFAS No. 144 requires that long-lived assets be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets is measured by comparing the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. These evaluations for impairment are significantly impacted by estimates of revenues, costs and expenses and other factors. If these assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets.

#### *Goodwill*

Goodwill is subject to at least an annual assessment for impairment by applying a fair value-based test. If the carrying amount exceeds the fair value, goodwill is considered impaired. For purposes of goodwill impairment testing, we compare the fair value of each reporting unit with its carrying amount, including goodwill. Each of our operating divisions is considered a reporting unit. The fair value of each reporting unit is based on expected discounted future cash flows.

We evaluate whether events and circumstances have occurred that indicate that goodwill may be impaired. Such evaluations for impairment are significantly impacted by estimates of future revenues, costs and expenses and other factors. If the goodwill is considered to be impaired, the impairment loss to be recognized is measured by the amount by which the carrying amount of the goodwill exceeds implied fair value of that goodwill. We performed our annual impairment test of goodwill as of April 30, 2003 and determined that goodwill was not impaired.

#### *Homebuilding Revenues and Costs*

Revenue from the sale of a home is recognized when the closing has occurred and the risk of ownership is transferred to the buyer. All associated homebuilding costs are charged to cost of sales in the period when the revenues from home closings are recognized. Homebuilding costs include land and land development costs (based upon an allocation of such costs, including costs to complete the development, or specific lot costs), home construction costs (including an estimate of costs, if any, to complete home construction), previously capitalized indirect costs (principally for construction supervision), capitalized interest and estimated warranty costs. Sales commissions are included in selling, general and administrative expense when the closing has occurred. All other costs are expensed as incurred.

#### *Warranty Reserves*

We provide a limited warranty (ranging from one to two years) of workmanship and materials with each of our homes. Such warranty covers defects in plumbing, electrical, heating, cooling and ventilating systems and major structural defects. In addition, we provide a ten year warranty with each

of our homes, covering major structural defects only. Since we subcontract our homebuilding work to subcontractors who generally provide us with an indemnity and a certificate of insurance prior to receiving payments for their work, claims relating to workmanship and materials are generally the primary responsibility of our subcontractors. We record reserves covering our anticipated warranty expense for each home closed. Management reviews the adequacy of warranty reserves each reporting period based on historical experience and claims in progress. Warranty reserves are included in accrued expenses.

**Value Created:** We evaluate our financial performance and the financial performance of our operations using *Value Created*, a variation of economic profit or economic value added. *Value Created* measures the extent to which we exceed our cost of capital. It is calculated as earnings before interest and taxes (EBIT), less a charge for all of the capital employed multiplied by our estimate of our minimum weighted average cost of capital. Most of our employees receive incentive compensation based upon a combination of *Value Created* and the change in *Value Created* during the year. For key managers a portion of the incentive is put in a bank. This portion is always at risk and may be paid out over three years. We believe that our *Value Created* system encourages managers to act like owners, rewards profitable growth and focuses attention on long-term loyalty and performance.

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The following tables present certain operating and financial data for the years discussed:

	2003		2002		2001
	Amount	% Change	Amount	% Change	Amount
<b>Number of new orders, net of cancellations(1):</b>					
Southeast Region:					
Florida	1,549	22.5%	1,265	16.7%	1,084
Georgia	519	3.4	502	22.4	410
North and South Carolina	2,850	30.9	2,177	45.4	1,497
Tennessee/Mississippi	696	2.5	679	(12.8)	779
<b>Total Southeast</b>	<b>5,614</b>	<b>21.4</b>	<b>4,623</b>	<b>22.6</b>	<b>3,770</b>
West Region:					
Arizona	1,443	11.5	1,294	10.1	1,175
California	2,009	(10.3)	2,239	26.7	1,767
Colorado	360	53.2	235	32.8	177
Nevada	1,330	47.6	901	30.4	691
<b>Total West</b>	<b>5,142</b>	<b>10.1</b>	<b>4,669</b>	<b>22.5</b>	<b>3,810</b>
Central Region:					
Texas	1,128	(9.3)	1,244	21.7	1,022
Mid-Atlantic Region:					
Maryland/Delaware	371	15.2	322	(16.4)	385
New Jersey/Pennsylvania	350	25.0	280	(15.2)	330
Virginia	934	22.4	763	5.7	722
<b>Total Mid-Atlantic</b>	<b>1,655</b>	<b>21.2</b>	<b>1,365</b>	<b>(5.0)</b>	<b>1,437</b>
Midwest Region:					
Indiana	2,026	67.3	1,211	n/a	—
Kentucky	229	100.9	114	n/a	—
Ohio	522	35.9	384	n/a	—
<b>Total Midwest</b>	<b>2,777</b>	<b>62.5</b>	<b>1,709</b>	<b>n/a</b>	<b>—</b>
<b>Total</b>	<b>16,316</b>	<b>19.9%</b>	<b>13,610</b>	<b>35.6%</b>	<b>10,039</b>
<b>Backlog at end of year:</b>					
Southeast Region:					
Florida	755	12.7%	670	24.8%	537
Georgia	188	26.2	149	24.2	120
North and South Carolina	1,119	36.0	823	167.2	308
Tennessee/Mississippi	259	15.1	225	(18.2)	275
<b>Total Southeast</b>	<b>2,321</b>	<b>24.3</b>	<b>1,867</b>	<b>50.6</b>	<b>1,240</b>
West Region:					
Arizona	707	15.0	615	15.6	532

California	701	(4.4)	733	32.5	553
Colorado	143	164.8	54	(72.3)	195
Nevada	736	70.8	431	32.2	326
<b>Total West</b>	<b>2,287</b>	<b>24.8</b>	<b>1,833</b>	<b>14.1</b>	<b>1,606</b>
<b>Central Region:</b>					
Texas	396	(21.9)	507	32.0	384
<b>Mid Atlantic Region:</b>					
Maryland/Delaware	274	83.9	149	(14.9)	175
New Jersey/Pennsylvania	213	53.2	139	2.2	136
Virginia	630	52.9	412	(5.5)	436
<b>Total Mid Atlantic</b>	<b>1,117</b>	<b>59.6</b>	<b>700</b>	<b>(6.3)</b>	<b>747</b>
<b>Midwest Region:</b>					
Indiana	908	(15.8)	1,079	n/a	—
Kentucky	119	54.5	77	n/a	—
Ohio	278	(39.0)	456	n/a	—
<b>Total Midwest</b>	<b>1,305</b>	<b>(19.0)</b>	<b>1,612</b>	<b>n/a</b>	<b>—</b>
<b>Total</b>	<b>7,426</b>	<b>13.9%</b>	<b>6,519</b>	<b>63.9%</b>	<b>3,977</b>

(1) New orders for 2002 and 2001 do not include 2,535 and 68 homes in backlog, respectively, from acquired operations.

(n/a) Percentage change is not applicable. We entered Indiana, Kentucky, Mississippi and Ohio in April 2002 when we acquired Crossmann Communities.

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	Year Ended September 30,				
	2003		2002		2001
	Amount	% Change	Amount	% Change	Amount
<b>Number of closings:</b>					
<b>Southeast Region:</b>					
Florida	1,464	29.3%	1,132	19.4%	948
Georgia	480	1.5	473	16.5	406
North and South Carolina	2,554	21.4	2,103	45.1	1,449
Tennessee/Mississippi	662	(23.6)	867	41.9	611
<b>Total Southeast</b>	<b>5,160</b>	<b>12.8</b>	<b>4,575</b>	<b>34.0</b>	<b>3,414</b>
<b>West Region:</b>					
Arizona	1,351	11.6	1,211	18.3	1,024
California	2,041	(0.9)	2,059	14.4	1,800
Colorado	271	(27.9)	376	817.1	41
Nevada	1,025	28.8	796	45.5	547
<b>Total West</b>	<b>4,688</b>	<b>5.5</b>	<b>4,442</b>	<b>30.2</b>	<b>3,412</b>
<b>Central Region:</b>					
Texas	1,239	10.5	1,121	25.0	897
<b>Mid Atlantic Region:</b>					
Maryland/Delaware	246	(29.3)	348	3.0	338
New Jersey/Pennsylvania	276	(0.4)	277	(8.9)	304
Virginia	716	(9.0)	787	13.4	694
<b>Total Mid Atlantic</b>	<b>1,238</b>	<b>(12.3)</b>	<b>1,412</b>	<b>5.7</b>	<b>1,336</b>
<b>Midwest Region:</b>					
Indiana	2,197	51.7	1,448	n/a	—
Kentucky	187	81.6	103	n/a	—

Ohio	700	39.4	502	n/a	—
Total Midwest	3,084	50.2	2,053	n/a	—
Total	15,409	13.3%	13,603	50.2%	9,059

**Homebuilding Revenues (in thousands):**

Southeast Region	\$ 900,901	18.6%	\$ 759,646	25.4%	\$ 605,860
West Region	1,161,983	16.9	994,120	41.4	703,196
Central Region	192,841	10.3	174,816	22.0	143,288
Mid Atlantic Region	406,708	6.9	380,296	20.1	316,725
Midwest Region	438,831	53.4	286,032	—	—
Total	\$ 3,101,264	19.5%	\$ 2,594,910	46.7%	\$ 1,769,069

**Average sales price per home closed**

**(in thousands):**

Southeast Region	\$ 174.6	5.2%	\$ 166.0	(6.5)%	\$ 177.5
West Region	247.9	10.8	223.8	8.6	206.1
Central Region	155.6	(0.2)	155.9	(2.4)	159.7
Mid Atlantic Region	328.5	22.0	269.3	13.6	237.1
Midwest Region	142.3	2.2	139.3	n/a	—
Company Average	201.3	5.5	190.8	(2.3)	195.3

**Number of active subdivisions at year end:**

Southeast Region	178	(5.3)%	188	51.6%	124
West Region	97	32.9	73	(15.1)	86
Central Region	39	14.7	34	9.7	31
Mid Atlantic Region	40	14.3	35	(12.5)	40
Midwest Region	140	1.4	138	—	—
Total	494	5.6%	468	66.5%	281

**New Orders:**

New orders increased in each of the last two fiscal years compared to the prior year. The increases in new orders in fiscal 2003 reflect strong overall demand in most of our markets, with the strongest growth in the Southeast, Mid-Atlantic and West regions. We believe that low interest rates and favorable demographic trends, including population growth, are fueling demand, particularly in the first-time buyer segment. The increase in new orders in the Midwest during fiscal 2003 reflects the inclusion of results from that region for a full year compared to six months of fiscal 2002. The overall increase in new orders in 2002 is attributable to strong growth in the Southeast, West and Central regions due to our commitment to the first-time buyer segment in these markets, as well as the addition of our Midwest region through the April 2002 acquisition of Crossmann.

The fundamentals that drive sales activity are numerous and varied. On a macro level, low unemployment and low mortgage interest rates each contribute to a positive general homebuilding market environment. Our ability to stay ahead of changing customer preferences and local demographic trends with our product mix and to maintain adequate product supply (as measured by the number of active subdivisions) contributes locally to new order trends.

*Backlog:* The increases in unit backlog in each of the past two fiscal years reflect the favorable homebuilding environment driving new order activity, and our ability to gain market share. The average sales price of homes in backlog increased at September 30, 2003 to \$221,500 from \$198,400 at September 30, 2002 and \$195,000 at September 30, 2001. The increase in the overall average price in backlog is due to our ability to raise prices in most markets, especially in our West and Mid-Atlantic regions, and an increased percentage of homes in backlog from the higher priced regions of the West and Mid-Atlantic.

**Aggregate Sales Value of Homes in Backlog**

(in Thousands)

2003	\$ 1,644,814
2002	1,293,290
2001	775,612

**Average Sales Price of Homes in Backlog**

(in Thousands)

2003	\$ 221.5
2002	198.4
2001	195.0

**Seasonality and Quarterly Variability:**

Our homebuilding operating cycle generally reflects escalating new order activity in our second and third fiscal quarters and increased closings in our third and fourth fiscal quarters. Fiscal 2002 results include new orders and closings for Crossmann from April 1, 2002, resulting in an increase in new orders and in closings for the third and fourth fiscal quarters. We believe that the typical seasonality reflects the preference of homebuyers to shop for a new home in the spring, as well as the scheduling of construction to accommodate seasonal weather conditions.

The following chart presents certain quarterly operating data for our last twelve fiscal quarters and is indicative of this seasonality.

New Orders	4thQ	3rdQ	2ndQ	1stQ
2003	3,862	4,734	4,579	3,141
2002	3,731	4,227	3,142	2,510
2001	2,340	2,873	3,028	1,798
Closings	4thQ	3rdQ	2ndQ	1stQ
2003	5,014	3,616	3,297	3,482
2002	4,839	3,960	2,439	2,365
2001	3,067	2,276	1,874	1,842

### Financial Results:

The following table provides additional details of revenues and certain expenses included in our consolidated statements of operations (*in thousands*).

	Year Ended September 30,		
	2003	2002	2001
<b>Revenues:</b>			
Homebuilding(1)	\$ 3,097,021	\$ 2,594,910	\$ 1,769,069
Land and lot sales	39,069	18,051	18,017
Mortgage origination	57,152	41,006	26,572
Intercompany elimination—mortgage	(15,834)	(12,794)	(8,481)
<b>Total revenue</b>	<b>\$ 3,177,408</b>	<b>\$ 2,641,173</b>	<b>\$ 1,805,177</b>
<b>Cost of home construction and land sales:</b>			
Homebuilding(1)	\$ 2,515,015	\$ 2,152,757	\$ 1,471,336
Land and lot sales	34,854	15,452	14,595
Intercompany elimination—mortgage	(15,834)	(12,794)	(8,481)
<b>Total cost of home construction and land sales</b>	<b>\$ 2,534,035</b>	<b>\$ 2,155,415</b>	<b>\$ 1,477,450</b>
<b>Selling, general and administrative:</b>			
Homebuilding operations	\$ 325,657	\$ 269,655	\$ 190,551
Mortgage origination operations	30,991	22,929	14,947
<b>Total selling, general and administrative</b>	<b>\$ 356,648</b>	<b>\$ 292,584</b>	<b>\$ 205,498</b>

- (1) Homebuilding revenues for fiscal 2003 reflect the deferral on a consolidated basis of \$4.1 million of revenues related to closings that occurred in fiscal 2003, but for which funding was not received until fiscal 2004. During fiscal 2003, revenues and related cost of sales were not recognized on those closings where the buyers' initial investments were not sufficient to recognize profit at the time of closing. We received funding on such closings pursuant to commitments from bond authority programs in early fiscal 2004, at which time we recognized the revenues and related cost of sales.

### Revenues:

The increase in homebuilding revenues for fiscal 2003 compared to fiscal 2002 is the result of an increase in the number of homes closed and increased average sales prices in most of our markets, as

well as the inclusion for a full year of the Midwest region, which we entered with the acquisition of Crossmann in April 2002.

The increase in homebuilding revenues for fiscal 2002 compared to fiscal 2001 is the result of the addition of the Midwest region as a result of our April 2002 acquisition of Crossmann, an increase in the number of homes closed and increased average sales prices in most of our markets.

### Cost of Home Construction and Land Sales:

Cost of Home Construction and Land Sales	2003	2002	2001

(in Thousands)

Revenues	\$	3,177,408	\$	2,641,173	\$	1,805,177
Cost of home construction and land sales	\$	2,534,035	\$	2,155,415	\$	1,477,450
Gross Margin		20.2%		18.4%		18.2%

Gross margin increased in fiscal 2003 as compared to fiscal 2002 as a result of our ability to raise prices in most markets combined with greater emphasis on focused profit improvement initiatives, including cost reductions resulting from improved efficiency and the negotiation of national and regional supply agreements. Fiscal 2003 gross margins also benefited from a higher percentage of revenues from California, where margins are high relative to other markets, while fiscal 2002 margins were negatively impacted by purchase accounting adjustments related to the Crossmann acquisition. Mortgage origination operations also contribute to gross margin improvements by directing payment of certain mortgage closing costs and discounts to Beazer Mortgage and Crossmann Mortgage rather than a third party lender. The fiscal 2003 margin improvement was achieved despite higher warranty expenses associated with construction defect claims from water intrusion in the Midwest and inventory write-downs in the Southeast.

The gross margin in fiscal 2002 includes approximately \$16.3 million of costs related to purchase accounting adjustments for the Crossmann acquisition. Excluding such costs, gross margin for fiscal 2002 was 19.0%. The increase in gross margins, before purchase accounting, in fiscal 2002 as compared to fiscal 2001 was the result of a strong housing market, where we were able to increase sales prices in most of our markets while overall costs remained stable.

We executed several land sales during the past three fiscal years. We realized gross profits of \$4.2 million, \$2.6 million, and \$3.4 million on these land sales in fiscal 2003, 2002 and 2001, respectively.

### Selling, General and Administrative Expense:

#### Selling, General and Administrative Expense as a Percentage of Total Revenue

2003	11.2%
2002	11.1%
2001	11.4%

During fiscal 2003, SG&A expense increased slightly as a percentage of revenue due primarily to higher management bonuses for fiscal 2003, the amount of which is related to the increase in our profits rather than our increase in revenue. In addition to increased management bonuses, fiscal 2003 SG&A included marketing costs incurred in preparation for the roll out of our national branding initiative launched in early fiscal 2004.

During fiscal 2002, SG&A decreased as a percentage of revenue due to increased efficiency across an expanded base of operations.

### Other Income:

Fiscal 2003 other income decreased by \$2.5 million, primarily due to the inclusion in fiscal 2002 of a \$3.3 million gain on the sale of a portion of our equity interest in Homebuilders Financial Network, Inc., the entity providing management services to Beazer Mortgage. This reduction was partially offset by increased income from our title operations.

Fiscal 2002 other income increased by \$7.2 million compared to fiscal 2001 as a result of a \$3.3 million gain on the sale of a portion of our equity interest in Homebuilders Financial Network, Inc., the entity providing management services to Beazer Mortgage, as well as increased joint venture income and increased income from our title operations.

### Mortgage Origination Operations

Number of Mortgages Originated	2003	2002	2001
Beazer Mortgage and Crossmann Mortgage Originations	10,139	8,882	6,172
Total Closings	15,409	13,603	9,059
Capture Rate	66%	65%	68%

Our capture rate (Beazer Mortgage and Crossmann Mortgage originations as a percentage of total home closings) during fiscal 2003 increased over 2002 due primarily to an improved capture rate in our Midwest region.

During fiscal 2002, our capture rate decreased due to the inclusion of Crossmann Mortgage, whose capture rate for the period subsequent to April 1, 2002 was 64%.

Our capture rate is based on total closings. Our capture rate excluding non-financed closings was approximately 71% for fiscal 2003.

### Income Taxes:

Income taxes for fiscal 2003 were provided at the effective rate of 39.5%. Income taxes for fiscal 2002 were provided at the effective rate of 39.3% (39% for the period prior to the Crossmann acquisition and 39.5% post acquisition). Income taxes for fiscal 2001 were provided at the effective rate of 39.0%. The principal difference between our effective rate and the U.S. Federal statutory rate is state income taxes.

### Derivative Instruments and Hedging Activities:

We are exposed to fluctuations in interest rates. We enter into derivative agreements to manage interest costs and hedge against risks associated with fluctuating interest rates. We do not enter into or hold derivatives for trading or speculative purposes. During the year ended September 30, 2001 we entered into interest rate swap agreements (the "Swap Agreements") to effectively fix the variable interest rate on \$100 million of floating rate debt. The Swap Agreements mature in December 2004.

The Swap Agreements have been designated as cash flow hedges and accordingly, are recorded at fair value in our consolidated balance sheet and the related gains or losses are deferred in stockholders' equity, net of taxes, as a component of other comprehensive income. Amounts to be received or paid as a result of the Swap Agreements are accrued and recognized as adjustments to interest related to the designated debt. The net effect of this accounting on our operating results is that interest on the variable-rate debt is generally recorded based on fixed interest rates. No portion of these hedges was considered ineffective for the year ended September 30, 2003. We expect to reclassify \$2.7 million, net of taxes of \$1.8 million, from other comprehensive loss to interest expense over the next twelve months.

As a result of the Swap Agreements, we have recorded a cumulative after-tax other comprehensive loss of \$3.4 million as of September 30, 2003. The estimated fair value of the Swap Agreements, based on current market rates, approximated \$5.6 million at September 30, 2003 and is included in other liabilities.

**Financial Condition And Liquidity:**

At September 30, 2003, we had cash of \$73.4 million, compared to \$125.0 million at September 30, 2002. The decrease in cash was primarily due to increased levels of inventory to support our significant growth and higher year end backlog. Our net cash used in operating activities for the year ended September 30, 2003 was \$41.0 million, as increased net income and increases in accounts payable and other liabilities were offset by increased levels of inventory driven by higher year end backlog and anticipated future growth. Net cash used in investing activities was \$6.6 million for fiscal 2003. Net cash used in financing activities was \$4.0 million in fiscal 2003 as proceeds from our term loan were used to pay off our existing term loan and 8<sup>7</sup>/<sub>8</sub>% Senior Notes due 2008 (as discussed below), and proceeds from stock option exercises offset cash used for share repurchases.

Our net cash provided by operating activities was \$59.5 million in fiscal 2002, as increased net income and increases in accounts payable and other liabilities offset an increase in inventories (net of inventory acquired in the Crossmann acquisition as discussed below). Net cash used in investing activities of \$314.6 million in fiscal 2002, was primarily due to the use of \$320.8 million for the Crossmann acquisition. Net cash provided by financing activities of \$338.5 million in 2002 was primarily the result of \$343 million in proceeds from our 8<sup>3</sup>/<sub>8</sub>% Senior Notes due 2012 issued in connection with the Crossmann acquisition.

In April 2002, we acquired Crossmann Communities for approximately \$500.2 million, of which \$308.6 million was paid through the issuance of 3.9 million shares of our common stock and \$191.6 million was paid in cash. In connection with the merger, we also repaid approximately \$125.4 million of Crossmann debt, resulting in total consideration paid of \$625.6 million. The acquisition has been accounted for as a purchase and, accordingly, the purchase price has been allocated to reflect the fair value of assets and liabilities acquired. The cash portion of the acquisition and repayment of Crossmann debt was funded with the proceeds from a senior note offering.

In August 2001, we acquired the assets of the homebuilding operations of Sanford Homes of Colorado for approximately \$68 million, of which \$59 million was paid in cash and approximately \$9 million represented the assumption of accounts payable and accrued expenses. The acquisition has been accounted for as a purchase and, accordingly, the purchase price has been allocated to reflect the fair value of assets and liabilities acquired. The acquisition was funded through cash generated from operations and a portion of the proceeds from a senior note offering.

At September 30, 2003 we had the following long-term debt (*in thousands*):

Debt	Due	Amount
8 <sup>3</sup> / <sub>8</sub> % Senior Notes	April 2012	\$ 350,000
8 <sup>5</sup> / <sub>8</sub> % Senior Notes	May 2011	200,000
Term Loan	June 2007	200,000
Unamortized discount		(8,635)
Total		\$ 741,365

During fiscal 2003 we executed a \$250 million four-year revolving credit facility (the "Revolving Credit Facility") with a group of banks. The Revolving Credit Facility matures in June 2007 and renews and extends our \$250 million revolving credit facility, which was set to expire in September 2004. The Revolving Credit Facility bears interest at a fluctuating rate (2.8% at September 30, 2003) based upon LIBOR or the corporate base rate of interest announced by our lead bank. The Revolving Credit Facility contains various operating and financial covenants. As of September 30, 2003, we were in compliance with all of these covenants. Each of our significant subsidiaries is a guarantor under the Revolving Credit Facility.

We fulfill our short-term cash requirements with cash generated from our operations and funds available from our unsecured Revolving Credit Facility. Available borrowings under the Revolving Credit Facility are limited to certain percentages of homes under contract, unsold homes, substantially improved lots and accounts receivable. At September 30, 2003, we had no borrowings outstanding and available borrowings of \$172 million under the Revolving Credit Facility.

During fiscal 2003 we executed a \$200 million four-year term loan (the "Term Loan") with a group of banks. The Term Loan matures in June 2007 and replaces our \$100 million term loan that was set to mature in December 2004. The Term Loan bears interest at a fluctuating rate (2.8% at September 30, 2003) based upon LIBOR or the corporate base rate of interest announced by our lead bank. The Term Loan contains various operating and financial covenants. As of September 30, 2003, we were in compliance with all of these covenants. Each of our significant subsidiaries is a guarantor under the Term Loan. A portion of the proceeds from the increase in our Term Loan was used to retire our \$100 million 8<sup>7</sup>/<sub>8</sub>% Senior Notes due in 2008 as described below.

We entered into Swap Agreements to manage interest costs and hedge against risks associated with fluctuating interest rates related to \$100 million of floating rate debt. As of September 30, 2003, we had entered into interest rate swaps to effectively fix the interest rate (before spread) on \$100 million in floating

rate debt as follows: \$75 million is fixed at 5.925% per annum; \$10 million is fixed at 5.17% per annum; \$5 million is fixed at 5.50% per annum; and \$10 million is fixed at 5.055% per annum. The Swap Agreements expire in December 2004.

In April 2002 we issued \$350 million 8<sup>3</sup>/<sub>8</sub>% Senior Notes due April 2012 (the "Original Notes") in a private placement pursuant to Rule 144A and Regulation S promulgated under the Securities Act of 1933, as amended. In September 2002 we completed an offer to exchange all of the outstanding Original Notes for an equal amount of 8<sup>3</sup>/<sub>8</sub>% Senior Notes due 2012 (the "8<sup>3</sup>/<sub>8</sub>% Senior Notes"), which were registered under the Securities Act of 1933. The terms of the 8<sup>3</sup>/<sub>8</sub>% Senior Notes were substantially identical to the terms of the Original Notes. The Original Notes were issued at a price of 100% of their face amount (before underwriting discount and other issuance costs). Interest on the 8<sup>3</sup>/<sub>8</sub>% Senior Notes is payable semiannually. We may, at our option, redeem the 8<sup>3</sup>/<sub>8</sub>% Senior Notes in whole or in part at any time after April 2007, initially at 104.188% of the principal amount, declining to 100% of the principal amount after April 2010. A portion of such notes may also be redeemed prior to April 2005 under certain conditions. We used the proceeds from the issuance of the 8<sup>3</sup>/<sub>8</sub>% Senior Notes to fund the cash portion of the Crossmann acquisition, to repay Crossmann's outstanding net indebtedness, to reduce borrowings under our revolving credit facility at the time, and to pay related fees, commissions and other expenses.

In May 2001 we issued \$200 million 8<sup>5</sup>/<sub>8</sub>% Senior Notes due May 2011 (the "8<sup>5</sup>/<sub>8</sub>% Senior Notes") at a price of 99.178% of their face amount (before underwriting discount and other issuance costs). Interest on the 8<sup>5</sup>/<sub>8</sub>% Senior Notes is payable semiannually. We may, at our option, redeem the 8<sup>5</sup>/<sub>8</sub>% Senior Notes in whole or in part at any time after May 2006, initially at 104.3125% of the principal amount, and declining to 100% of the principal amount after May 2009. A portion of such notes may also be redeemed prior to May 2004 under certain conditions. We used a portion of the proceeds from the issuance of the 8<sup>5</sup>/<sub>8</sub>% Senior Notes to redeem \$115 million of our 9% Senior Notes which were due in March 2004. As a result of this redemption of the 9% Senior Notes, we recorded a pre-tax charge during fiscal 2001 of \$1.2 million for the write-off of associated unamortized debt issuance costs.

A portion of the proceeds from the increase in our Term Loan was used to retire our \$100 million 8<sup>7</sup>/<sub>8</sub>% Senior Notes due in 2008 (the "8<sup>7</sup>/<sub>8</sub>% Senior Notes"). The 8<sup>7</sup>/<sub>8</sub>% Senior Notes were redeemed at 104.438% of the principal amount, plus accrued interest. As a result of the redemption of the 8<sup>7</sup>/<sub>8</sub>% Senior Notes, during fiscal 2003 we recorded a pre-tax charge of \$7.6 million, which includes the write off of previously capitalized fees.

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On November 13, 2003 we issued \$200 million 6<sup>1</sup>/<sub>2</sub>% Senior Notes due November 2013 (the "6<sup>1</sup>/<sub>2</sub>% Senior Notes") in a private placement pursuant to Rule 144A and Regulation S promulgated under the Securities Act of 1933, as amended. The 6<sup>1</sup>/<sub>2</sub>% Senior Notes were issued at a price of 100% of their face amount (before underwriting discount and other issuance costs). Interest on the 6<sup>1</sup>/<sub>2</sub>% Senior Notes is payable semiannually. We may, at our option, redeem the 6<sup>1</sup>/<sub>2</sub>% Senior Notes in whole or in part at any time after November 2008, initially at 103.250% of the principal amount, declining to 100% of the principal amount after November 2011. We may redeem the 6<sup>1</sup>/<sub>2</sub>% Senior Notes, in whole or in part, at any time before November 2008 at a redemption price equal to the principal amount thereof plus a "make-whole" premium, plus accrued and unpaid interest. A portion of such notes may also be redeemed prior to November 2006 under certain conditions. We intend to use the proceeds from the issuance of the 6<sup>1</sup>/<sub>2</sub>% Senior Notes for general corporate purposes.

Within 90 days after issuance of the 6<sup>1</sup>/<sub>2</sub>% Senior Notes, we will initiate an offer to exchange all of the outstanding 6<sup>1</sup>/<sub>2</sub>% Senior Notes for an equal amount of notes with terms substantially identical to the 6<sup>1</sup>/<sub>2</sub>% Senior Notes, which will be registered under the Securities Act of 1933.

All significant subsidiaries of Beazer Homes USA, Inc. ("Beazer Homes") are full and unconditional guarantors of the Senior Notes and our obligations under the Revolving Credit Facility and Term Loan, and are jointly and severally liable for our obligations under the Senior Notes, Revolving Credit Facility and Term Loan. Each significant subsidiary is a 100% owned subsidiary of Beazer Homes. Neither the Revolving Credit Facility, Term Loan nor the Senior Notes restrict distributions to Beazer Homes by its subsidiaries. At September 30, 2003 we were in compliance with all covenants related to the Revolving Credit Facility, Term Loan, and Senior Notes. At September 30, 2003, under the most restrictive covenants of each indenture, approximately \$229.5 million of our retained earnings were available for cash dividends and for share repurchases.

In February 2003 our Board of Directors approved a stock repurchase plan authorizing the purchase of up to one million shares of our outstanding common stock. As of September 30, 2003, we have repurchased 128,000 shares for an aggregate purchase price of \$6.9 million or approximately \$54 per share pursuant to the plan. Certain officers and employees transferred to us 31,072 and 6,977 shares of our common stock, during fiscal 2002 and 2001, respectively, valued at prevailing market prices. The transfers, made to satisfy such officers' and employees' tax obligations under certain stock incentive plans, were accounted for as a stock repurchase by the Company. The Company has since discontinued the practice of allowing officers and employees to settle tax obligations through the transfer of stock to the Company.

The Company's Board of Directors on November 4, 2003 declared an initial quarterly cash dividend of \$0.10 per common share payable December 22, 2003 to shareholders of record at the close of business on December 10, 2003.

We attempt to control half or more of our land supply through options. At September 30, 2003 we controlled 79,716 lots (a 5.2 year supply based on fiscal 2003 closings), with 36,935 lots owned and 42,781 lots under option. The increased land supply reflects the higher level of Crossmann's land base, which was over a six year supply. We expect to exercise all of our option contracts with specific performance obligations and, subject to market conditions, substantially all of our option contracts without specific performance obligations. As a result of the flexibility that these options provide us, upon a change in market conditions we may renegotiate the terms of the options prior to their ultimate exercise.

Land Bank	Lots	Percentage
Owned	36,935	46%
Optioned	42,781	54%
<b>Total</b>	<b>79,716</b>	<b>100%</b>

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In January 2000, we filed a \$300 million universal shelf registration statement on Form S-3 with the Securities and Exchange Commission. Pursuant to the filing, we may, from time to time over an extended period, offer new debt or equity securities. This shelf registration allows us to expediently access capital markets periodically. Our \$200 million 8<sup>5</sup>/<sub>8</sub>% Senior Notes were sold pursuant to this registration statement. The timing and amount of future offerings, if any, will depend on market and general business conditions.

We believe that our current borrowing capacity at September 30, 2003 and anticipated cash flows from operations are sufficient to meet our liquidity needs for the foreseeable future.

#### Off-Balance Sheet Arrangements:

We acquire certain lots by means of option contracts. Option contracts generally require the payment of cash for the right to acquire lots during a specified period of time at a certain price. Under option contracts, both with and without specific performance provisions, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Our obligation with respect to options with specific performance provisions is included on our consolidated balance sheet in other liabilities at September 30, 2003. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, letters of credit and other non-refundable amounts incurred, which aggregated approximately \$137.3 million at September 30, 2003. This amount includes letters of credit of approximately \$38.9 million. Below is a summary of amounts (*in thousands*) committed under all options at September 30, 2003:

	Aggregate Exercise Price of Options
Options with specific performance	\$ 21,689
Options without specific performance	1,350,905
<b>Total options</b>	<b>\$ 1,372,594</b>

We expect to exercise all of our option contracts with specific performance obligations and, subject to market conditions, substantially all of our option contracts without specific performance obligations. Various factors, some of which are beyond our control, such as market conditions, weather conditions and the timing of the completion of development activities, can have a significant impact on the timing of option exercises. Under their current terms, and assuming no significant changes in market conditions or other factors, we expect to exercise our land options as follows (in thousands):

Year Ending September 30,	
2004	\$ 368,958
2005	434,464
Thereafter	569,172
<b>Total</b>	<b>\$ 1,372,594</b>

We have historically funded the exercise of land options through a combination of operating cash flows and borrowings under our Revolving Credit Facility. We expect these sources to continue to be adequate to fund anticipated future option exercises. Therefore, we do not anticipate that the exercise of our land options will have a material adverse effect on our liquidity.

We had outstanding letters of credit and performance bonds of approximately \$40.3 million and \$336.1 million, respectively, at September 30, 2003 related principally to our obligations to local governments to construct roads and other improvements in various developments in addition to the

letters of credit of approximately \$38.9 million relating to our land option contracts discussed above. We do not believe that any such letters of credit or bonds are likely to be drawn upon.

#### Recent Accounting Pronouncements:

In April 2002, SFAS No. 145 "Rescission of SFAS No. 4, 44, 64 and Amendment of SFAS No. 13 and Technical Corrections" was issued. SFAS No. 145 prevents treatment as extraordinary gains or losses on extinguishment of debt not meeting the criteria of Accounting Principles Board Opinion ("APB") No. 30. We adopted SFAS No. 145 on October 1, 2002, the beginning of fiscal 2003. As a result, the \$1.2 million pre-tax charge for extinguishment of debt recorded during fiscal 2001 is no longer classified as an extraordinary loss.

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51" ("FIN 46"). FIN 46 defines a Variable Interest Entity ("VIE") as an entity with insufficient equity investment to finance its planned activities without additional financial support or an entity in which the equity investors lack certain characteristics of a controlling financial interest. Pursuant to FIN 46, an enterprise that absorbs a majority of the expected losses or receives a majority of the expected residual returns of a VIE is deemed to be the primary beneficiary of the VIE and must consolidate the VIE. FIN 46 applied immediately to variable interest entities created after January 31, 2003, and with respect to variable interests held before February 1, 2003, FIN 46 will apply beginning with our quarter ending December 31, 2003, the first quarter of fiscal 2004.

We have evaluated all of our existing joint venture agreements, and we have determined that none of our joint ventures are VIEs. Therefore, we have not consolidated any of our joint venture agreements pursuant to the requirements of FIN 46. We have evaluated our option contracts for land entered into subsequent to January 31, 2003 and determined we are the primary beneficiary of certain of these option contracts. Although we do not have legal title to the optioned land, for those option contracts for which we are the primary beneficiary, we are required to consolidate the land under option at fair value. We believe that the exercise prices of our option contracts approximate their fair value. The consolidation of the land subject to these option contracts had the effect of increasing consolidated

inventory not owned by \$30.5 million with a corresponding increase to obligations related to consolidated inventory not owned in the accompanying consolidated balance sheet as of September 30, 2003. The liabilities represent the difference between the exercise price of the optioned land and our deposits. Additionally, to reflect the fair value of the inventory consolidated under FIN 46, we reclassified \$5.2 million of related option deposits from development projects in progress to consolidated inventory not owned.

We currently estimate that we will record an additional \$223 million, net of cash deposits, of consolidated inventory not owned, with a corresponding increase to obligations related to consolidated inventory not owned, during the first quarter of our 2004 fiscal year to reflect the application of FIN 46 to option agreements that we entered into prior to February 1, 2003.

In April 2003, the FASB issued SFAS No. 149 "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends and clarifies financial accounting and reporting for derivative instruments, including certain derivative instruments embedded in other contracts (collectively referred to as derivatives) and for hedging activities under SFAS No. 133. SFAS No. 149 is effective for contracts entered into or modified after June 30, 2003, and for hedging relationships designated after June 30, 2003. The implementation of SFAS No. 149 did not have a material impact on our financial condition, results of operations or cash flows.

In May 2003, the FASB issued SFAS No. 150 "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity.

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With the exception of certain measurement criteria deferred indefinitely by the FASB, SFAS No. 150 was effective for financial instruments entered into or modified after May 31, 2003 and otherwise was effective at the beginning of the first interim period beginning after June 15, 2003. The implementation of SFAS No. 150 did not have a material impact on our financial condition, results of operations or cash flows.

**Outlook:**

We are optimistic about our prospects for fiscal 2004 and confident about our long-term prospects. Based on increased backlog at September 30, 2003, and our expectation for continued strength in the housing market, we expect home closings to increase in fiscal 2004. In addition, we will focus on consistently achieving sustainable and profitable growth through initiatives that leverage our national brand, increase market penetration through focused product expansion and price-point diversification and increase operating efficiencies. Based upon these factors, we currently target achieving earnings in the range of \$14.00 to \$14.75 per diluted share for fiscal 2004. Over the long-term, we believe that projected population growth and household formation will drive demand for housing, especially in the growth states in which we operate.

**Disclosure Regarding Forward-Looking Statements:**

This annual report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements represent our expectations or beliefs concerning future events, and no assurance can be given that the results described in this annual report will be achieved. These forward-looking statements can generally be identified by the use of statements that include words such as "estimate," "project," "believe," "expect," "anticipate," "intend," "plan," "foresee," "likely," "will," "goal," "target" or other similar words or phrases. All forward-looking statements are based upon information available to us on the date of this annual report. Except as may be required under applicable law, we do not undertake any obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

These forward-looking statements are subject to risks, uncertainties and other factors, many of which are outside of our control, that could cause actual results to differ materially from the results discussed in the forward-looking statements, including, among other things, the matters discussed in this annual report in the sections captioned "Outlook" and "Financial Condition and Liquidity." Additional information about factors that could lead to material changes in performance is contained in our filings with the Securities and Exchange Commission. Such factors may include:

- economic changes nationally or in our local markets;
- volatility of mortgage interest rates and inflation;
- increased competition;
- shortages of skilled labor or raw materials used in the production of houses;
- increased prices for labor, land and raw materials used in the production of houses;
- increased land development costs on projects under development;
- the cost and availability of insurance, including the availability of insurance for the presence of mold;
- any delays in reacting to changing consumer preference in home design;
- terrorist acts and other acts of war;

- 
- changes in consumer confidence;
  - delays or difficulties in implementing our initiatives to reduce our production and overhead cost structure;

- delays in land development or home construction resulting from adverse weather conditions;
- potential delays or increased costs in obtaining necessary permits as a result of changes to laws, regulations, or governmental policies;
- changes in accounting policies, standards, guidelines or principles, as may be adopted by regulatory agencies as well as the Financial Accounting Standards Board; or
- other factors over which we have little or no control.

#### Item 7(a). Quantitative and Qualitative Disclosures About Market Risk

We are exposed to a number of market risks in the ordinary course of business. Our primary market risk exposure relates to fluctuations in interest rates. We do not believe that our exposure in this area is material to cash flows or earnings. During fiscal 2001 we entered into interest rate swap agreements with an aggregate notional amount of \$100 million to manage our exposure to fluctuations in interest rates on \$100 million of variable rate debt. These swaps effectively fix the rate on this debt at 5.74%. We do not enter into or hold derivatives for trading or speculative purposes.

We have formally designated these agreements as cash flow hedges as discussed in Note 3 of the consolidated financial statements. The estimated fair value of the Swap Agreements, based on current market rates, was approximately \$5.6 million at September 30, 2003 and is included in other liabilities.

The estimated fair value of our fixed rate debt at September 30, 2003 was \$593 million, compared to a carrying value of \$541 million. In addition, the effect of a hypothetical one percentage point decrease in interest rates would increase the estimated fair value of the fixed rate debt instruments from \$593 million to \$630 million at September 30, 2003.

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#### Item 8. Financial Statements and Supplementary Data

**Beazer Homes USA, Inc.**  
**Consolidated Statements of Income**  
(in thousands, except per share amounts)

	Year Ended September 30,		
	2003	2002	2001
Total revenue	\$ 3,177,408	\$ 2,641,173	\$ 1,805,177
Costs and expenses:			
Home construction and land sales	2,534,035	2,155,415	1,477,450
Selling, general and administrative	356,648	292,584	205,498
Expenses related to retirement of debt	7,570	—	1,202
Operating income	279,155	193,174	121,027
Other income, net	6,374	8,885	1,721
Income before income taxes	285,529	202,059	122,748
Provision for income taxes	112,784	79,425	47,872
Net income	\$ 172,745	\$ 122,634	\$ 74,876
Weighted average number of shares:			
Basic	12,886	10,535	8,145
Diluted	13,514	11,415	9,156
Earnings per share:			
Basic	\$ 13.41	\$ 11.64	\$ 9.19
Diluted	\$ 12.78	\$ 10.74	\$ 8.18

See Notes to Consolidated Financial Statements

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**Beazer Homes USA, Inc.**  
**Consolidated Balance Sheets**  
(dollars in thousands, except per share amounts)

	September 30,	
	2003	2002
<b>ASSETS</b>		
Cash and cash equivalents	\$ 73,372	\$ 124,989

Accounts receivable	66,003	54,329
Inventory		
Owned inventory	1,687,809	1,364,133
Consolidated inventory not owned	35,674	—
Total inventory	1,723,483	1,364,133
Deferred tax asset	26,160	27,099
Property, plant and equipment, net	19,185	19,096
Goodwill	251,603	251,603
Other assets	52,228	51,598
Total Assets	\$ 2,212,034	\$ 1,892,847
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Trade accounts payable	\$ 125,521	\$ 108,554
Other liabilities	320,996	245,678
Obligations related to consolidated inventory not owned	30,457	—
Revolving credit facility	—	—
Term Loan	200,000	100,000
Senior Notes (net of discount of \$8,635 and \$10,900 respectively)	541,365	639,100
Total Liabilities	1,218,339	1,093,332
Stockholders' Equity:		
Preferred stock (par value \$.01 per share, 5,000,000 shares authorized, no shares issued)	—	—
Common stock (par value \$.01 per share, 30,000,000 shares authorized, 17,501,052 and 16,725,673 issued, 13,542,976 and 12,895,597 outstanding)	175	167
Paid in capital	572,070	535,460
Retained earnings	511,349	338,604
Treasury stock, at cost (3,958,076 and 3,830,076 shares)	(70,604)	(63,679)
Unearned restricted stock	(15,852)	(6,260)
Accumulated other comprehensive loss	(3,443)	(4,777)
Total Stockholders' Equity	993,695	799,515
Total Liabilities and Stockholders' Equity	\$ 2,212,034	\$ 1,892,847

See Notes to Consolidated Financial Statements

**Beazer Homes USA, Inc.**  
**Consolidated Statement of Stockholders' Equity**  
(dollars in thousands)

	Preferred Stock	Common Stock	Paid in Capital	Retained Earnings	Treasury Stock	Unearned Restricted Stock	Accumulated Other Comprehensive Loss	Total
Balance, September 30, 2000	\$ —	\$ 123	\$ 195,134	\$ 141,094	\$ (61,204)	\$ (4,609)	\$ —	\$ 270,538
Comprehensive income:								
Net income				74,876				74,876
Unrealized loss on interest rate swaps, net of tax of \$2,228							(3,483)	(3,483)
Total comprehensive income								71,393
Amortization of unearned restricted stock						2,926		2,926
Exercises of stock options		1	2,286					2,287
Issuance of Bonus Stock			431			89		520
Tax benefit from stock transactions			3,837					3,837
Purchase of treasury stock (6,977 shares)					(306)			(306)
Other			433			(433)		—
Balance, September 30, 2001	—	124	202,121	215,970	(61,510)	(2,027)	(3,483)	351,195
Comprehensive income:								
Net income				122,634				122,634
Unrealized loss on interest rate swaps, net of tax of \$845							(1,294)	(1,294)
Total comprehensive income								121,340
Amortization of unearned restricted stock						2,365		2,365

Exercises of stock options	3	5,159							5,162
Issuance of Bonus Stock	1	813							814
Tax benefit from stock transactions		12,235							12,235
Issuance of restricted stock (79,337 shares)		6,281				(6,281)			—
Stock issued for Crossmann acquisition (3,8571,166 shares)	39	308,534							308,573
Purchase of treasury stock (31,072 shares)						(2,169)			(2,169)
Other		317				(317)			—
Balance, September 30, 2002	—	167	535,460	338,604	(63,679)	(6,260)	(4,777)		799,515
Comprehensive income:									
Net income				172,745					172,745
Unrealized gain on interest rate swaps, net of tax of \$871							1,334		1,334
Total comprehensive income									174,079
Amortization of unearned restricted stock						3,984			3,984
Exercises of stock options	6	9,799							9,805
Issuance of Bonus Stock		1,735							1,735
Tax benefit from stock transactions		11,502							11,502
Issuance of restricted stock (215,642 shares)	2	13,280				(13,282)			—
Purchase of treasury stock (128,000 shares)						(6,925)			(6,925)
Other		294				(294)			—
Balance, September 30, 2003	\$ —	\$ 175	\$ 572,070	\$ 511,349	\$ (70,604)	\$ (15,852)	\$ (3,443)	\$	\$ 993,695

See Notes to Consolidated Financial Statements

**Beazer Homes USA, Inc.**  
**Consolidated Statements of Cash Flows**  
(dollars in thousands)

	Year Ended September 30,		
	2003	2002	2001
<b>Cash flows from operating activities:</b>			
Net income	\$ 172,745	\$ 122,634	\$ 74,876
Adjustments to reconcile net income to net cash provided/(used) by operating activities:			
Depreciation and amortization	13,220	9,453	9,253
Loss on extinguishment of debt	7,570	—	1,202
Deferred income tax provision (benefit)	87	(6,613)	(7,906)
Tax benefit from stock transactions	11,502	12,235	3,837
Changes in operating assets and liabilities, net of effects from acquisitions:			
Increase in accounts receivable	(11,674)	(13,601)	(15,814)
Increase in inventory	(328,893)	(152,990)	(153,668)
Decrease/(increase) in other assets	(3,028)	15,611	(1,023)
Increase/(decrease) in trade accounts payable	16,967	23,481	(26,676)
Increase in other liabilities	79,257	48,300	65,397
Change in book overdraft	—	—	20,095
Other changes	1,198	954	4,849
Net cash provided/(used) by operating activities	(41,049)	59,464	(25,578)
<b>Cash flows from investing activities:</b>			
Capital expenditures	(9,325)	(8,213)	(5,906)
Proceeds from sale of fixed assets	—	4,800	—
Investments in unconsolidated joint ventures	(4,941)	(3,146)	(4,517)
Distributions from and proceeds from sale of unconsolidated joint ventures	7,714	12,736	—
Acquisitions, net of cash acquired	—	(320,810)	(62,412)
Net cash used by investing activities	(6,552)	(314,633)	(72,835)

Cash flows from financing activities:			
Change in revolving credit facility	—	—	(40,000)
Proceeds from Term Loan	200,000	—	100,000
Repayment of Term Loan	(100,000)	—	—
Redemption of 8 <sup>7</sup> / <sub>8</sub> % Senior Notes	(104,438)	—	—
Proceeds from issuance of 8 <sup>3</sup> / <sub>8</sub> % Senior Notes	—	343,000	—
Proceeds from issuance of 8 <sup>5</sup> / <sub>8</sub> % Senior Notes	—	—	198,356
Redemption of 9% Senior Notes	—	—	(115,000)
Debt issuance costs	(2,458)	(7,513)	(5,246)
Proceeds from stock option exercises	9,805	5,162	2,287
Common share repurchases	(6,925)	(2,169)	(306)
Net cash provided/(used) by financing activities	(4,016)	338,480	140,091
Increase/(decrease) in cash and cash equivalents	(51,617)	83,311	41,678
Cash and cash equivalents at beginning of year	124,989	41,678	—
Cash and cash equivalents at end of year	\$ 73,372	\$ 124,989	\$ 41,678

**Supplemental cash flow information:**

Interest paid	\$ 67,580	\$ 37,178	\$ 28,241
Income taxes paid	\$ 77,904	\$ 81,534	\$ 38,288

**Supplemental disclosure of non-cash activity:**

Issuance of common stock related to acquisition	\$ —	\$ 308,573	\$ —
Consolidated inventory not owned	\$ 30,457	\$ —	\$ —

See Notes to Consolidated Financial Statements

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**(1) Summary of Significant Accounting Policies**

**Organization**—Beazer Homes USA, Inc. is one of the ten largest single-family homebuilders in the United States based on number of homes closed. We design, sell and build single-family homes in over 35 markets located in Arizona, California, Colorado, Delaware, Florida, Georgia, Indiana, Kentucky, Maryland, Mississippi, Nevada, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas and Virginia. We also provide mortgage origination services for our homebuyers through Beazer Mortgage Corporation, or Beazer Mortgage, and Crossmann Mortgage Corp., or Crossmann Mortgage. In addition, we provide title services to our homebuyers in many of our markets.

**Presentation**—Our homebuilding operations conducted across several geographic regions of the United States have similar characteristics; therefore, they have been aggregated into one reportable segment—the homebuilding segment.

The accompanying consolidated financial statements include the accounts of Beazer Homes USA, Inc., and our wholly owned subsidiaries. Intercompany balances have been eliminated in consolidation.

**Cash and Cash Equivalents**—We consider investments with maturities of three months or less when purchased to be cash equivalents.

**Inventory**—Owned inventory consists solely of residential real estate developments. Interest, real estate taxes and development costs are capitalized in inventory during the development and construction period. Sold units are expensed on a specific identification basis or on a relative sales value basis as cost of sales. Consolidated inventory not owned represents that fair value of land under option agreements consolidated pursuant to Financial Accounting Standards Board ("FASB") Interpretation No. 46. See additional discussion in the Recent Accounting Pronouncements section of this Note 1.

**Property, Plant and Equipment**—Property, plant and equipment are recorded at cost. Depreciation is computed on a straight line basis at rates based on estimated useful lives as follows:

Buildings	15 years
Machinery and equipment	3 - 12 years
Information systems	3 - 5 years
Furniture and fixtures	3 - 5 years

**Impairment of Long Lived Assets**—Housing projects and unimproved land held for future development (components of inventory) and property, plant and equipment are reviewed for recoverability whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets is measured by comparing the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. If these assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets.

**Goodwill**—Goodwill represents the excess of the purchase price over the fair value of assets acquired. We adopted Statement of Financial Accounting Standards ("SFAS") No. 142 "Goodwill and Other Intangible Assets" effective October 1, 2001 which resulted in the discontinuation of amortization of goodwill. Goodwill arising from our April 2002 and August 2001 acquisitions (Note 2) is not being amortized. Amortization expense of goodwill was \$801,000 for the year ended September 30, 2001. Associated accumulated amortization was \$5,588,000 at September 30, 2001. Net income for the year ended September 30, 2001 would have been \$75.5 million (\$8.25 per share) after adding back goodwill amortization.

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Goodwill is subject to at least an annual assessment for impairment by applying a fair value-based test. If the carrying amount exceeds the fair value, goodwill is considered impaired. For purposes of goodwill impairment testing, we compare the fair value of each reporting unit with its carrying amount, including goodwill. Each of our operating divisions is considered a reporting unit. The fair value of each reporting unit is based on expected discounted future cash flows.

We evaluate whether events and circumstances have occurred that indicate that goodwill may be impaired. Such evaluations for impairment are significantly impacted by estimates of future revenues, costs and expenses and other factors. If the goodwill is considered to be impaired, the impairment loss to be recognized is measured by the amount by which the carrying amount of the goodwill exceeds implied fair value of that goodwill. We performed our annual impairment test of goodwill as of April 30, 2003 and determined that goodwill was not impaired. Identifiable intangible assets, other than goodwill, are immaterial.

**Other Assets**—Other assets include prepaid expenses, debt issuance costs and investments in unconsolidated entities, including our interests in real estate development joint ventures.

**Income Taxes**—Deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse.

**Other Liabilities**—Other liabilities include homebuyer deposits, land purchase obligations, accrued compensation, accrued warranty costs and various other accrued expenses.

**Income Recognition and Classification of Costs**—Income from the sale of residential units or land parcels is recognized when closings have occurred and the risk of ownership is transferred to the buyer. Sales commissions are included in selling, general and administrative expense.

Fees paid to Beazer Mortgage and Crossmann Mortgage from third party lenders are recognized as revenue concurrent with the closing on the sale of the residential unit. All expenses of operating Beazer Mortgage and Crossmann Mortgage are included in selling, general and administrative expense in the period incurred.

Estimated future warranty costs are charged to cost of sales in the period when the revenues from home closings are recognized. Such estimated warranty costs generally range from 0.5% to 1.0% of total revenue and, based upon experience, have been sufficient to cover costs incurred.

Advertising costs of \$34,775,000, \$28,237,000, and \$19,793,000 for fiscal years 2003, 2002 and 2001, respectively, are expensed as incurred.

**Earnings Per Share**—The computation of basic earnings per common share is determined by dividing net income applicable to common shareholders by the weighted average number of common shares outstanding during the period. Diluted earnings per share additionally gives effect (when dilutive) to stock options and other stock based awards.

**Fair Value of Financial Instruments**—The historical carrying amount of cash and cash equivalents and our Term Loan are reasonable estimates of their fair value. The fair value of our publicly held Senior Notes (Note 9) is estimated based on the quoted bid prices for these debt instruments and was approximately \$593 million at September 30, 2003 and \$652 million at September 30, 2002. The fair values of our interest rate swaps, based on current rates, approximated \$5.6 million at September 30, 2003 and \$7.9 million at September 30, 2002, and is included in other liabilities.

**Stock-based Compensation**—We account for stock option grants under the recognition and measurement principles of Accounting Principles Board Opinion ("APB") No. 25, "Accounting for Stock Issued to Employees", and related Interpretations. No compensation expense is recognized because all stock options granted have exercise prices not less than the market value of our stock on

the date of the grant. Restricted stock grants are valued based on the market price of the common stock on the date of the grant. Unearned compensation arising from the restricted stock grants is amortized to expense using the straight-line method over the period of the restrictions. Unearned restricted stock is shown as a reduction of stockholders' equity in the consolidated balance sheets.

The following table illustrates the effect (in thousands, except per share amounts) on net earnings and earnings per share if we had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" as amended by SFAS No. 148 "Accounting for Stock-Based Compensation—Transition and Disclosure", to stock-based employee compensation:

	2003	Year Ended September 30, 2002	2001
Net income, as reported	\$ 172,745	\$ 122,634	\$ 74,876
Add: Stock-based employee compensation expense included in reported net income, net of related tax effects	2,410	1,443	1,785
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(5,409)	(3,057)	(3,224)
Pro forma net income	\$ 169,746	\$ 121,020	\$ 73,437
<b>Earnings per share:</b>			
Basic—as reported	\$ 13.41	\$ 11.64	\$ 9.19

Basic—pro forma	\$	13.17	\$	11.49	\$	9.02
Diluted—as reported	\$	12.78	\$	10.74	\$	8.18
Diluted—pro forma	\$	12.65	\$	10.66	\$	8.09

The weighted average fair value of each option granted during the years ended September 30, 2003 and 2002 was \$32.89 and \$38.30, respectively. There were no options granted during the year ended September 30, 2001. The fair values of options granted were estimated on the date of their grant using the Black-Scholes option pricing model based on the following weighted average assumptions:

	Year Ended September 30,	
	2003	2002
Expected volatility	46.7%	40.7%
Expected dividend yield	none	none
Risk-free interest rate	3.6%	4.9%
Expected life (in years)	7.0	7.0

**Use of Estimates**—The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Reclassifications**—Certain items in prior-period financial statements have been reclassified to conform to the current presentation.

**Recent Accounting Pronouncements**—In April 2002, SFAS No. 145 "Rescission of SFAS No. 4, 44, 64 and Amendment of SFAS No. 13 and Technical Corrections" was issued. SFAS No. 145 prevents treatment as extraordinary, gains or losses on extinguishment of debt not meeting the criteria of APB

No. 30. We adopted SFAS No. 145 on October 1, 2002, the beginning of fiscal 2003. As a result, the \$1.2 million pre-tax charge for extinguishment of debt recorded during fiscal 2001 (see Note 9) is no longer classified as an extraordinary loss.

In January 2003, the FASB issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51" ("FIN 46"). FIN 46 defines a Variable Interest Entity ("VIE") as an entity with insufficient equity investment to finance its planned activities without additional financial support or an entity in which the equity investors lack certain characteristics of a controlling financial interest. Pursuant to FIN 46, an enterprise that absorbs a majority of the expected losses or receives a majority of the expected residual returns of a VIE is deemed to be the primary beneficiary of the VIE and must consolidate the VIE. FIN 46 applied immediately to variable interest entities created after January 31, 2003, and with respect to variable interests held before February 1, 2003, FIN 46 will apply beginning with our quarter ending December 31, 2003, the first quarter of fiscal 2004.

We have evaluated all of our existing joint venture agreements, and we have determined that none of our joint ventures are VIEs. Therefore, we have not consolidated any of our joint venture agreements pursuant to the requirements of FIN 46. We have evaluated our option contracts for land entered into subsequent to January 31, 2003 and determined we are the primary beneficiary of certain of these option contracts. Although we do not have legal title to the optioned land, for those option contracts for which we are the primary beneficiary, we are required to consolidate the land under option at fair value. We believe that the exercise prices of our option contracts approximate their fair value. The consolidation of the land subject to these option contracts had the effect of increasing consolidated inventory not owned by \$30.5 million with a corresponding increase to obligations related to consolidated inventory not owned in the accompanying consolidated balance sheet as of September 30, 2003. The liabilities represent the difference between the exercise price of the optioned land and our deposits. Additionally, to reflect the fair value of the inventory consolidated under FIN 46, we reclassified \$5.2 million of related option deposits from development projects in progress to consolidated inventory not owned.

We currently estimate that we will record an additional \$223 million, net of cash deposits, of consolidated inventory not owned, with a corresponding increase to obligations related to consolidated inventory not owned, during the first quarter of our 2004 fiscal year to reflect the application of FIN 46 to option agreements that we entered into prior to February 1, 2003.

In April 2003, the FASB issued SFAS No. 149 "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends and clarifies financial accounting and reporting for derivative instruments, including certain derivative instruments embedded in other contracts (collectively referred to as derivatives) and for hedging activities under SFAS No. 133. SFAS No. 149 is effective for contracts entered into or modified after June 30, 2003, and for hedging relationships designated after June 30, 2003. The implementation of SFAS No. 149 did not have a material impact on our financial condition, results of operations or cash flows.

In May 2003, the FASB issued SFAS No. 150 "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity." SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. With the exception of certain measurement criteria deferred indefinitely by the FASB, SFAS No. 150 was effective for financial instruments entered into or modified after May 31, 2003 and otherwise was effective at the beginning of the first interim period beginning after June 15, 2003. The implementation of SFAS No. 150 did not have a material impact on our financial condition, results of operations or cash flows.

## (2) Acquisitions

Effective April 17, 2002, Beazer Homes acquired Crossmann Communities, Inc. ("Crossmann"). Crossmann built single-family homes in Indiana—its home base—with operations in Kentucky, Mississippi, North Carolina, Ohio, South Carolina and Tennessee. This acquisition represented our entry into the Midwest region and strengthened our focus on the first-time homebuyer segment. We have included Crossmann's operating results in our consolidated financial statements since April 1, 2002.

The aggregate merger consideration we paid totaled approximately \$500.2 million and consisted of approximately 3.9 million shares of Beazer Homes common stock (approximately \$308.6 million) and approximately \$191.6 million in cash. In connection with the merger, we also repaid approximately \$125.4 million of Crossmann debt, resulting in total consideration paid of \$625.6 million. The cash portion of the merger consideration and the repayment of Crossmann debt upon the merger were funded from net proceeds of our issuance of \$350 million 8<sup>3</sup>/<sub>8</sub>% Senior Notes due 2012 in a private placement on April 17, 2002.

The acquisition was accounted for as a purchase; accordingly, the purchase price was allocated to reflect the fair value of assets and liabilities acquired. Under this method, Crossmann assets acquired and liabilities assumed were recorded on our balance sheet at their fair market value as of April 1, 2002. This resulted in an inventory write-up to fair value of \$26.9 million and a write-down of fixed assets to fair value of \$1.1 million. This acquisition resulted in approximately \$239.9 million of goodwill, none of which is deductible for income tax purposes.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition (in thousands):

Inventory	\$	357,801
Property, plant and equipment, net		9,085
Goodwill		239,919
Other assets		61,722
<b>Total assets acquired</b>	<b>\$</b>	<b>668,527</b>
Accounts payable and accrued liabilities	\$	31,455
Revolving credit facility		59,600
Other debt		63,641
<b>Total liabilities assumed</b>		<b>154,696</b>
<b>Net assets acquired</b>	<b>\$</b>	<b>513,831</b>

In August 2001, we acquired the assets and certain liabilities (approximately \$9 million) of Sanford Homes of Colorado LLLP for approximately \$59 million in cash. The acquisition was accounted for as a purchase; accordingly the purchase price was allocated to reflect the fair value of assets and liabilities acquired. This acquisition resulted in \$4.5 million of goodwill and \$1 million of other intangible assets. Sanford's operating results have been included in our consolidated financial statements since August 1, 2001.

The following unaudited pro forma financial data (in thousands, except per share amounts) gives effect to our acquisitions of Crossmann and Sanford as if they had occurred on the first day of the fiscal year of acquisition and on the first day of the comparable prior period. The pro forma financial

data is provided for comparative purposes only and is not necessarily indicative of the results that would have been obtained if the acquisitions had been effected at those dates.

	Year Ended September 30,	
	2002	2001
Total revenues	\$ 3,046,841	\$ 2,708,587
Net income	141,753	125,322
Net income per share:		
Basic	\$ 11.37	\$ 10.45
Diluted	10.62	9.63

## (3) Derivative Instruments and Hedging Activities

We are exposed to fluctuations in interest rates. We enter into derivative agreements to manage interest costs and hedge against risks associated with fluctuating interest rates. We do not enter into or hold derivatives for trading or speculative purposes. During the year ended September 30, 2001 we entered into interest rate swap agreements (the "Swap Agreements") to effectively fix the variable interest rate on \$100 million of floating rate debt. The Swap Agreements mature in December 2004.

The Swap Agreements have been designated as cash flow hedges and accordingly, are recorded at fair value in our consolidated balance sheet and the related gains or losses are deferred in stockholders' equity, net of taxes, as a component of other comprehensive income. Amounts to be received or paid as a result of the Swap Agreements are accrued and recognized as adjustments to interest related to the designated debt. The net effect of this accounting on our operating results is that interest on the variable-rate debt is generally recorded based on fixed interest rates. No portion of these hedges was considered ineffective for the year ended September 30, 2003. We expect to reclassify \$2.7 million, net of taxes of \$1.8 million, from other comprehensive loss to interest expense over the next twelve months.

As a result of the Swap Agreements, we have recorded a cumulative after-tax other comprehensive loss of \$3.4 million as of September 30, 2003. The estimated fair value of the Swap Agreements, based on current market rates, approximated \$5.6 million at September 30, 2003 and is included in other liabilities.

#### (4) Inventory

Inventory consists of (*in thousands*):

September 30,	2003	2002
Homes under construction	\$ 658,909	\$ 596,644
Development projects in progress	919,257	653,871
Unimproved land held for future development	33,583	43,829
Model homes	76,060	69,789
Consolidated inventory not owned	35,674	—
	<u>\$ 1,723,483</u>	<u>\$ 1,364,133</u>

Homes under construction include homes finished and ready for delivery and homes in various stages of construction. We had 362 (\$58.3 million) and 507 (\$68.7 million) completed homes that were not subject to a sales contract, not including model homes, at September 30, 2003 and 2002, respectively.

Development projects in progress consist principally of land and land improvement costs. Certain of the fully developed lots in this category are reserved by a deposit or sales contract.

Inventory located in California, the state with our largest concentration of inventory, was \$323.8 million and \$188.2 million at September 30, 2003, and 2002, respectively.

We acquire certain lots by means of option contracts. Option contracts generally require the payment of cash for the right to acquire lots during a specified period of time at a certain price. Under option contracts, both with and without specific performance provisions, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Our obligation with respect to options with specific performance provisions is included on our consolidated balance sheet in other liabilities at September 30, 2003. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, letters of credit and other non-refundable amounts incurred, which aggregated approximately \$137.3 million at September 30, 2003. This amount includes letters of credit of approximately \$38.9 million. Below is a summary of amounts (*in thousands*) committed under all options at September 30, 2003:

	Aggregate Exercise Price of Options
Options with specific performance	\$ 21,689
Options without specific performance	1,350,905
<b>Total options</b>	<b>\$ 1,372,594</b>

We expect to exercise all of our option contracts with specific performance obligations and, subject to market conditions, substantially all of our option contracts without specific performance obligations. Various factors, some of which are beyond our control, such as market conditions, weather conditions and the timing of the completion of development activities, can have a significant impact on the timing of option exercises. Under their current terms, and assuming no significant changes in market conditions or other factors, we expect to exercise our land options as follows (*in thousands*):

Year Ending September 30,	
2004	\$ 269,537
2005	458,371
Thereafter	644,686
<b>Total</b>	<b>\$ 1,372,594</b>

#### (5) Interest

Information regarding interest (*in thousands*) is as follows:

	Year Ended September 30,		
	2003	2002	2001
<b>Capitalized interest in inventory, beginning of year</b>	<b>\$ 24,441</b>	<b>\$ 16,271</b>	<b>\$ 13,681</b>
Interest incurred and capitalized	65,295	51,171	35,825

Capitalized interest amortized to cost of sales	(55,451)	(43,001)	(33,235)
<b>Capitalized interest in inventory, End of the year</b>	<b>\$ 34,285</b>	<b>\$ 24,441</b>	<b>\$ 16,271</b>

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## (6) Property, Plant and Equipment

Property, plant and equipment consists of (*in thousands*):

	September 30,	
	2003	2002
Land and buildings	\$ 1,011	\$ 1,133
Leasehold improvements	5,429	4,558
Machinery and equipment	18,954	14,186
Information systems	14,608	13,190
Furniture and fixtures	13,960	13,986
	<u>53,962</u>	<u>47,053</u>
Less: Accumulated depreciation	(34,777)	(27,957)
Property, plant and equipment, net	<u>\$ 19,185</u>	<u>\$ 19,096</u>

## (7) Revolving Credit Facility

During fiscal 2003 we executed a \$250 million four-year revolving credit facility (the "Revolving Credit Facility") with a group of banks. The Revolving Credit Facility matures in June 2007 and renews and extends our \$250 million revolving credit facility, which was set to expire in September 2004. The Revolving Credit Facility bears interest at a fluctuating rate (2.8% at September 30, 2003) based upon LIBOR or the corporate base rate of interest announced by our lead bank. The Revolving Credit Facility contains various operating and financial covenants. Each of our significant subsidiaries is a guarantor under the Revolving Credit Facility.

Available borrowings under the Revolving Credit Facility are limited to certain percentages of homes under contract, unsold homes, substantially improved lots and accounts receivable. At September 30, 2003 we had no borrowings outstanding, and had available borrowings of \$172 million under the Revolving Credit Facility.

## (8) Term Loan

During fiscal 2003 we executed a \$200 million four-year term loan (the "Term Loan") with a group of banks. The Term Loan matures in June 2007 and replaces our \$100 million term loan that was set to mature in December 2004. The Term Loan bears interest at a fluctuating rate (2.8% at September 30, 2003) based upon LIBOR or the corporate base rate of interest announced by our lead bank. The Term Loan contains various operating and financial covenants. Each of our significant subsidiaries is a guarantor under the Term Loan. As discussed in Note 9, a portion of the proceeds from the increase in our Term Loan were used to retire our \$100 million 8<sup>7</sup>/<sub>8</sub>% Senior Notes due in 2008.

As discussed in Note 3, we entered into Swap Agreements to manage interest costs and hedge against risks associated with fluctuating interest rates related to \$100 million of floating rate debt. As of September 30, 2003, we had entered into interest rate swaps to effectively fix the interest rate (before spread) on \$100 million in floating rate debt as follows: \$75 million is fixed at 5.925% per annum; \$10 million is fixed at 5.17% per annum; \$5 million is fixed at 5.50% per annum; and \$10 million is fixed at 5.055% per annum. The Swap Agreements expire in December 2004.

## (9) Senior Notes

In April 2002 we issued \$350 million 8<sup>3</sup>/<sub>8</sub>% Senior Notes due April 2012 (the "Original Notes") in a private placement pursuant to Rule 144A and Regulation S promulgated under the Securities Act of 1933, as amended. In September 2002 we completed an offer to exchange all of the outstanding Original Notes for an equal amount of 8<sup>3</sup>/<sub>8</sub>% Senior Notes due 2012 (the "8<sup>3</sup>/<sub>8</sub>% Senior Notes"), which

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were registered under the Securities Act of 1933. The terms of the 8<sup>3</sup>/<sub>8</sub>% Senior Notes were substantially identical to the terms of the Original Notes. The Original Notes were issued at a price of 100% of their face amount (before underwriting discount and other issuance costs). Interest on the 8<sup>3</sup>/<sub>8</sub>% Senior Notes is payable semiannually. We may, at our option, redeem the 8<sup>3</sup>/<sub>8</sub>% Senior Notes in whole or in part at any time after April 2007, initially at 104.188% of the principal amount, declining to 100% of the principal amount after April 2010. A portion of such notes may also be redeemed prior to April 2005 under certain conditions. We used the proceeds from the issuance of the 8<sup>3</sup>/<sub>8</sub>% Senior Notes to fund the cash portion of the Crossmann acquisition, to repay Crossmann's outstanding net indebtedness, to reduce borrowings under our revolving credit facility at the time, and to pay related fees, commissions and other expenses.

In May 2001 we issued \$200 million 8<sup>5</sup>/<sub>8</sub>% Senior Notes due May 2011 (the "8<sup>5</sup>/<sub>8</sub>% Senior Notes") at a price of 99.178% of their face amount (before underwriting discount and other issuance costs). Interest on the 8<sup>5</sup>/<sub>8</sub>% Senior Notes is payable semiannually. We may, at our option, redeem the 8<sup>5</sup>/<sub>8</sub>% Senior

Notes in whole or in part at any time after May 2006, initially at 104.3125% of the principal amount, declining to 100% of the principal amount after May 2009. A portion of such notes may also be redeemed prior to May 2004 under certain conditions. We used a portion of the proceeds from the issuance of the 8<sup>5</sup>/<sub>8</sub>% Senior Notes to redeem \$115 million of our 9% Senior Notes which were due in March 2004. As a result of this redemption of the 9% Senior Notes, we recorded a pre-tax charge during fiscal 2001 of \$1.2 million for the write-off of associated unamortized debt issuance costs.

A portion of the proceeds from the increase in our Term Loan was used to retire our \$100 million 8<sup>7</sup>/<sub>8</sub>% Senior Notes due in 2008 (the "8<sup>7</sup>/<sub>8</sub>% Senior Notes"). The 8<sup>7</sup>/<sub>8</sub>% Senior Notes were redeemed at 104.438% of the principal amount, plus accrued interest. As a result of the redemption of the 8<sup>7</sup>/<sub>8</sub>% Senior Notes, we recorded a pre-tax charge of \$7.6 million, which includes the write off of previously capitalized fees, during fiscal 2003.

The 8<sup>3</sup>/<sub>8</sub>% Senior Notes and the 8<sup>5</sup>/<sub>8</sub>% Senior Notes (collectively the "Senior Notes") are unsecured obligations ranking pari passu with all other existing and future senior indebtedness. All of our significant subsidiaries are full and unconditional guarantors of the Senior Notes and our obligations under the Revolving Credit Facility and Term Loan, and are jointly and severally liable for obligations under the Senior Notes, Revolving Credit Facility and Term Loan. Each guarantor subsidiary is a 100% owned subsidiary of Beazer Homes.

The indentures under which the Senior Notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At September 30, 2003, under the most restrictive covenants of each indenture, approximately \$229.5 million of our retained earnings was available for cash dividends and for share repurchases. Each indenture provides that, in the event of defined changes in control or if our consolidated tangible net worth falls below a specified level or in certain circumstances upon a sale of assets, we are required to offer to repurchase certain specified amounts of outstanding Senior Notes.

## (10) Income Taxes

The provision for income taxes consists of (*in thousands*):

	Year Ended September 30,		
	2003	2002	2001
Current:			
Federal	\$ 106,871	\$ 78,709	\$ 48,926
State	16,261	13,566	7,943
Deferred	(10,348)	(12,850)	(8,997)
<b>Total</b>	<b>\$ 112,784</b>	<b>\$ 79,425</b>	<b>\$ 47,872</b>

The provision for income taxes differs from the amount computed by applying the federal income tax statutory rate as follows (*in thousands*):

	Year Ended September 30,		
	2003	2002	2001
Income tax computed at statutory rate	\$ 99,935	\$ 70,721	\$ 42,962
State income taxes, net of federal benefit	12,764	8,524	4,686
Goodwill amortization	—	—	189
Other	85	180	35
<b>Total</b>	<b>\$ 112,784</b>	<b>\$ 79,425</b>	<b>\$ 47,872</b>

Deferred tax assets and liabilities are composed of the following (*in thousands*):

	September 30,	
	2003	2002
Deferred Tax Assets:		
Warranty and other reserves	\$ 19,352	\$ 13,895
Incentive compensation	3,752	8,779
Property, equipment and other assets	3,604	2,376
Interest rate swaps	2,203	3,073
Other	767	—
<b>Total Deferred Tax Assets</b>	<b>29,678</b>	<b>28,123</b>
Deferred Tax Liabilities:		
Inventory valuation	(3,518)	(825)
Other	—	(199)
<b>Net Deferred Tax Asset</b>	<b>\$ 26,160</b>	<b>\$ 27,099</b>

We believe that based upon our history of profitable operations, it is more likely than not that our net deferred tax asset will be realized.

## (11) Leases

We are obligated under various noncancelable operating leases for office facilities and equipment. Rental expense under these agreements amounted to approximately \$11,562,000, \$9,654,000 and \$7,569,000 for the years ended September 30, 2003, 2002 and 2001, respectively. As of September 30,

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2003, future minimum lease payments under noncancelable operating lease agreements are as follows: (*in thousands*):

	Year Ending September 30,
2004	\$ 9,122
2005	7,906
2006	5,552
2007	4,431
2008	3,136
Thereafter	6,353
<b>Total</b>	<b>\$ 36,500</b>

## (12) Stockholders' Equity

**Preferred Stock**—We currently have no shares of preferred stock outstanding.

**Common Stock Repurchase Plan**—In February 2003 our Board of Directors approved a stock repurchase plan authorizing the purchase of up to one million shares of our outstanding common stock. As of September 30, 2003, we have repurchased 128,000 shares for an aggregate purchase price of \$6.9 million or approximately \$54 per share pursuant to the plan.

**Shareholder Rights Plan**—In June 1996 our Board of Directors adopted a Shareholder Rights Plan and distributed a dividend of one preferred share purchase right (a "Right") to purchase one one-hundredth of a share of Series B Junior Participating Preferred Stock, par value \$0.01 per share (the "Junior Preferred Shares"), of Beazer Homes. The Rights become exercisable in certain limited circumstances involving principally the acquisition of over 20% of our outstanding common stock by any one individual or group. The Rights are initially exercisable at a price of \$80 per one hundredth of a Junior Preferred Share subject to adjustment. Following certain other events after the Rights have become exercisable, each Right entitles its holder to purchase at the Right's then-current exercise price, a number of shares of our common stock having a market value of twice such price, or, in certain circumstances, securities of the acquirer, having a then-current market value of two times the exercise price of the Right.

The Rights are redeemable and may be amended at our option before they become exercisable. Until a Right is exercised, the holder of a Right has no rights as a shareholder of Beazer Homes. The Rights expire in June 2006.

**Dividends**—The Company's Board of Directors on November 4, 2003 declared an initial quarterly cash dividend of \$0.10 per common share payable December 22, 2003 to shareholders of record at the close of business on December 10, 2003.

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## (13) Earnings Per Share

Basic and diluted earnings per share are calculated as follows (*in thousands, except per share amounts*):

	Year Ended September 30,		
	2003	2002	2001
<b>Basic:</b>			
Net income	\$ 172,745	\$ 122,634	\$ 74,876
Weighted average number of common shares outstanding	12,886	10,535	8,145
Basic earnings per share	\$ 13.41	\$ 11.64	\$ 9.19
<b>Diluted:</b>			
Net income applicable to common stockholders	\$ 172,745	\$ 122,634	\$ 74,876
Weighted average number of common shares outstanding	12,886	10,535	8,145
Effect of dilutive securities:			
Restricted stock units	252	364	493
Options to acquire common stock	376	516	518
Diluted weighted average number of common shares outstanding	13,514	11,415	9,156

Options to purchase 137,326 and 143,898 shares of common stock were not included in the computation of diluted earnings per share for the years ended September 30, 2003 and 2002, respectively, because the options' exercise price was greater than the average market price of the common shares during those years.

#### (14) Retirement Plan and Incentive Awards

**401(k) Retirement Plan**—We sponsor a 401(k) Plan (the "Plan"). Substantially all employees are eligible for participation in the Plan after completing one month of service with us. Participants may defer and contribute to the Plan from 1% to 80% of their salary with certain limitations on highly compensated individuals. We match 50% of the first 6% of the participant's contributions. The participant's contributions vest 100% immediately, while our contributions vest over five years. Our total contributions for the years ended September 30, 2003, 2002 and 2001 were approximately \$2,022,000, \$1,851,000, and \$1,632,000, respectively.

**Deferred Compensation Plan**—During fiscal 2002, we adopted the Beazer Homes USA, Inc. Deferred Compensation Plan (the "DCP Plan"). The DCP Plan is a non-qualified deferred compensation plan for a select group of executives and highly compensated employees. The Plan allows the executives to defer current compensation on a pre-tax basis to a future year, up until termination of employment. The objectives of the Plan are to assist executives with financial planning and capital accumulation and to provide the Company with a method of attracting, rewarding, and retaining highly compensated executives. Participation in the plan is voluntary. Beazer Homes may voluntarily make a contribution to the participants' DCP accounts. For the years ended September 30, 2003 and 2002, Beazer Homes contributed \$626,000 and \$284,000, respectively, to the DCP Plan.

**Stock Incentive Plans**—During fiscal 2000, we adopted the 1999 Stock Incentive Plan (the "1999 Plan") because the shares reserved under the 1994 Stock Incentive Plan (the "1994 Plan") had been substantially depleted. We also have the Non-Employee Director Stock Option Plan (the "Non-

Employee Director Plan"). At September 30, 2003, we had reserved 2,975,000 shares of common stock for issuance under our various stock incentive plans, of which 181,177 shares are available for future grants.

**Stock Option Awards**—We have issued several stock option awards to officers and key employees under both the 1999 Plan and the 1994 Plan and to non-employee directors pursuant to the Non-Employee Director Plan. Stock options are generally exercisable at the fair market value of the common stock on the grant date, vest three years after the date of grant and may be exercised thereafter until their expiration on the tenth anniversary from the date such options were granted, subject to forfeiture upon termination of employment as provided in the applicable plan.

**Stock Option Awards**—Information regarding activity under our stock option plans is summarized as follows:

	Year Ended September 30,					
	2003		2002		2001	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Options outstanding at beginning of year	1,070,880	\$ 28.37	1,230,540	\$ 19.62	1,369,290	\$ 19.37
Granted	214,577	\$ 62.21	166,245	75.10	—	—
Exercised	(462,506)	\$ 21.69	(298,907)	18.46	(134,000)	17.02
Forfeited	(30,236)	\$ 47.40	(26,998)	27.10	(4,750)	20.19
Options outstanding at end of year	792,715	\$ 41.48	1,070,880	\$ 28.37	1,230,540	\$ 19.62
Options exercisable at end of year	455,087	\$ 20.69	390,537	\$ 19.86	649,250	\$ 18.63

The following table summarizes information about stock options outstanding and exercisable at September 30, 2003:

Range of Exercise Prices	Stock Options Outstanding			Stock Options Exercisable	
	Number Outstanding	Weighted Average Contractual Remaining Life (Years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$13-\$18	167,524	6	\$ 17.49	167,524	\$ 17.49
\$20-\$25	287,563	6	22.56	287,563	22.56
\$56-\$63	201,064	9	62.19	—	—
\$74-\$87	136,564	9	80.27	—	—
	792,715			455,087	

**Other Stock Awards**—We have made several restricted stock awards to officers and key employees under both the 1999 Plan and the 1994 Plan. All restricted stock is awarded in the name of the participant, who has all the rights of other common stockholders with respect to such stock, subject to restrictions and forfeiture provisions. Accordingly, such restricted stock awards are considered outstanding shares. Certain restricted stock awards vest three years after the date of grant, while others vest seven years after the date of grant but provide for accelerated vesting if certain performance goals are achieved. Compensation expense recognized for such awards totaled \$3,984,000, \$2,365,000 and \$2,926,000 for the years ended September 30, 2003, 2002 and 2001 respectively.

Activity relating to restricted stock awards is summarized as follows:

	Year Ended September 30,		
	2003	2002	2001
Restricted shares, beginning of year	88,337	134,625	381,624
Shares awarded	215,642	79,337	—
Shares forfeited	(2,026)	—	(4,820)
Shares vested	(9,000)	(125,625)	(242,179)
Restricted shares, end of year	292,953	88,337	134,625

We have an incentive compensation plan (called the Value Created Incentive Plan), modeled under the concepts of economic profit or economic value added. Participants may receive a portion of their earned annual incentive compensation under the plan in our common stock (the "Bonus Stock"). Such shares are issued after a three-year vesting period, subject to an election for further deferral by the participant, at a discount to the stock's market value at the time the bonus was earned. Should the participant's employment terminate during the vesting period, the deferred incentive compensation is settled in cash or cash and stock, depending on the cause of termination.

Activity relating to Bonus Stock is as follows:

	Year Ended September 30,		
	2003	2002	2001
Bonus Stock issuable, beginning of year	209,158	237,362	227,713
Shares awarded	22,847	28,029	47,504
Shares forfeited	(6,370)	(2,905)	(10,598)
Shares vested and issued	(97,231)	(53,328)	(27,257)
Bonus Stock issuable, end of year	128,404	209,158	237,362

Our former Chief Financial Officer resigned effective September 30, 2003. Effective October 1, 2003, Beazer Homes and our former CFO entered into a consulting and non-compete agreement pursuant to which our former CFO will retain and continue to vest in various stock awards during the two year life of the agreement which would have otherwise been forfeited upon termination, representing up to 46,409 shares of the Company's common stock. As a result, \$3,300,000 of unearned compensation cost was recorded to reflect the fair value of the stock awards as of September 30, 2003. Such unearned compensation cost, as adjusted by changes in the value of the Company's common stock, will be recognized over the two year life of the consulting and non-compete agreement.

### (15) Contingencies

We had outstanding letters of credit and performance bonds of approximately \$40.3 million and \$336.1 million, respectively, at September 30, 2003 related principally to our obligations to local governments to construct roads and other improvements in various developments in addition to the letters of credit of approximately \$38.9 million relating to our land option contracts discussed in Note 4. We do not believe that any such letters of credit or bonds are likely to be drawn upon.

The Company and certain of its subsidiaries have been named as defendants in various claims, complaints and other legal actions, including relating to moisture intrusion and related mold claims, construction defects and product liability. Certain of the liabilities resulting from these actions are covered by insurance. While management currently believes that the ultimate resolution of these matters, individually and in the aggregate, will not have a material adverse effect on the Company's financial position or overall trends in results of operations, such matters are subject to inherent uncertainties. The Company has recorded reserves to provide for the anticipated costs associated with

the resolution of these matters. However, there exists the possibility that the costs to resolve these matters could differ from the recorded estimates and therefore have a material adverse impact on the Company's net income of the periods in which the matters are resolved.

We provide a limited warranty (ranging from one to two years) of workmanship and materials with each of our homes. Such warranty covers defects in plumbing, electrical, heating, cooling and ventilating systems and major structural defects. In addition, we provide a ten year warranty with each of our homes, covering major structural defects only. Since we subcontract our homebuilding work to subcontractors who generally provide us with an indemnity and a certificate of insurance prior to receiving payments for their work, claims relating to workmanship and materials are generally the primary responsibility of our subcontractors.

We self-insure our structural warranty obligations through our wholly-owned risk retention groups, United Home Insurance Company, A Risk Retention Group ("UHIC") and Meridian Structural Insurance, Risk Retention Group Inc. ("Meridian"). We believe this results in cost savings as well as increased control over the warranty process. As of September 30, 2003, Meridian was merged into UHIC.

There can be no assurance, however, that the terms and limitations of the limited warranty will be enforceable against the homebuyers, that we will be able to renew our insurance coverage or renew it at reasonable rates, that we will not be liable for damages, the cost of repairs, and or the expense of litigation surrounding possible construction defects, soil subsidence or building related claims or that claims will not arise out of uninsurable events or circumstances not covered by insurance and not subject to effective indemnification agreements with our subcontractors.

We record reserves covering our anticipated warranty expense for each home closed. Management reviews the adequacy of warranty reserves each reporting period based on historical experience and claims in progress. Warranty reserves are included in accrued expenses. The 2003 warranty expense increased, compared to 2002, principally due to costs recorded in connection with remediation relating to moisture intrusion resulting from construction defects and related mold concerns.

Changes in our warranty reserves during the period are as follows (in thousands):

	Year ended September 30,	
	2003	2002
Balance at beginning of period	\$ 25,527	\$ 16,464
Provisions	39,244	24,883
Payments	(24,298)	(15,820)
Balance at end of period	\$ 40,473	\$ 25,527

#### (16) Supplemental Guarantor Information

As discussed in Note 9, the Company's obligations to pay principal, premium, if any and interest under certain debt are guaranteed on a joint and several basis by substantially all of its subsidiaries. The guarantees are full and unconditional and the guarantor subsidiaries are 100% owned by Beazer Homes USA, Inc. The Company has determined that separate, full financial statements of the guarantors would not be material to investors and, accordingly, supplemental financial information for the guarantors is presented.

#### Beazer Homes USA, Inc. Consolidating Balance Sheet September 30, 2003 (in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
<b>ASSETS</b>					
Cash and cash equivalents	\$ 110,754	\$ (40,079)	\$ 2,697	\$ —	\$ 73,372
Accounts receivable	—	64,620	1,383	—	66,003
Inventory	—	1,713,639	—	9,844	1,723,483
Deferred tax asset	26,160	—	—	—	26,160
Property, plant and equipment, net	—	19,166	19	—	19,185
Goodwill	—	251,603	—	—	251,603
Investments in subsidiaries	1,246,831	—	—	(1,246,831)	—
Intercompany	403,945	(415,211)	11,266	—	—
Other assets	11,085	35,587	5,556	—	52,228
<b>Total Assets</b>	<b>\$ 1,798,775</b>	<b>\$ 1,629,325</b>	<b>\$ 20,921</b>	<b>\$ (1,236,987)</b>	<b>\$ 2,212,034</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Trade accounts payable	\$ —	\$ 125,099	\$ 422	\$ —	\$ 125,521
Other liabilities	64,963	272,960	9,642	3,888	351,453
Intercompany	(1,248)	—	1,248	—	—
Term Loan	200,000	—	—	—	200,000
Senior Notes	541,365	—	—	—	541,365
<b>Total Liabilities</b>	<b>805,080</b>	<b>398,059</b>	<b>11,312</b>	<b>3,888</b>	<b>1,218,339</b>
<b>Stockholders' Equity</b>	<b>993,695</b>	<b>1,231,266</b>	<b>9,609</b>	<b>(1,240,875)</b>	<b>993,695</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 1,798,775</b>	<b>\$ 1,629,325</b>	<b>\$ 20,921</b>	<b>\$ (1,236,987)</b>	<b>\$ 2,212,034</b>

**Beazer Homes USA, Inc.**  
**Consolidating Balance Sheet**  
**September 30, 2002**  
**(in thousands)**

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
<b>ASSETS</b>					
Cash and cash equivalents	\$ 147,355	\$ (25,759)	\$ 3,393	\$ —	\$ 124,989
Accounts receivable	—	53,322	1,007	—	54,329
Inventory	—	1,355,963	—	8,170	1,364,133
Deferred tax asset	27,099	—	—	—	27,099
Property, plant and equipment, net	—	19,093	3	—	19,096
Goodwill	—	251,603	—	—	251,603
Investments in subsidiaries	1,061,452	—	—	(1,061,452)	—
Intercompany	341,749	(349,060)	7,311	—	—
Other assets	13,612	35,759	2,227	—	51,598
<b>Total Assets</b>	<b>\$ 1,591,267</b>	<b>\$ 1,340,921</b>	<b>\$ 13,941</b>	<b>\$ (1,053,282)</b>	<b>\$ 1,892,847</b>

**LIABILITIES AND  
STOCKHOLDERS' EQUITY**

Trade accounts payable	—	108,460	94	—	108,554
Other liabilities	53,706	181,448	7,313	3,211	245,678
Intercompany	(1,054)	—	1,054	—	—
Term Loan	100,000	—	—	—	100,000
Senior Notes	639,100	—	—	—	639,100
<b>Total Liabilities</b>	<b>791,752</b>	<b>289,908</b>	<b>8,461</b>	<b>3,211</b>	<b>1,093,332</b>
<b>Stockholders' Equity</b>	<b>799,515</b>	<b>1,051,013</b>	<b>5,480</b>	<b>(1,056,493)</b>	<b>799,515</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 1,591,267</b>	<b>\$ 1,340,921</b>	<b>\$ 13,941</b>	<b>\$ (1,053,282)</b>	<b>\$ 1,892,847</b>

**Beazer Homes USA, Inc.**  
**Consolidating Statement of Income**  
**September 30, 2003**  
**(in thousands)**

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
<b>Total revenue</b>	<b>\$ —</b>	<b>\$ 3,169,765</b>	<b>\$ 7,643</b>	<b>\$ —</b>	<b>\$ 3,177,408</b>
<b>Costs and expenses:</b>					
Home construction and land sales	65,295	2,478,059	525	(9,844)	2,534,035
Selling, general and administrative	—	354,088	2,560	—	356,648
Expenses related to retirement of debt	7,570	—	—	—	7,570
<b>Operating income</b>	<b>(72,865)</b>	<b>337,618</b>	<b>4,558</b>	<b>9,844</b>	<b>279,155</b>
<b>Other income, net</b>	<b>—</b>	<b>6,347</b>	<b>27</b>	<b>—</b>	<b>6,374</b>
<b>Income before income taxes</b>	<b>(72,865)</b>	<b>343,965</b>	<b>4,585</b>	<b>9,844</b>	<b>285,529</b>
Provision for income taxes	(28,782)	135,867	1,811	3,888	112,784
Equity in income of subsidiaries	216,828	—	—	(216,828)	—
<b>Net income</b>	<b>\$ 172,745</b>	<b>\$ 208,098</b>	<b>\$ 2,774</b>	<b>\$ (210,872)</b>	<b>\$ 172,745</b>

**Beazer Homes USA, Inc.**  
**Consolidating Statement of Income**  
**September 30, 2002**  
(in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
Total revenue	\$ —	\$ 2,635,619	\$ 5,554	\$ —	\$ 2,641,173
Costs and expenses:					
Home construction and land sales	51,171	2,112,261	153	(8,170)	2,155,415
Selling, general and administrative	—	290,533	2,051	—	292,584
Operating income	(51,171)	232,825	3,350	8,170	193,174
Other income, net	—	8,847	38	—	8,885
Income before income taxes	(51,171)	241,672	3,388	8,170	202,059
Provision for income taxes	(20,114)	94,997	1,331	3,211	79,425
Equity in income of subsidiaries	153,691	—	—	(153,691)	—
Net income	\$ 122,634	\$ 146,675	\$ 2,057	\$ (148,732)	\$ 122,634

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**Beazer Homes USA, Inc.**  
**Consolidating Statement of Income**  
**September 30, 2001**  
(in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
Total revenue	\$ —	\$ 1,801,215	\$ 3,962	\$ —	\$ 1,805,177
Costs and expenses:					
Home construction and land sales	35,825	1,444,124	91	(2,590)	1,477,450
Selling, general and administrative	—	203,317	2,181	—	205,498
Expenses related to retirement of debt	1,202	—	—	—	1,202
Operating income	(37,027)	153,774	1,690	2,590	121,027
Other income, net	—	1,704	17	—	1,721
Income before income taxes	(37,027)	155,478	1,707	2,590	122,748
Provision for income taxes	(14,441)	60,637	666	1,010	47,872
Equity in income of subsidiaries	97,462	—	—	(97,462)	—
Net income	\$ 74,876	\$ 94,841	\$ 1,041	\$ (95,882)	\$ 74,876

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**Beazer Homes USA, Inc.**  
**Consolidating Statement of Cash Flows**  
**September 30, 2003**  
(in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
Net cash provided/(used) by operating activities	\$ (11,140)	\$ (32,990)	\$ 3,081	\$ —	\$ (41,049)
Cash flows from investing activities:					
Capital expenditures		(9,309)	(16)		(9,325)
Investments in unconsolidated joint ventures		(4,941)	—		(4,941)
Distributions from and proceeds from		7,714	—		7,714

sale of unconsolidated joint ventures					
Net cash used by investing activities	—	(6,536)	(16)	—	(6,552)
Cash flows from financing activities:					
Proceeds from Term Loan	200,000		—		200,000
Repayment of Term Loan	(100,000)		—		(100,000)
Redemption of 8 <sup>7</sup> / <sub>8</sub> % Senior Notes	(104,438)		—		(104,438)
Advances (to) from subsidiaries	(21,445)	25,206	(3,761)		—
Debt issuance costs	(2,458)		—		(2,458)
Proceeds from stock option exercises	9,805		—		9,805
Common share repurchases	(6,925)		—		(6,925)
Net cash provided/(used) by financing activities	(25,461)	25,206	(3,761)	—	(4,016)
Decrease in cash and cash equivalents	(36,601)	(14,320)	(696)	—	(51,617)
Cash and cash equivalents at beginning of year	147,355	(25,759)	3,393		124,989
Cash and cash equivalents at end of year	\$ 110,754	\$ (40,079)	\$ 2,697	\$ —	\$ 73,372

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**Beazer Homes USA, Inc.**  
**Consolidating Statement of Cash Flows**  
**September 30, 2002**  
**(in thousands)**

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
Net cash provided/(used) by operating activities	\$ (18,717)	\$ 71,291	\$ 6,890	\$ —	\$ 59,464
Cash flows from investing activities:					
Capital expenditures		(8,213)	—		(8,213)
Proceeds from sale of fixed assets		4,800	—		4,800
Investments in unconsolidated joint ventures		(3,146)	—		(3,146)
Distributions from and proceeds from sale of unconsolidated joint ventures		12,736	—		12,736
Acquisitions, net of cash acquired		(320,810)	—		(320,810)
Net cash used by investing activities	—	(314,633)	—	—	(314,633)
Cash flows from financing activities:					
Proceeds from issuance of 8 <sup>3</sup> / <sub>8</sub> % Senior Notes	343,000		—		343,000
Advances (to) from subsidiaries	(223,050)	225,916	(2,866)		—
Debt issuance costs	(7,513)		—		(7,513)
Proceeds from stock option exercises	5,162		—		5,162
Common share repurchases	(2,169)		—		(2,169)
Net cash provided/(used) by financing activities	115,430	225,916	(2,866)	—	338,480
Increase/(decrease) in cash and cash equivalents	96,713	(17,426)	4,024	—	83,311
Cash and cash equivalents at beginning of year	50,642	(8,333)	(631)		41,678
Cash and cash equivalents at end of year	\$ 147,355	\$ (25,759)	\$ 3,393	\$ —	\$ 124,989

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**Beazer Homes USA, Inc.**  
**Consolidating Statement of Cash Flows**  
**September 30, 2001**  
**(in thousands)**

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
Net cash provided/(used) by operating activities	\$ 126	\$ (21,131)	\$ (4,573)	\$ —	\$ (25,578)
Cash flows from investing activities:					
Capital expenditures		(5,906)	—		(5,906)
Investments in unconsolidated joint ventures		(4,517)	—		(4,517)
Acquisitions, net of cash acquired		(62,412)	—		(62,412)
Net cash used by investing activities	—	(72,835)	—	—	(72,835)
Cash flows from financing activities:					
Change in revolving credit facility	(40,000)		—		(40,000)
Proceeds from Term Loan	100,000		—		100,000
Proceeds from issuance of 8 <sup>5</sup> / <sub>8</sub> % Senior Notes	198,356		—		198,356
Redemption of 9% Senior Notes	(115,000)		—		(115,000)
Advances (to) from subsidiaries	(74,165)	72,684	1,481		—
Debt issuance costs	(5,246)		—		(5,246)
Proceeds from stock option exercises	2,287		—		2,287
Common share repurchases	(306)		—		(306)
Net cash provided by financing activities	65,926	72,684	1,481	—	140,091
Increase/(decrease) in cash and cash equivalents	66,052	(21,282)	(3,092)	—	41,678
Cash and cash equivalents at beginning of year	(15,410)	12,949	2,461		—
Cash and cash equivalents at end of year	\$ 50,642	\$ (8,333)	\$ (631)	\$ —	\$ 41,678

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### (17) Subsequent Event

On November 13, 2003 we issued \$200 million 6<sup>1</sup>/<sub>2</sub>% Senior Notes due November 2013 (the "6<sup>1</sup>/<sub>2</sub>% Senior Notes") in a private placement pursuant to Rule 144A and Regulation S promulgated under the Securities Act of 1933, as amended. The 6<sup>1</sup>/<sub>2</sub>% Senior Notes were issued at a price of 100% of their face amount (before underwriting discount and other issuance costs). Interest on the 6<sup>1</sup>/<sub>2</sub>% Senior Notes is payable semiannually. We may, at our option, redeem the 6<sup>1</sup>/<sub>2</sub>% Senior Notes in whole or in part at any time after November 2008, initially at 103.250% of the principal amount, declining to 100% of the principal amount after November 2011. We may redeem the 6<sup>1</sup>/<sub>2</sub>% Senior Notes, in whole or in part, at any time before November 2008 at a redemption price equal to the principal amount thereof plus a "make-whole" premium, plus accrued and unpaid interest. A portion of such notes may also be redeemed prior to November 2006 under certain conditions. We intend to use the proceeds from the issuance of the 6<sup>1</sup>/<sub>2</sub>% Senior Notes for general corporate purposes.

Within 90 days after issuance of the 6<sup>1</sup>/<sub>2</sub>% Senior Notes, we will initiate an offer to exchange all of the outstanding 6<sup>1</sup>/<sub>2</sub>% Senior Notes for an equal amount of notes with terms substantially identical to the 6<sup>1</sup>/<sub>2</sub>% Senior Notes, which will be registered under the Securities Act of 1933.

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### INDEPENDENT AUDITOR'S REPORT

To the Board of Directors and Stockholders of  
Beazer Homes USA, Inc.

We have audited the accompanying consolidated balance sheets of Beazer Homes USA, Inc. and subsidiaries (the "Company") as of September 30, 2003 and 2002 and the related consolidated statements of income, stockholders' equity and cash flows for each of the three years in the period ended September 30, 2003. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, such consolidated financial statements referred to above present fairly, in all material respects, the financial position of Beazer Homes USA, Inc. and subsidiaries at September 30, 2003 and 2002 and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2003 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1 to the consolidated financial statements, in 2003 the Company changed its method of accounting for consolidated inventory not owned to conform to Financial Accounting Standards Board Interpretation No. 46.

/s/ DELOITTE & TOUCHE LLP

Atlanta, Georgia  
November 5, 2003  
(November 13, 2003 as to Note 17)

## Quarterly Financial Data

Summarized quarterly financial information (unaudited):

	Quarter Ended			
	September 30	June 30	March 31	December 31
	(in thousands, except per share data)			
<b>Fiscal 2003:</b>				
Total revenue	\$ 1,039,923	\$ 771,758	\$ 665,567	\$ 700,160
Operating income	92,634	65,968	61,487	59,066
Net income	57,164	40,689	37,972	36,920
<i>Net income per common share:</i>				
Basic	\$ 4.38	\$ 3.16	\$ 2.96	\$ 2.88
Diluted	\$ 4.18	\$ 3.01	\$ 2.83	\$ 2.75
<b>Fiscal 2002:</b>				
Total revenue	\$ 904,331	\$ 743,813	\$ 503,312	\$ 489,717
Operating income	64,100	53,721	38,255	37,098
Net income	40,658	34,649	24,177	23,150
<i>Net income per common share:</i>				
Basic	\$ 3.21	\$ 2.76	\$ 2.84	\$ 2.76
Diluted	\$ 3.03	\$ 2.59	\$ 2.56	\$ 2.47

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

None.

## Item 9A. Controls and Procedures

As of the end of the period covered by this report on Form 10-K, an evaluation was performed under the supervision and with the participation of Beazer Homes' management, including the CEO and CFO, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")). Based on that evaluation, Beazer Homes' management, including the CEO and CFO, concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective to ensure that required information will be disclosed on a timely basis in our reports filed under the Exchange Act. No changes in Beazer Homes' internal control over financial reporting were identified during the evaluation described above that occurred during the Company's fourth fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART III

## Item 10. Directors and Executive Officers of the Registrant

Director information is incorporated by reference to the section entitled "Election of Directors" of our Proxy Statement for our 2004 Annual Meeting of Stockholders, which is expected to be filed on or before January 9, 2004. Information regarding our executive officers is set forth herein under Part I as a separate item.

Beazer Homes has adopted a Code of Business Conduct and Ethics for its senior financial officers, which applies to its principal financial officer and controller, other senior financial officers and Chief Executive Officer. The full text of the Code of Business Conduct and Ethics can be found on the Company's website. Our Corporate Governance Guidelines, Corporate Management Authority Guidelines and the charters of the following committees of our Board of Directors: Audit, Compensation, and Nominating and Governance, are also posted to our website, and are available in print to any stockholder who requests a printed copy. Information regarding waivers of our code of business conduct and ethics will also be published on our website.

**Item 11. Executive Compensation**

The information required by this item is incorporated by reference to the section entitled "Executive Compensation" of our Proxy Statement for our 2004 Annual Meeting of Stockholders, which is expected to be filed on or before January 9, 2004.

**Item 12. Security Ownership of Certain Beneficial Owners and Management**

The information required by this item is incorporated by reference to the section entitled "Security Ownership of Management" of our Proxy Statement for our 2004 Annual Meeting of Stockholders, which is expected to be filed on or before January 9, 2004.

**Item 13. Certain Relationships and Related Transactions**

None

**Item 14. Principal Accounting Fees and Services**

The information required by this item is incorporated by reference to the section entitled "Principal Accounting Firm Fees" of our Proxy Statement for our 2004 Annual Meeting of Stockholders, which is expected to be filed on or before January 9, 2004.

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

The following documents are filed as part of this Annual Report on Form 10-K.

## (a) 1. Financial Statements

	<u>Page herein</u>
Consolidated Statements of Income for the years ended September 30, 2003, 2002 and 2001.	33
Consolidated Balance Sheets as of September 30, 2003 and 2002.	34
Consolidated Statements of Stockholders' Equity for the years ended September 30, 2003, 2002 and 2001.	35
Consolidated Statements of Cash Flows for the years ended September 30, 2003, 2002 and 2001.	36
Notes to Consolidated Financial Statements.	37

## 2. Financial Statement Schedules

None required

## 3. Exhibits

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<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Page herein or incorporate by reference from</u>
2.1	— Agreement and Plan of Merger among Beazer Homes USA, Inc., Beazer Homes Investment Corp., and Crossmann Communities Inc. dated as of January 29, 2002	(7)
3.1	— Amended and Restated Certificate of Incorporation of the Company	Filed herewith
3.2	— Amended and Restated Bylaws of the Company	Filed herewith
4.1	— Indenture dated as of May 21, 2001 among the Company and U.S. Bank Trust National Association, as trustee, related to the Company's 8 <sup>5</sup> / <sub>8</sub> % Senior Notes due 2011	(6)
4.2	— Supplemental Indenture (8 <sup>5</sup> / <sub>8</sub> % Notes) dated as of May 21, 2001 among the Company, its subsidiaries party thereto and U.S. Bank Trust National Association, as trustee	(6)
4.3	— Form of 8 <sup>5</sup> / <sub>8</sub> % Senior Notes due 2011	(6)
4.4	— Specimen of Common Stock Certificate	(2)
4.5*	— Retirement Savings and Investment Plan (the "RSIP")	(1)
4.6*	— RSIP Summary Plan Description	(1)

4.7	—	Rights Agreement, dated as of June 21, 1996, between the Company and First Chicago Trust Company of New York, as Rights Agent	Filed herewith
4.8	—	Indenture dated as of April 17, 2002 among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Company's 8 <sup>3</sup> / <sub>8</sub> % Senior Notes due 2012	(7)
4.9	—	First Supplemental Indenture dated as of April 17, 2002 among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Company's 8 <sup>3</sup> / <sub>8</sub> % Senior Notes due 2012	(7)
4.10	—	Form of 8 <sup>3</sup> / <sub>8</sub> % Senior Notes due 2012	(7)
4.11	—	Second Supplemental Indenture dated as of November 13, 2003 among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Company's 6 <sup>1</sup> / <sub>2</sub> % Senior Notes due 2013	Filed herewith
4.12	—	Form of 6 <sup>1</sup> / <sub>2</sub> % Senior Notes due 2013	Filed herewith
10.1*	—	Amended and Restated 1994 Stock Incentive Plan	(4)
10.2*	—	Non-Employee Director Stock Option Plan	Filed herewith
10.3*	—	Amended and Restated 1999 Stock Incentive Plan	(8)
10.4-5		Amended and Restated Employment Agreements dated as of March 31, 1995:	
10.4*	—	Ian J. McCarthy	Filed herewith
10.5*	—	John Skelton	Filed herewith

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10.6*	—	Employment Agreement dated as of January 13, 1998—Michael H. Furlow	(3)
10.7-8		Supplemental Employment Agreements dated as of July 17, 1996:	
10.7*	—	Ian J. McCarthy	Filed herewith
10.8*	—	John Skelton	Filed herewith
10.12*	—	Employment Agreement effective as of November 7, 2000 for C. Lowell Ball	(4)
10.13*	—	Change of Control Agreement effective as of November 7, 2000 for C. Lowell Ball	(4)
10.14	—	Purchase Agreement for Sanford Homes of Colorado LLLP	(5)
10.15*	—	Employment Agreement effective as of July 10, 2002 for James O'Leary	(9)
10.16*	—	Change of Control Agreement effective as of July 10, 2002 for James O'Leary	(9)
10.17*	—	Change of Control Agreement effective as of March 1, 2001 for Michael T. Rand	(9)
10.18*	—	Employment Agreement effective as of December 17, 2002 for Michael T. Rand	(9)
10.19	—	Credit Agreement dated as of June 2, 2003 between the Company and Bank One, NA, as Agent, BNP Paribas, Guaranty Bank, Suntrust Bank, and Wachovia Bank, National Association as Syndication Agents, Comerica Bank, PNC Bank, N.A. and Washington Mutual Bank, FA, as Co-Agents and Banc One Capital Markets, Inc., Lead Arranger and Sole Bookrunner	(10)
21	—	Subsidiaries of the Company	Filed herewith
23	—	Consent of Deloitte & Touche LLP	Filed herewith
31.1	—	Certification pursuant to 17 CFR 240.13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith
31.2	—	Certification pursuant to 17 CFR 240.13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith
32.1	—	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	Filed herewith
32.2	—	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-	Filed herewith

- \* Represents a management contract or compensatory plan or arrangement
- (1) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-8 (Registration No. 33-91904) filed on May 4, 1995.
- (2) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-1 (Registration No. 33-72576) initially filed on December 6, 1993.

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- (3) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-4 (Registration No. 333-51087) filed on April 27, 1998.
- (4) Incorporated herein by reference to the exhibits to the Company's 10-Q for the quarterly period ended December 31, 2000
- (5) Incorporated herein by reference to the exhibits to the Company's report on Form 8-K filed on August 10, 2001.
- (6) Incorporated herein by reference to the exhibits to the Company's report on Form 10-K for the year ended September 30, 2001.
- (7) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-4 (Registration No. 333-92470) filed on July 16, 2002.
- (8) Incorporated herein by reference to the exhibits to the Company's Registration Statement on Form S-8/S-3 (Registration No. 333-101142) filed on November 12, 2002.
- (9) Incorporated herein by reference to the exhibits to the Company's report on Form 10-K for the year ended September 30, 2002.
- (10) Incorporated herein by reference to the exhibits to the Company's report on Form 10-Q for the quarterly period ended June 30, 2003.

(b) Reports on Form 8-K

On July 8, 2003 we furnished a report on Form 8-K announcing under Item 12 our new home orders for the three month period ended June 30, 2003.

On July 22, 2003 we furnished a report on Form 8-K announcing under Item 12 our earnings and results of operations for the three and nine month periods ended June 30, 2003.

(c) Exhibits

Reference is made to Item 15(a)3 above. The following is a list of exhibits, included in item 15(a)3 above, that are filed concurrently with this report.

- |        |   |   |
|--------|---|---|
| 3.1    | — | Amended and Restated Certificate of Incorporation of the Company  |
| 3.2    | — | Amended and Restated Bylaws of the Company  |
| 4.7    | — | Rights Agreement, dated as of June 21, 1996, between the Company and First Chicago Trust Company of New York, as Rights Agent   |
| 4.11   | — | Second Supplemental Indenture dated as of November 13, 2003 among Beazer, the Guarantors party thereto and U.S. Bank Trust National Association, as trustee, related to the Company's 6 <sup>1</sup> / <sub>2</sub> % Senior Notes due 2013 |
| 4.12   | — | Form of 6 <sup>1</sup> / <sub>2</sub> % Senior Notes due 2013   |
| 10.2*  | — | Non-Employee Director Stock Option Plan   |
| 10.4-5 |   | Amended and Restated Employment Agreements dated as of March 31, 1995:  |
| 10.4*  | — | Ian J. McCarthy   |
| 10.5*  | — | John Skelton  |

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10.7-8 Supplemental Employment Agreements dated as of July 17, 1996:

- |       |   |                 |
|-------|---|-----------------|
| 10.7* | — | Ian J. McCarthy |
|-------|---|-----------------|

10.8*	—	John Skelton
21	—	Subsidiaries of the Company
23	—	Consent of Deloitte & Touche LLP
31.1	—	Certification pursuant to 17 CFR 240.13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002
31.2	—	Certification pursuant to 17 CFR 240.13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002
32.1	—	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	—	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(d) Financial Statement Schedules

Reference is made to Item 15(a)2 above.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**Beazer Homes USA, Inc.**

By: /s/ IAN J. MCCARTHY

Name: Ian J. McCarthy  
Title: President and Chief Executive Officer  
Date: December 19, 2003

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

December 19, 2003	By: /s/ BRIAN C. BEAZER
Date	Brian C. Beazer, Director and Non-Executive Chairman of the Board
December 19, 2003	By: /s/ IAN J. MCCARTHY
Date	Ian J. McCarthy, Director, President and Chief Executive Officer (Principal Executive Officer)
December 19, 2003	By: /s/ LAURENT ALPERT
Date	Laurent Alpert, Director
December 19, 2003	By: /s/ KATIE J. BAYNE
Date	Katie J. Bayne, Director
December 19, 2003	By: /s/ DAVID E. (NED) MUNDELL
Date	David E. (Ned) Mundell, Director
December 19, 2003	By: /s/ MAUREEN E. O'CONNELL
Date	Maureen E. O'Connell, Director
December 19, 2003	By: /s/ LARRY T. SOLARI
Date	Larry T. Solari, Director
December 19, 2003	By: /s/ STEPHEN P. ZELNAK, JR.
Date	Stephen P. Zelnak, Jr., Director

December 19, 2003

By: /s/ JAMES O'LEARY

Date

James O'Leary, Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

December 19, 2003

By: /s/ MICHAEL T. RAND

Date

Michael T. Rand, Senior Vice President, Corporate Controller (Principal  
Accounting Officer)

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[BEAZER HOMES USA LETTERHEAD]

**AMENDED AND RESTATED BY-LAWS**

**OF**

**BEAZER HOMES USA, INC.**

**(a Delaware corporation)**

**December 1994 Revisions**

**ARTICLE I**

**STOCKHOLDERS**

SECTION 1. ANNUAL MEETINGS. (a) All meetings of the stockholders for the election of directors shall be held in the County of New Castle, State of Delaware, at such place as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of Stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

(b) Annual meetings of Stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect by a plurality vote a Board of Directors, and transact such other business as may properly be brought before the meeting.

(c) Written notice of the annual meeting stating the place, date, and hour of the meeting shall be given to each Stockholder entitled to vote at such meeting not less than ten days nor more than sixty days prior to the date of the meeting.

(d) The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of Stockholders, a complete list of the Stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list shall be open to the examination of any Stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Stockholder who is present. The stock ledger shall be the only evidence as to the Stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of Stockholders.

SECTION 2. SPECIAL MEETINGS. (a) Special meetings of the Stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation of the Corporation, may be called by the President and shall be called by the President or Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of a Stockholder or Stockholders owning a majority in amount of the entire capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

(b) Written notice of a special meeting stating the place, date, and hour of the meeting and, in general terms, the purpose or purposes for which the meeting is called, shall be given not less than ten days nor more than sixty days prior to the date of the meeting, to each Stockholder entitled to vote at

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such meeting. Whenever the directors shall fail to fix such place, the meeting shall be held at the principal executive offices of the Corporation.

(c) Business transacted at any special meeting of the Stockholders shall be limited to the purpose or purposes stated in the notice.

SECTION 3. QUORUMS. (a) The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the Stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the Stockholders, the Stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting, at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting. When a quorum is once present it is not broken by the subsequent withdrawal of any Stockholder.

(b) When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one on which by express provision of the Delaware General Corporation Law, the Certificate of Incorporation or these By-laws, a different vote is required in which case such express provision shall govern and control the decision of such question.

SECTION 4. ORGANIZATION. Meetings of Stockholder shall be presided over by the Chairman, if any, or if none or in the Chairman's absence the President, if any, or if none or in the President's absence, by a Chairman to be chosen by the Stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as Secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the presiding officer of the meeting shall appoint any person present to act as Secretary of the meeting.

**SECTION 5. VOTING; PROXIES; REQUIRED VOTE.** (a) At each meeting of Stockholders, every Stockholder shall be entitled to vote in person or by proxy appointed by an instrument in writing, subscribed by such Stockholder or by such Stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Certificate of Incorporation provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such Stockholder on the books of the Corporation on the applicable record date fixed pursuant to these By-laws. At all elections of directors the voting may but need not be by ballot and the affirmative vote of holders of a plurality of the stock present in person or represented by proxy and entitled to vote on such election shall elect. Except as otherwise required by law or the Certificate of Incorporation, any other action shall be authorized by the affirmative vote of holders of a majority of the stock present in person or represented by proxy and entitled to vote on such matter.

(b) Any action required or permitted to be taken at any meeting of Stockholders may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those Stockholders who have not consented in writing.

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(c) Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to vote on the matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class, unless otherwise provided in the Corporation's Certificate of Incorporation.

**SECTION 6.** The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all Stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

## **ARTICLE II**

### **BOARD OF DIRECTORS**

**SECTION 1. GENERAL POWERS.** The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors.

**SECTION 2. QUALIFICATION; NUMBER; TERM; REMUNERATION.** (a) Each director shall be at least 18 years of age. A director need not be a Stockholder, a citizen of the United States, or a resident of the State of Delaware. The number of directors constituting the entire Board shall be one or such other number as may be fixed from time to time by the Board of Directors or the Stockholders. One of the directors may be selected by the Board of Directors to be its Chairman, who shall preside at meetings of the Stockholders and the Board of Directors and shall have such other duties, if any, as may from time to time be assigned by the Board of Directors. In the absence of formal selection, the President of the Corporation shall serve as Chairman. The use of the phrase "entire Board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

(b) Directors who are elected at an annual meeting of Stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of Stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

(c) Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for serving as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing Committees may be allowed like compensation for attending Committee meetings.

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**SECTION 3. QUORUM AND MANNER OF VOTING.** Except as otherwise provided by law, a majority of the entire Board of Directors shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**SECTION 4. PLACES OF MEETINGS.** Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

**SECTION 5. ANNUAL MEETING.** Following the annual meeting of Stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may be held without notice immediately after the annual meeting of Stockholders at the same place at which such Stockholders' meeting is held.

**SECTION 6. REGULAR MEETINGS.** Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine.

**SECTION 7. SPECIAL MEETINGS.** Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, President, or by a majority of the directors then in office.

SECTION 8. NOTICE OF MEETINGS. A notice of the place, date and time and the purpose or purposes of each meeting of the Board of Directors shall be given to each director by mailing the same at least two days before the meeting, or by telephoning or faxing the same or by delivering the same personally not later than the day before the day of the meeting.

SECTION 9. ORGANIZATION. At all meetings of the Board of Directors, the Chairman or in the Chairman's absence or inability to act, the President, or in the President's absence, a Chairman chosen by the directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as Secretary.

SECTION 10. RESIGNATION. Any director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any or all of the directors may be removed, with or without cause, by the holders of a majority of the shares of stock outstanding and entitled to vote for the election of directors.

SECTION 11. VACANCIES. Unless otherwise provided in these By-Laws, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of directors or otherwise, may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director, or at a special meeting of the Stockholders, by vote of the Stockholders required for the election of directors generally.

SECTION 12. ACTION BY WRITTEN CONSENT. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all directors consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

SECTION 13. ELECTRONIC COMMUNICATION. Any member or members of the Board of Directors may participate in a meeting of the Board by means of conference telephone or similar

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communications equipment by means of which all persons participating in the meeting can hear and speak to each other.

### ARTICLE III

#### COMMITTEES

SECTION 1. APPOINTMENT. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more Committees, each Committee to consist of two or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any Committee, who may replace any absent or disqualified member at any meeting of the Committee. Any such Committee, to the extent provided in the resolution, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Such Committee or Committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

SECTION 2. PROCEDURES; QUORUM AND MANNER OF ACTING. Each Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a Committee shall constitute a quorum for the transaction of business by that Committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the Committee present shall be the act of the Committee. Each Committee shall keep minutes of its proceedings, and actions taken by a Committee shall be reported to the Board of Directors.

SECTION 3. ACTION BY WRITTEN CONSENT. Any action required or permitted to be taken at any meeting of any Committee by the Board of Directors may be taken without a meeting if all the members of the Committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Committee.

SECTION 4. ELECTRONIC COMMUNICATION. Any member or members of a Committee of the Board of Directors may participate in a meeting of a Committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and speak to each other.

SECTION 5. TERMINATION. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any Committee appointed by the Board of Directors.

### ARTICLE IV

#### OFFICERS

SECTION 1. ELECTION AND QUALIFICATIONS. The Board of Directors at its first meeting held after each annual meeting of Stockholders shall elect the officers of the Corporation, which shall include a President and a Secretary, and may include, by election or appointment, one or more Vice-Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board of Directors may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these By-Laws and as may be assigned by the Board of Directors or the President. Any two or more offices may be held by the same person.

SECTION 2. TERM OF OFFICE AND REMUNERATION. The term of office of all officers shall be one year and until their respective successors have been elected and qualified, but any officer

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may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

**SECTION 3. RESIGNATION; REMOVAL.** Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by the Board of Directors.

**SECTION 4. POWERS AND DUTIES OF OFFICERS.** (a) The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

(b) The President shall be the chief executive officer of the Corporation and shall preside at all meetings of the Stockholders and, if there is no Chairman, of the Board of Directors and shall have general management of and supervisory authority over the property, business and affairs of the Corporation and its other officers. The President may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments, and shall have such other authority and perform such other duties as from time to time may be assigned by the Board of Directors. The President shall see that all orders and resolutions of the Board of Directors are carried into effect and shall perform such additional duties that usually pertain to this office.

(c) A Vice President may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments pertaining to the regular course of such Vice President's duties, and shall have such other authority and perform such other duties as from time to time may be assigned by the Board of Directors or the President.

(d) The Treasurer shall in general have all duties and authority incident to the position of Treasurer and such other duties and authority as may be assigned by the Board of Directors or the President. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by or at the direction of the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the President, and shall render, upon request, an account of all such transactions.

(e) The Secretary shall in general have all the duties and authority incident to the position of Secretary and such other duties and authority as may be assigned by the Board of Directors or the President. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Stockholders and record all the proceedings thereat in a book or books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the Stockholders and special meetings of the Board of Directors. The Secretary shall have custody of the seal of the Corporation and any officer of the Corporation shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or any other officer.

(f) Any assistant officer shall have such duties and authority as the officer such assistant officer assists and, in addition, such other duties and authority as the Board of Directors or President shall from time to time assign.

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## **ARTICLE V**

### **CONTRACTS, ETC.**

**SECTION 1. CONTRACTS.** The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

**SECTION 2. PROXIES; POWERS OF ATTORNEY; OTHER INSTRUMENTS.** (a) The Chairman, the President, any Vice President, the Treasurer or any other person designated by any of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the execution of contracts, the purchase of real or personal property, the rights and powers incident to the ownership of stock by the Corporation and such other situations as the Chairman, the President, such Vice President or the Treasurer shall approve, such approval to be conclusively evidenced by the execution of such proxy, power of attorney or other instrument on behalf of the Corporation.

(b) The Chairman, the President, any Vice President, the Treasurer or any other person authorized by proxy or power of attorney executed and delivered by any of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

## **ARTICLE VI**

### **BOOKS AND RECORDS**

**SECTION 1. LOCATION.** The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all Stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in the By-Laws or by such officer or agent as shall be designated by the Board of Directors.

**SECTION 2. ADDRESSES OF STOCKHOLDERS.** Notices of meetings and all other corporate notices may be delivered personally or mailed to each Stockholder at the Stockholder's address as it appears on the records of the Corporation.

**SECTION 3. FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD.** (a) In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty days nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining

Stockholders entitled to notice of or to vote at a meeting of Stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the Stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining Stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining Stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the Stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the Stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action not contemplated by paragraph (a) or (b) of this Section 3, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining Stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

## ARTICLE VII

### CERTIFICATES REPRESENTING STOCK

SECTION 1. CERTIFICATES; SIGNATURES. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board of Directors, of the President or Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation. The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

SECTION 2. TRANSFERS OF STOCK. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, shares of capital stock shall be transferrable on the books of the Corporation only by the holder of record thereof in person, or by duly authorized attorney, upon surrender and cancellation of certificates for a like number of shares, properly endorsed, and the payment of all taxes due thereon.

SECTION 3. FRACTIONAL SHARES. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a Stockholder except as therein provided.

SECTION 4. LOST, STOLEN OR DESTROYED CERTIFICATES. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

## ARTICLE VIII

### DIVIDENDS

Subject to the provisions of applicable law and the Certificate of Incorporation, the Board of Directors shall have sole power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to Stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the Stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve. Stockholders shall receive dividends pro rata in proportion to the number of shares of Common Stock respectively held by them. A holder of Common Stock shall be deemed to share pro rata in all dividends declared by the Board of Directors within the meaning of the preceding sentence if such Stockholder receives assets (whether consisting of cash, securities, real property, equipment, inventory or other assets) the fair market value of which is in the same proportion to the fair market value of the total assets of the Corporation available for distribution as a dividend as the number of shares of Common Stock held by such holder of Common Stock is to the total number of issued and outstanding shares of Common Stock of the Corporation. A Stockholder shall not have the right to receive a pro rata share of each or any such asset available for distribution

as a dividend, however, the Corporation shall not be prohibited hereby for making a pro rata distribution of each or any such asset available for distribution as a dividend. The fair market value of any and all assets of the Corporation distributed as a dividend shall be determined in the sole discretion of the Corporation's Board of Directors.

## **ARTICLE IX**

### **RATIFICATION**

Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of any director, officer or Stockholder, non disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the Stockholders, as appropriate, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly

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authorized. Such ratification shall be binding upon the Corporation and its Stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

## **ARTICLE X**

### **CORPORATE SEAL**

The corporate seal shall contain the words "Corporate Seal" and such additional information as the officer inscribing such seal shall determine in such officer's sole discretion. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise displayed or it may be manually inscribed.

## **ARTICLE XI**

### **FISCAL YEAR**

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall end on September 30.

## **ARTICLE XII**

### **WAIVER OF NOTICE**

Whenever notice is required to be given by these By-Laws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

## **ARTICLE XIII**

### **AMENDMENTS**

The Board of Directors shall have power to adopt, amend or repeal By-Laws. By-Laws adopted by the Board of Directors may be repealed or changed, and new By-Laws made, by the Stockholders, and the Stockholders may prescribe that any By-Law made by them shall not be altered, amended or repealed by the Board of Directors.

## **ARTICLE XIV**

### **INDEMNIFICATION**

**SECTION 1. POWER TO INDEMNIFY IN ACTION, SUITS OR PROCEEDINGS OTHER THAN THOSE BY OR IN THE RIGHT OF THE CORPORATION.** Subject to Section 3 of this Article XIV, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was servicing at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' and other professionals' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of NOLO CONTENDERE or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to

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be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

**SECTION 2. POWER TO INDEMNIFY IN ACTIONS, SUITS OR PROCEEDINGS BY OR IN THE RIGHT OF THE CORPORATION.** Subject to Section 3 of this Article XIV, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procedure a judgment in its favor by reason of the fact that he is or was a director, officer,

employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' and other professionals' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

**SECTION 3. AUTHORIZATION OF INDEMNIFICATION.** Any indemnification under this Article XIV (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article XIV, as the case may be. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) if the Board of Directors so directs, by the Stockholders. To the extent, however, that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' and other professionals' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

**SECTION 4. GOOD FAITH DEFINED.** For purposes of any determination under Section 3 of this Article XIV, a person shall be deemed to have acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe the conduct was unlawful, if the action is based on (a) the records or books of account of the Corporation or another enterprise (as defined below in this Section 4), or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, unless such person had reasonable cause to believe that reliance thereon would not be justifiable, or on (b) the advice of legal counsel for the Corporation or another enterprise, or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant, independent financial adviser, appraiser or other expert, as to matters reasonably believed to be within such other person's professional or expert competence. The term "another enterprise" as used in this Section 4 shall mean any other corporation or any partnership, joint venture, trust or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 1 or 2 of this Article XIV, as the case may be.

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**SECTION 5. INDEMNIFICATION BY A COURT.** Notwithstanding any contrary determination in the specific case under Section 3 of this Article XIV, and notwithstanding the absence of any determination thereunder, any director, officer, employee or agent may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1 and 2 of this Article XIV. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standards of conduct set forth in Sections 1 or 2 of this Article XIV, as the case may be. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application.

**SECTION 6. EXPENSES PAYABLE IN ADVANCE.** Expenses (including attorneys' and other professionals' fees) incurred by an officer or director in defending any threatened or pending civil, criminal, administrative or investigative action, suit or proceeding may, but shall not be required to, be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer, to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article XIV. Such expenses (including attorneys' and other professionals' fees) incurred by other employees and agents may be paid upon such terms and conditions, if any, as the Board of Directors deem appropriate.

**SECTION 7. NON-EXCLUSIVITY AND SURVIVAL OF INDEMNIFICATION.** The indemnification and advancement of expenses provided by or granted pursuant to this Article XIV shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, contract, vote of Stockholders or of disinterested directors, or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and 2 of this Article XIV (as distinguished from advancement of funds pursuant to Section 6 of this Article XIV) shall be made to the fullest extent permitted by law. The provisions of this Article XIV shall not be deemed to preclude the indemnification of any person who is not specified in Sections 1 and 2 of this Article XIV but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise. The indemnification provided by this Article XIV shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors, administrators and other comparable legal representatives of such person. The rights conferred in this Article XIV shall be enforceable as contract rights, and shall continue to exist after any rescission or restrictive modification hereof with respect to events occurring prior thereto.

**SECTION 8. MEANING OF "OTHER ENTERPRISES" IN CONNECTION WITH EMPLOYEE BENEFIT PLANS, ETC.** For purposes of this Article XIV (including Sections 1, 2, 4 and 9 hereof), references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who has acted in good faith and in a manner reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article XIV.

**SECTION 9. INSURANCE.** The Corporation may, but shall not be required to, purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article XIV.

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## QuickLinks

[AMENDED AND RESTATED BY-LAWS OF BEAZER HOMES USA, INC. \(a Delaware corporation\) December 1994 Revisions](#)

[BEAZER HOMES USA LETTERHEAD]

**BEAZER HOMES USA, INC.**

**AMENDMENTS TO BY-LAWS**

*Limitations on the Ability to Call Special Meetings*

Article I, Section 2, Subsection (a) is hereby deleted and replaced in its entirety with the following:

"SECTION 2. SPECIAL MEETINGS. (a) Special meetings of the stockholders, unless otherwise prescribed by statute, may be called by the Chairman of the Board, the President or by resolution of the Board of Directors. Notice of each special meeting shall be given in accordance with Subsection (b) of Section 2 of this Article I. Unless otherwise required by law, business transacted at any special meeting of stockholders shall be limited to the purpose stated in the notice."

*Notice of Stockholder Business*

The following new Section 7 is hereby added to Article I:

"SECTION 7. NOTICE OF STOCKHOLDER BUSINESS. (a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (i) pursuant to the Corporation's notice of meeting; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 7, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 7.

(b) For business to be properly brought before an annual meeting by a stockholder pursuant to clause (a) (iii) of this Section 7, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 120 days nor more than 150 days prior to the first anniversary of the date of the Company's notice of annual meeting for the preceding year's annual meeting; provided, however, that in the event that the date of the meeting is changed by more than 30 days from the anniversary date of the preceding year's annual meeting, notice by the stockholder to be timely must be received no later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made; (iii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder of record and by the beneficial owner, if any, on whose behalf the proposal is made; and (iv) any material interest of such stockholder of record and the beneficial owner, if any, on whose behalf the proposal is made in such business.

(c) Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 7. The Chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the procedures prescribed by these By-laws, and if he should so determine, he shall so declare to the meeting and such business shall not be transacted. Notwithstanding the foregoing provisions of this Section 7, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of

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1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section 7."

*Setting a Record Date for Determining Stockholders Entitled to Act by Written Consent*

The following new Section 8 is hereby added to Article I:

"SECTION 8. RECORD DATE FOR ACTION BY WRITTEN CONSENT. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten days after the date on which such a request is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Section 8). If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 8 or otherwise within ten days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to any officer or agent of stockholders are recorded. Delivery shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action."

*Notice of Director Nomination by Stockholders*

The following new Section 14 is hereby added to Article II:

"SECTION 14. NOMINATION OF DIRECTORS. (a) Only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible to serve as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 14, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Section 14.

(b) Nominations by stockholders shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than 120 days nor more than 150 days prior to the first anniversary of the date of the Company's notice of annual meeting for the preceding year's annual meeting; provided however, that in the event that the date of the annual meeting is changed by more than 30 days from the anniversary date of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made and (ii) in the case of a special meeting at which Directors are to be elected, not later than

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the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a Director all information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to the stockholder giving the notice (x) the name and address, as they appear on the Corporation's books, of such stockholder, (y) the class and number of shares of the Corporation which are beneficially owned by such stockholder and also which are owned of record by such stockholder; and (iii) as to the beneficial owner, if any, on whose behalf the nomination is made, (x) the name and address of such person, and (y) the class and number of shares of the Corporation which are beneficially owned by such person. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a Director shall furnish to the Secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee.

(c) No person shall be eligible to serve as a Director of the Corporation unless nominated in accordance with the procedures set forth in this Section 14. The Chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these By-laws, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 14, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section 14."

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QuickLinks

[BEAZER HOMES USA, INC. AMENDMENTS TO BY-LAWS](#)

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**BEAZER HOMES USA, INC.**  
**and**  
**FIRST CHICAGO TRUST COMPANY OF NEW YORK**  
**as**  
**Rights Agent**  
**Rights Agreement**  
**Dated as of June 21, 1996**

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Exhibit A—Form of Certificate of Designations

Exhibit B—Form of Right Certificate

Exhibit C—Summary of Rights to Purchase Preferred Shares

Agreement, dated as of June 21, 1996, between Beazer Homes USA, Inc., a Delaware corporation (the "*Company*"), and First Chicago Trust Company of New York, a New York corporation (the "*Rights Agent*").

The Board of Directors of the Company has authorized and declared a dividend of one preferred share purchase right (a "*Right*") for each Common Share of the Company outstanding on June 24, 1996 (the "*Record Date*"), each Right representing the right to purchase one hundredth of a Preferred Share, upon the terms and subject to the conditions herein set forth, and has further authorized and directed the issuance of one Right with respect to each Common Share that shall become outstanding between the Record Date and the earliest of the Distribution Date, the Redemption Date and the Final Expiration Date.

Accordingly, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. *Certain Definitions.* For purposes of this Agreement, the following terms have the meanings indicated:

(a) "*Acquiring Person*" shall mean any Person who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of 20% or more of the Common Shares of the Company then outstanding, but shall not include the Company, any Subsidiary of the Company, any employee benefit plan of the Company or any Subsidiary of the Company, or any entity holding Common Shares for or pursuant to the terms of any such plan. Notwithstanding the foregoing, no Person shall become an "Acquiring Person" solely by virtue of its Beneficial Ownership, on the date hereof, of 20% or more of the Common Shares then outstanding as of the date hereof; *provided, however*, that if any Person that, on the date hereof, Beneficially Owns 20% or more of the Common Shares of the Company then outstanding as of the date hereof shall, after the date hereof, acquire Beneficial Ownership of any additional Common Shares such that such Person's Beneficial Ownership of Common Shares, expressed as a percentage of the total number of Common Shares then outstanding, shall be 0.5% or more greater than the lesser of (in each case expressed as a percentage) (x) such Person's Beneficial Ownership of Common Shares on the date hereof, and (y) such Person's Beneficial Ownership of Common Shares on any date following the date hereof, then such Person shall be deemed to be an "Acquiring Person"; *but provided further* that the foregoing proviso shall have no further application as to any Person from and after the time, if any, that such Person Beneficially Owns less than 20% of the Common Shares then outstanding. Notwithstanding the foregoing, no Person shall become an "Acquiring Person" as the result of an acquisition of Common Shares by the Company which, by reducing the number of shares outstanding, increases the proportionate number of shares Beneficially Owned by such Person to 20% or more of the Common Shares of the Company then outstanding; *provided, however*, that if a Person shall become the Beneficial Owner of 20% or more of the Common Shares of the Company then outstanding by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner of any additional Common Shares of the Company, then such Person shall be deemed to be an "Acquiring Person." Notwithstanding the foregoing, if the Board of Directors of the Company determines in good faith that a Person who would otherwise be an "Acquiring Person," as defined pursuant to the foregoing provisions of this paragraph (a), has become such inadvertently, and such Person divests as promptly as practicable a sufficient number of Common Shares so that such Person would no longer be an "Acquiring Person," as defined pursuant to the foregoing provisions of this paragraph (a), then such Person shall not be deemed to be an "Acquiring Person" for any purposes of this Agreement.

(b) "*Affiliate*" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

(c) "*Associate*" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

(d) A Person shall be deemed the "*Beneficial Owner*" of and shall be deemed to "*Beneficially Own*" any securities:

(i) which such Person or any of such Person's Affiliates or Associates beneficially owns, directly or indirectly;

(ii) which such Person or any of such Person's Affiliates or Associates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a *bona fide* public offering of securities), or upon the exercise of conversion rights, exchange rights, rights (other than these Rights), warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange; or (B) the right to vote pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own, any security if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a *bona fide* public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to Section 1(d)(ii)(B)) or disposing of any securities of the Company.

Notwithstanding anything in this definition of Beneficial Ownership to the contrary, the phrase "*then outstanding*," when used with reference to a Person's Beneficial Ownership of securities of the Company, shall mean the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such Person would be deemed to Beneficially Own hereunder.

(e) "*Business Day*" shall mean any day other than a Saturday, a Sunday, or a day on which banking institutions in State of New York are authorized or obligated by law or executive order to close.

(f) "*Close of Business*" on any given date shall mean 5:00 P.M., New York City time, on such date; *provided, however*, that, if such date is not a Business Day, it shall mean 5:00 P.M., New York City time, on the next succeeding Business Day.

(g) "*Common Shares*" when used with reference to the Company shall mean the shares of common stock, par value \$0.01 per share, of the Company. "*Common Shares*" when used with reference to any Person other than the Company shall mean the capital stock (or equity interest) with the greatest voting power of such other Person or, if such other Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person.

(h) "*Company*" shall have the meaning set forth in the preamble hereof.

(i) "*current per share market price*" shall have the meaning set forth in Section 11(d) hereof.

(j) "*Distribution Date*" shall have the meaning set forth in Section 3(a) hereof.

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(k) "*equivalent preferred shares*" shall have the meaning set forth in Section 11(b) hereof.

(l) "*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended.

(m) "*Exchange Ratio*" shall have the meaning set forth in Section 24(a) hereof.

(n) "*Final Expiration Date*" shall have the meaning set forth in Section 7(a) hereof.

(o) "*NASDAQ*" shall mean the National Association of Securities Dealers, Inc. Automated Quotations System.

(p) "*Person*" shall mean any individual, firm, corporation or other entity, and shall include any successor (by merger or otherwise) of such entity.

(q) "*Preferred Shares*" shall mean shares of Series B Junior Participating Preferred Stock, par value \$0.01 per share, of the Company having the rights and preferences set forth in the Form of Certificate of Designations attached to this Agreement as Exhibit A.

(r) "*Purchase Price*" shall have the meaning set forth in Section 7(b) hereof.

(s) "*Record Date*" shall have the meaning set forth in the second paragraph hereof.

(t) "*Redemption Date*" shall have the meaning set forth in Section 7(a) hereof.

(u) "*Redemption Price*" shall have the meaning set forth in Section 23(a) hereof.

(v) "*Rights Agent*" shall have the meaning set forth in the preamble hereof.

(w) "*Right*" shall have the meaning set forth in the second paragraph hereof.

(x) "*Right Certificate*" shall have the meaning set forth in Section 3(a) hereof.

(y) "*Security*" shall have the meaning set forth in Section 11(d) hereof.

(z) "*Shares Acquisition Date*" shall mean the first date of public announcement by the Company or an Acquiring Person that an Acquiring Person has become such.

(aa) "*Subsidiary*" of any Person shall mean any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person.

(ab) "*Summary of Rights*" shall have the meaning set forth in Section 3(b) hereof.

(ac) "*Trading Day*" shall have the meaning set forth in Section 11(d) hereof.

Section 2. *Appointment of Rights Agent.* The Company hereby appoints the Rights Agent to act as agent for the Company and the holders of the Rights (who, in accordance with Section 3 hereof, shall, prior to the Distribution Date, also be the holders of the Common Shares) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-Rights Agents as it may deem necessary or desirable.

Section 3. *Issue of Right Certificates.* (a) Until the earlier of (i) the tenth day after the Shares Acquisition Date or (ii) the tenth Business Day (or such later date as may be determined by action of the Board of Directors of the Company prior to such time as any Person becomes an Acquiring Person) after the date of the commencement by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company or any entity holding Common Shares for or pursuant to the terms of any such plan) of, or of the first public announcement of the intention of any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company or any entity holding Common Shares for or pursuant to the terms of any such plan) to commence, a tender or exchange offer the consummation of which would result in any Person becoming the Beneficial

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Owner of Common Shares aggregating 20% or more of the then outstanding Common Shares (including any such date which is after the date of this Agreement and prior to the issuance of the Rights; the earlier of such dates being herein referred to as the "*Distribution Date*"), (x) the Rights will be evidenced (subject to the provisions of Section 3(b) hereof) by the certificates for Common Shares registered in the names of the holders thereof (which certificates shall also be deemed to be Right Certificates) and not by separate Right Certificates, and (y) the right to receive Right Certificates will be transferable only in connection with the transfer of Common Shares. As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign, and the Company will send or cause to be sent (and the Rights Agent will, if requested, send) by first-class, insured, postage-prepaid mail, to each record holder of Common Shares as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company, a Right Certificate, in substantially the form of Exhibit B hereto (a "*Right Certificate*"), evidencing one Right for each Common Share so held. As of the Distribution Date, the Rights will be evidenced solely by such Right Certificates.

(b) On the Record Date, or as soon as practicable thereafter, the Company will send a copy of a Summary of Rights to Purchase Preferred Shares, in substantially the form of Exhibit C hereto (the "*Summary of Rights*"), by first-class, postage-prepaid mail, to each record holder of Common Shares as of the Close of Business on the Record Date, at the address of such holder shown on the records of the Company. With respect to certificates for Common Shares outstanding as of the Record Date, until the Distribution Date, the Rights will be evidenced by such certificates registered in the names of the holders thereof together with a copy of the Summary of Rights attached thereto. Until the Distribution Date (or the earlier of the Redemption Date or the Final Expiration Date), the surrender for transfer of any certificate for Common Shares outstanding on the Record Date, with or without a copy of the Summary of Rights attached thereto, shall also constitute the transfer of the Rights associated with the Common Shares represented thereby.

(c) Certificates for Common Shares which become outstanding (including, without limitation, reacquired Common Shares referred to in the last sentence of this paragraph (c)) after the Record Date but prior to the earliest of the Distribution Date, the Redemption Date or the Final Expiration Date shall have impressed on, printed on, written on or otherwise affixed to them the following legend:

This certificate also evidences and entitles the holder hereof to certain rights as set forth in a Rights Agreement between Beazer Homes USA, Inc. and First Chicago Trust Company of New York, dated as of June 21, 1996 (the "*Rights Agreement*"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of Beazer Homes USA, Inc. Under certain circumstances, as set forth in the Rights Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. Beazer Homes USA, Inc. will mail to the holder of this certificate a copy of the Rights Agreement without charge after receipt of a written request therefor. Under certain circumstances, as set forth in the Rights Agreement, Rights issued to any Person who becomes an Acquiring Person (as defined in the Rights Agreement) may become null and void.

With respect to such certificates containing the foregoing legend, until the Distribution Date, the Rights associated with the Common Shares represented by such certificates shall be evidenced by such certificates alone, and the surrender for transfer of any such certificate shall also constitute the transfer of the Rights associated with the Common Shares represented thereby. In the event that the Company purchases or acquires any Common Shares after the Record Date but prior to the Distribution Date, any Rights associated with such Common Shares shall be deemed cancelled

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and retired so that the Company shall not be entitled to exercise any Rights associated with the Common Shares which are no longer outstanding.

Section 4. *Form of Right Certificates.* The Right Certificates (and the forms of election to purchase Preferred Shares and of assignment to be printed on the reverse thereof) shall be substantially the same as Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or automated quotation

system on which the Rights may from time to time be listed, or to conform to usage. Subject to the provisions of Section 22 hereof, the Right Certificates shall entitle the holders thereof to purchase such number of one hundredths of a Preferred Share as shall be set forth therein at the price per one hundredth of a Preferred Share set forth therein, but the number of such one hundredths of a Preferred Share and the Purchase Price shall be subject to adjustment as provided herein.

Section 5. *Countersignature and Registration.* The Right Certificates shall be executed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President, any of its Vice Presidents, or its Treasurer, either manually or by facsimile signature, shall have affixed thereto the Company's seal or a facsimile thereof, and shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Right Certificates shall be manually countersigned by the Rights Agent and shall not be valid for any purpose unless countersigned. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the Person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any Person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Agreement any such Person was not such an officer.

Following the Distribution Date, the Rights Agent will keep or cause to be kept, at its principal office, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

Section 6. *Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates.* Subject to the provisions of Section 14 hereof, at any time after the Close of Business on the Distribution Date, and at or prior to the Close of Business on the earlier of the Redemption Date or the Final Expiration Date, any Right Certificate or Right Certificates (other than Right Certificates representing Rights that have become void pursuant to Section 11(a)(ii) hereof or that have been exchanged pursuant to Section 24 hereof) may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates entitling the registered holder to purchase a like number of one hundredths of a Preferred Share as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate or Right Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Right Certificate or Right Certificates to be transferred, split up, combined or exchanged at the principal office of the Rights Agent. Thereupon the Rights Agent shall countersign and deliver to the Person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Company may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates.

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Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will make and deliver a new Right Certificate of like tenor to the Rights Agent for delivery to the registered holder in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Section 7. *Exercise of Rights; Purchase Price; Expiration Date of Rights.* (a) The registered holder of any Right Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein), in whole or in part, at any time after the Distribution Date upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the principal office of the Rights Agent, together with payment of the Purchase Price for each one hundredth of a Preferred Share as to which the Rights are exercised, at or prior to the earliest of (i) the Close of Business on June 24, 2006 (the "*Final Expiration Date*"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the "*Redemption Date*") or (iii) the time at which such Rights are exchanged as provided in Section 24 hereof.

(b) The Purchase Price (the "*Purchase Price*") for each one hundredth of a Preferred Share purchasable pursuant to the exercise of a Right shall initially be \$80.00, and shall be subject to adjustment from time to time as provided in Section 11 or 13 hereof and shall be payable in lawful money of the United States of America in accordance with paragraph (c) below.

(c) Upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase duly executed, accompanied by payment of the Purchase Price for the shares to be purchased and an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in accordance with Section 9 hereof by certified check, cashier's check or money order payable to the order of the Company, the Rights Agent shall thereupon promptly (i) (A) requisition from any transfer agent of the Preferred Shares certificates for the number of Preferred Shares to be purchased and the Company hereby irrevocably authorizes any such transfer agent to comply with all such requests, or (B) requisition from the depository agent depository receipts representing such number of one hundredths of a Preferred Share as are to be purchased (in which case certificates for the Preferred Shares represented by such receipts shall be deposited by the transfer agent of the Preferred Shares with the depository agent) and the Company hereby directs such depository agent to comply with such request; (ii) when appropriate, requisition from the Company the amount of cash to be paid in lieu of issuance of fractional shares in accordance with Section 14 hereof; (iii) after receipt of such certificates or depository receipts, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder; and (iv) when appropriate, after receipt, deliver such cash to or upon the order of the registered holder of such Right Certificate.

(d) In case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent to the registered holder of such Right Certificate or to his duly authorized assigns, subject to the provisions of Section 14 hereof.

Section 8. *Cancellation and Destruction of Right Certificates.* All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in cancelled form, or, if surrendered to the Rights Agent, shall be cancelled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall

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so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all cancelled Right Certificates to the Company, or shall, at the written request of the Company, destroy such cancelled Right Certificates, and, in such case, shall deliver a certificate of destruction thereof to the Company.

Section 9. *Availability of Preferred Shares.* The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued Preferred Shares or any Preferred Shares held in its treasury, the number of Preferred Shares that will be sufficient to permit the exercise in full of all outstanding Rights in accordance with Section 7. The Company covenants and agrees that it will take all such action as may be necessary to ensure that all Preferred Shares delivered upon exercise of Rights shall, at the time of delivery of the certificates for such Preferred Shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable shares.

The Company further covenants and agrees that it will pay when due and payable any and all federal and state transfer taxes and charges which may be payable in respect of the issuance or delivery of the Right Certificates or of any Preferred Shares upon the exercise of Rights. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer or delivery of Right Certificates to a Person other than, or the issuance or delivery of certificates or depository receipts for the Preferred Shares in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or to deliver any certificates or depository receipts for Preferred Shares upon the exercise of any Rights until any such tax shall have been paid (any such tax being payable by the holder of such Right Certificate at the time of surrender) or until it has been established to the Company's reasonable satisfaction that no such tax is due.

Section 10. *Preferred Shares Record Date.* Each Person in whose name any certificate for Preferred Shares is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Preferred Shares represented thereby on, and such certificate shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and any applicable transfer taxes) was made; *provided, however,* that if the date of such surrender and payment is a date upon which the Preferred Shares transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Shares transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate shall not be entitled to any rights of a holder of Preferred Shares for which the Rights shall be exercisable, including, without limitation, the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. *Adjustment of Purchase Price, Number of Shares or Number of Rights.* The Purchase Price, the number of Preferred Shares covered by each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a) (i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on the Preferred Shares payable in Preferred Shares, (B) subdivide the outstanding Preferred Shares, (C) combine the outstanding Preferred Shares into a smaller number of Preferred Shares or (D) issue any shares of its capital stock in a reclassification of the Preferred Shares (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a), the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind

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of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Shares transfer books of the Company were open, he would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; *provided, however,* that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right.

(ii) Subject to Section 24 of this Agreement, in the event any Person becomes an Acquiring Person, each holder of a Right shall thereafter have a right to receive, upon exercise thereof at a price equal to the then current Purchase Price multiplied by the number of one hundredths of a Preferred Share for which a Right is then exercisable, in accordance with the terms of this Agreement and in lieu of Preferred Shares, such number of Common Shares of the Company as shall equal the result obtained by (A) multiplying the then current Purchase Price by the number of one hundredths of a Preferred Share for which a Right is then exercisable and dividing that product by (B) 50% of the then current per share market price of the Company's Common Shares (determined pursuant to Section 11(d) hereof) on the date of the occurrence of such event. In the event that any Person shall become an Acquiring Person and the Rights shall then be outstanding, the Company shall not take any action which would eliminate or diminish the benefits intended to be afforded by the Rights.

From and after the occurrence of such event, any Rights that are or were acquired or Beneficially Owned by any Acquiring Person (or any Associate or Affiliate of such Acquiring Person) shall be void and any holder of such Rights shall thereafter have no right to exercise such Rights under any provision of this Agreement. No Right Certificate shall be issued pursuant to Section 3 that represents Rights Beneficially Owned by an Acquiring Person whose Rights would be void pursuant to the preceding sentence or any Associate or Affiliate thereof; no Right Certificate shall be issued at any time upon the transfer of any Rights to an Acquiring Person whose Rights would be void pursuant to the preceding sentence or any Associate or Affiliate thereof or to any nominee of such Acquiring Person, Associate or Affiliate; and any Right Certificate delivered to the Rights Agent for transfer to an Acquiring Person whose Rights would be void pursuant to the preceding sentence shall be cancelled.

(iii) In the event that there shall not be sufficient Common Shares issued but not outstanding or authorized but unissued to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii), the Company shall take all such action as may be necessary to authorize additional Common Shares for issuance upon exercise of the Rights. In the event the Company shall, after good faith effort, be unable to take all such action as may be necessary to authorize such additional Common Shares, the Company shall substitute, for each Common Share that would otherwise be issuable upon exercise of a Right, a number of Preferred Shares or fraction thereof such that the current per share market price of one Preferred Share multiplied by such number or fraction is equal to the current per share market price of one Common Share as of the date of issuance of such Preferred Shares or fraction thereof.

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Shares entitling them (for a period expiring within 45 calendar days after such record date) to subscribe for or purchase Preferred Shares (or shares having the same rights, privileges and preferences as the Preferred Shares ("*equivalent preferred shares*")) or securities convertible into Preferred Shares or equivalent preferred shares at a price per Preferred Share or equivalent preferred share (or having a conversion price per share, if a security convertible into Preferred Shares or equivalent

preferred shares) less than the then current per share market price of the Preferred Shares on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately

prior to such record date by a fraction, the numerator of which shall be the number of Preferred Shares outstanding on such record date plus the number of Preferred Shares which the aggregate offering price of the total number of Preferred Shares and/or equivalent preferred shares so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current market price and the denominator of which shall be the number of Preferred Shares outstanding on such record date plus the number of additional Preferred Shares and/or equivalent preferred shares to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. In case such subscription price may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. Preferred Shares owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed; and in the event that such rights, options or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Shares (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness or assets (other than a regular quarterly cash dividend or a dividend payable in Preferred Shares) or subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the then current per share market price of the Preferred Shares on such record date, less the fair market value (as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and holders of the Rights) of the portion of the assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to one Preferred Share and the denominator of which shall be such current per share market price of the Preferred Shares; *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(d) (i) For the purpose of any computation hereunder, the "current per share market price" of any security (a "Security" for the purpose of this Section 11(d)(i)) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the 30 consecutive Trading Days immediately prior to such date; *provided, however*, that in the event that the current per share market price of the Security is determined during a period following the announcement by the issuer of such Security of (A) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares, or (B) any subdivision, combination or reclassification of such Security and prior to the expiration of 30 Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the current per share market price shall be appropriately adjusted to reflect the current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, or, in case no such

sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case, as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Security is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the NASDAQ or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board of Directors of the Company. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day.

(ii) For the purpose of any computation hereunder, the "current per share market price" of the Preferred Shares shall be determined in accordance with the method set forth in Section 11(d)(i). If the Preferred Shares are not publicly traded, the "current per share market price" of the Preferred Shares shall be conclusively deemed to be the current per share market price of the Common Shares as determined pursuant to Section 11(d)(i) (appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof), multiplied by one hundred. If neither the Common Shares nor the Preferred Shares are publicly held or so listed or traded, "current per share market price" shall mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent.

(e) No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; *provided, however*, that any adjustments which by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one-millionth of a Preferred Share or one ten-thousandth of any other share or security as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three years from the date of the transaction which requires such adjustment or (ii) the date of the expiration of the right to exercise any Rights.

(f) If, as a result of an adjustment made pursuant to Section 11(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than Preferred Shares, thereafter the number of such other shares so receivable upon exercise of any Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to

the Preferred Shares contained in Section 11(a) through (c), inclusive, and the provisions of Sections 7, 9, 10 and 13 with respect to the Preferred Shares shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one hundredths of a Preferred Share purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i), upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11(b) and (c), each Right outstanding immediately prior to the making of such adjustment shall thereafter

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evidence the right to purchase, at the adjusted Purchase Price, that number of one hundredths of a Preferred Share (calculated to the nearest one millionth of a Preferred Share) obtained by (A) multiplying (x) the number of one hundredths of a share covered by a Right immediately prior to this adjustment by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (B) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

(i) The Company may elect on or after the date of any adjustment of the Purchase Price to adjust the number of Rights in substitution for any adjustment in the number of one hundredths of a Preferred Share purchasable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights shall be exercisable for the number of one hundredths of a Preferred Share for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or the number of one hundredths of a Preferred Share issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price and the number of one hundredths of a Preferred Share which were expressed in the initial Right Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below one hundredth of the then par value, if any, of the Preferred Shares issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable Preferred Shares at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuing to the holder of any Right exercised after such record date of the Preferred Shares and other capital stock or securities of the Company, if any, issuable upon such exercise over and above the Preferred Shares and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; PROVIDED, HOWEVER, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

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(m) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that, it, in its sole discretion, shall determine to be advisable in order that any consolidation or subdivision of the Preferred Shares, issuance wholly for cash of any Preferred Shares at less than the current market price, issuance wholly for cash of Preferred Shares or securities which by their terms are convertible into or exchangeable for Preferred Shares, dividends on Preferred Shares payable in Preferred Shares or issuance of rights, options or warrants referred to hereinabove in Section 11(b), hereafter made by the Company to holders of its Preferred Shares shall not be taxable to such stockholders.

(n) In the event that at any time after the date of this Agreement and prior to the Distribution Date, the Company shall (i) declare or pay any dividend on the Common Shares payable in Common Shares or (ii) effect a subdivision, combination or consolidation of the Common Shares (by reclassification or otherwise than by payment of dividends in Common Shares) into a greater or lesser number of Common Shares, then in any such case (A) the number of one hundredths of a Preferred Share purchasable after such event upon proper exercise of each Right shall be determined by multiplying the number of one hundredths of a Preferred Share so purchasable immediately prior to such event by a fraction, the numerator of which is the number of Common Shares outstanding immediately before such event and the denominator of which is the number of Common Shares outstanding immediately after such event, and (B) each Common Share outstanding immediately after such event shall have issued with respect to it that number of Rights which each Common Share outstanding immediately prior to such event had issued with respect to it. The adjustments provided for in this Section 11(n) shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation is effected.

Section 12. *Certificate of Adjusted Purchase Price or Number of Shares.* Whenever an adjustment is made as provided in Section 11 or 13 hereof, the Company shall promptly (a) prepare a certificate setting forth such adjustment, and a brief statement of the facts accounting for such adjustment, (b) file with the Rights Agent and with each transfer agent for the Common Shares or the Preferred Shares a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate in accordance with Section 25 hereof.

Section 13. *Consolidation, Merger or Sale or Transfer of Assets or Earning Power.* In the event, directly or indirectly, at any time after a Person has become an Acquiring Person, (a) the Company shall consolidate with, or merge with and into, any other Person, (b) any Person shall consolidate with the Company, or merge with and into the Company and the Company shall be the continuing or surviving corporation of such merger and, in connection with such merger, all or part of the Common Shares shall be changed into or exchanged for stock or other securities of any other Person (or the Company) or cash or any other property, or (c) the Company shall sell or otherwise transfer (or one or more of its Subsidiaries shall sell or otherwise transfer), in one or more transactions, assets or earning power aggregating 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person other than the Company or one or more of its wholly-owned Subsidiaries, then, and in each such case, proper provision shall be made so that (i) each holder of a Right (except as otherwise provided herein) shall thereafter have the right to receive, upon the exercise thereof at a price equal to the then current Purchase Price multiplied by the number of one hundredths of a Preferred Share for which a Right is then exercisable, in accordance with the terms of this Agreement and in lieu of Preferred Shares, such number of Common Shares of such other Person (including the Company as successor thereto or as the surviving corporation) as shall equal the result obtained by (A) multiplying the then current Purchase Price by the number of one hundredths of a Preferred Share for which a Right is then exercisable and dividing that product by (B) 50% of the then current per share market price of the Common Shares of such other Person (determined pursuant to

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Section 11(d) hereof) on the date of consummation of such consolidation, merger, sale or transfer; (ii) the issuer of such Common Shares shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all the obligations and duties of the Company pursuant to this Agreement; (iii) the term "COMPANY" shall thereafter be deemed to refer to such issuer; and (iv) such issuer shall take such steps (including, but not limited to, the reservation of a sufficient number of its Common Shares in accordance with Section 9 hereof) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to the Common Shares thereafter deliverable upon the exercise of the Rights. The Company shall not consummate any such consolidation, merger, sale or transfer unless prior thereto the Company and such issuer shall have executed and delivered to the Rights Agent a supplemental agreement so providing. The Company shall not enter into any transaction of the kind referred to in this Section 13 if at the time of such transaction there are any rights, warrants, instruments or securities outstanding or any agreements or arrangements which, as a result of the consummation of such transaction, would eliminate or substantially diminish the benefits intended to be afforded by the Rights. The provisions of this Section 13 shall similarly apply to successive mergers or consolidations or sales or other transfers.

Section 14. *Fractional Rights and Fractional Shares.* (a) The Company shall not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case, as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Rights are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by NASDAQ or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors of the Company. If on any such date no such market maker is making a market in the Rights, the fair value of the Rights on such date as determined in good faith by the Board of Directors of the Company shall be used.

(b) The Company shall not be required to issue fractions of Preferred Shares (other than fractions which are integral multiples of one hundredth of a Preferred Share) upon exercise of the Rights or to distribute certificates which evidence fractional Preferred Shares (other than fractions which are integral multiples of one hundredth of a Preferred Share). Fractions of Preferred Shares in integral multiples of one hundredth of a Preferred Share may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; PROVIDED that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as Beneficial Owners of the Preferred Shares represented by such depositary receipts. In lieu of fractional Preferred Shares that are not integral multiples of one hundredth of a Preferred Share, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one Preferred Share. For the purposes of this Section 14(b), the current

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market value of a Preferred Share shall be the closing price of a Preferred Share (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of such exercise.

(c) The holder of a Right by the acceptance of the Right expressly waives his right to receive any fractional Rights or any fractional shares upon exercise of a Right (except as provided above).

Section 15. *Rights of Action.* All rights of action in respect of this Agreement, excepting the rights of action given to the Rights Agent under Section 18 hereof, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Shares); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Shares), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Shares), may, in his own behalf and for his own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, his right to exercise the Rights evidenced by such Right Certificate in the manner provided in such Right Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and will be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of the obligations of any Person subject to, this Agreement.

Section 16. *Agreement of Right Holders.* Every holder of a Right, by accepting the same, consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of the Common Shares;

(b) after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the principal office of the Rights Agent, duly endorsed or accompanied by a proper instrument of transfer; and

(c) the Company and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Common Shares certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificate or the associated Common Shares certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent shall be affected by any notice to the contrary.

Section 17. *Right Certificate Holder Not Deemed a Stockholder.* No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Shares or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 25 hereof), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions hereof.

Section 18. *Concerning the Rights Agent.* The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the

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administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability in the premises.

The Rights Agent shall be protected and shall incur no liability for, or in respect of any action taken, suffered or omitted by it in connection with, its administration of this Agreement in reliance upon any Right Certificate or certificate for the Preferred Shares or Common Shares or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in Section 20 hereof.

Section 19. *Merger or Consolidation or Change of Name of Rights Agent.* Any corporation into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation succeeding to the stock transfer or corporate trust powers of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and, in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

Section 20. *Duties of Rights Agent.* The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel (who may be legal counsel for the Company), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by any one of the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer or the Secretary of the Company and

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delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder to the Company and any other Person only for its own negligence, bad faith or willful misconduct.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to Section 11(a)(ii) hereof) or any adjustment in the terms of the Rights (including the manner, method or amount thereof) provided for in Section 3, 11, 13, 23 or 24, or the ascertaining of the existence of facts that would require any such change or adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after actual notice that such change or adjustment is required); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Preferred Shares to be issued pursuant to this Agreement or any Right Certificate or as to whether any Preferred Shares will, when issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any one of the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Secretary or the Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered by it in good faith in accordance with instructions of any such officer or for any delay in acting while waiting for those instructions.

(h) The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, provided reasonable care was exercised in the selection and continued employment thereof.

Section 21. *Change of Rights Agent.* The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon 30-days' notice in writing mailed to the

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Company and to each transfer agent of the Common Shares or Preferred Shares by registered or certified mail, and to the holders of the Right Certificates by first-class mail. The Company may remove the Rights Agent or any successor Rights Agent upon 30-days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Shares or Preferred Shares by registered or certified mail, and to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of 30 days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be a corporation organized and doing business under the laws of the United States or of the State of New York (or of any other state of the United States so long as such corporation is authorized to do business as a banking institution in the State of New York), in good standing, having an office in the State of New York, which is authorized under such laws to exercise corporate trust or stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least \$50 million. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Shares or Preferred Shares, and mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. *Issuance of New Right Certificates.* Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Agreement.

Section 23. *Redemption.* (a) The Board of Directors of the Company may, at its option, at any time prior to such time as any Person becomes an Acquiring Person, redeem all but not less than all the then outstanding Rights at a redemption price of \$.01 per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the "*Redemption Price*"). The redemption of the Rights by the Board of Directors of the Company may be made effective at such time, on such basis and with such conditions as the Board of Directors of the Company, in its sole discretion, may establish.

(b) Immediately upon the action of the Board of Directors of the Company ordering the redemption of the Rights pursuant to paragraph (a) of this Section 23, and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price. The Company shall promptly give public notice of any such redemption; *provided, however*, that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. Within 10 days after such action of the Board of Directors of the Company ordering the redemption of the Rights, the

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Company shall mail a notice of redemption to all the holders of the then outstanding Rights at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Shares. Any notice which is mailed in

the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made. Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 or in Section 24 hereof, and other than in connection with the purchase of Common Shares prior to the Distribution Date.

Section 24. *Exchange.* (a) The Board of Directors of the Company may, at its option, at any time after any Person becomes an Acquiring Person, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 11(a)(ii) hereof) for Common Shares at an exchange ratio of one Common Share per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such exchange ratio being hereinafter referred to as the "*Exchange Ratio*"). Notwithstanding the foregoing, the Board of Directors of the Company shall not be empowered to effect such exchange at any time after any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or any such Subsidiary, or any entity holding Common Shares for or pursuant to the terms of any such plan), together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of 50% or more of the Common Shares then outstanding.

(b) Immediately upon the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 24 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of Common Shares equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice of any such exchange; *provided, however*, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the Common Shares for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected *pro rata* based on the number of Rights (other than Rights which have become void pursuant to the provisions of Section 11(a)(ii) hereof) held by each holder of Rights.

(c) In the event that there shall not be sufficient Common Shares issued but not outstanding or authorized but unissued to permit any exchange of Rights as contemplated in accordance with this Section 24, the Company shall take all such action as may be necessary to authorize additional Common Shares for issuance upon exchange of the Rights. In the event the Company shall, after good faith effort, be unable to take all such action as may be necessary to authorize such additional Common Shares, the Company shall substitute, for each Common Share that would otherwise be issuable upon exchange of a Right, a number of Preferred Shares or fraction thereof such that the current per share market price of one Preferred Share multiplied by such number or fraction is equal to the current per share market price of one Common Share as of the date of issuance of such Preferred Shares or fraction thereof.

(d) The Company shall not be required to issue fractions of Common Shares or to distribute certificates which evidence fractional Common Shares. In lieu of such fractional Common Shares, the Company shall pay to the registered holders of the Right Certificates with regard to which

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such fractional Common Shares would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole Common Share. For the purposes of this paragraph (d), the current market value of a whole Common Share shall be the closing price of a Common Share (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of exchange pursuant to this Section 24.

Section 25. *Notice of Certain Events.* (a) In case the Company shall propose (i) to pay any dividend payable in stock of any class to the holders of its Preferred Shares or to make any other distribution to the holders of its Preferred Shares (other than a regular quarterly cash dividend), (ii) to offer to the holders of its Preferred Shares rights or warrants to subscribe for or to purchase any additional Preferred Shares or shares of stock of any class or any other securities, rights or options, (iii) to effect any reclassification of its Preferred Shares (other than a reclassification involving only the subdivision of outstanding Preferred Shares), (iv) to effect any consolidation or merger into or with, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one or more transactions, of 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to, any other Person, (v) to effect the liquidation, dissolution or winding up of the Company, or (vi) to declare or pay any dividend on the Common Shares payable in Common Shares or to effect a subdivision, combination or consolidation of the Common Shares (by reclassification or otherwise than by payment of dividends in Common Shares), then, in each such case, the Company shall give to each holder of a Right Certificate, in accordance with Section 26 hereof, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, or distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the Common Shares and/or Preferred Shares, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least 10 days prior to the record date for determining holders of the Preferred Shares for purposes of such action, and in the case of any such other action, at least 10 days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Common Shares and/or Preferred Shares, whichever shall be the earlier.

(b) In case the event set forth in Section 11(a)(ii) hereof shall occur, then the Company shall as soon as practicable thereafter give to each holder of a Right Certificate, in accordance with Section 26 hereof, a notice of the occurrence of such event, which notice shall describe such event and the consequences of such event to holders of Rights under Section 11(a)(ii) hereof.

Section 26. *Notices.* Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Beazer Homes USA, Inc.  
5775 Peachtree Dunwoody Road  
Suite C-550  
Atlanta, Georgia 30342  
Attention: Corporate Secretary

shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

First Chicago Trust Company of New York  
525 Washington Boulevard  
Suite 4660  
Jersey City, New Jersey 07310  
Attn: T&E Administration

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27. *Supplements and Amendments.* The Company may from time to time supplement or amend this Agreement without the approval of any holders of Right Certificates in order to cure any ambiguity, to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, or to make any other provisions with respect to the Rights which the Company may deem necessary or desirable, any such supplement or amendment to be evidenced by a writing signed by the Company and the Rights Agent; *provided, however*, that from and after such time as any Person becomes an Acquiring Person, this Agreement shall not be amended in any manner which would adversely affect the interests of the holders of Rights. Without limiting the foregoing, the Company may at any time prior to such time as any Person becomes an Acquiring Person amend this Agreement to lower the thresholds set forth in Sections 1(a) and 3(a) to not less than the greater of (i) the sum of .001% and the largest percentage of the outstanding Common Shares then known by the Company to be Beneficially Owned by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or any Subsidiary of the Company, or any entity holding Common Shares for or pursuant to the terms of any such plan) and (ii) 10%.

Section 28. *Successors.* All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. *Benefits of this Agreement.* Nothing in this Agreement shall be construed to give to any Person, other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares).

Section 30. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 31. *Governing Law.* This Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of New York and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

Section 32. *Counterparts.* This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 33. *Descriptive Headings.* Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

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

Attest: BEAZER HOMES USA, INC.

By /s/ JOHN KELTON

By /s/ DAVID S. WEISS

Name: John Kelton  
Title: Secretary

David S. Weiss  
Executive Vice President

Attest: FIRST CHICAGO TRUST COMPANY OF NEW YORK

By /s/ JAMES KUZMICH

By /s/ EDWARD J. BURNETT

Name: James Kuzmich  
Title: C.F.O.

Name: Edward J. Burnett  
Title: A.V.P.

of  
CERTIFICATE OF DESIGNATIONS  
of  
SERIES B JUNIOR PARTICIPATING PREFERRED STOCK  
of  
BEAZER HOMES USA, INC.  
(Pursuant to Section 151 of the  
Delaware General Corporation Law)

Beazer Homes USA, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation as required by Section 151 of the General Corporation Law at a meeting duly called and held on June 11, 1996:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Certificate of Incorporation, the Board of Directors hereby creates a series of Preferred Stock, par value \$0.01 per share (the "Preferred Stock"), of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences, and limitations thereof as follows:

**Series B Junior Participating Preferred Stock:**

Section 1. *Designation and Amount.* The shares of such series shall be designated as "Series B Junior Participating Preferred Stock" (the "Series B Preferred Stock") and the number of shares constituting the Series B Preferred Stock shall be 300,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; *provided* that no decrease shall reduce the number of shares of Series B Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series B Preferred Stock.

Section 2. *Dividends and Distributions.*

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series B Preferred Stock with respect to dividends, the holders of shares of Series B Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series B Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash

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dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series B Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series B Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); *provided* that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1 per share on the Series B Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series B Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series B Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series B Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated *pro rata* on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series B Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. *Voting Rights.* The holders of shares of Series B Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series B Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of

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which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series B Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series B Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

#### Section 4. *Certain Restrictions.*

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series B Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series B Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, except dividends paid ratably on the Series B Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series B Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series B Preferred Stock, or any shares of stock ranking on a parity with the Series B Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. *Reacquired Shares.* Any shares of Series B Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any

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other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. *Liquidation, Dissolution or Winding Up.* Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock unless, prior thereto, the holders of shares of Series B Preferred Stock shall have received \$100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series B Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, except distributions made ratably on the Series B Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. *Consolidation, Merger, etc.* In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series B Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series B Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. *No Redemption.* The shares of Series B Preferred Stock shall not be redeemable.

Section 9. *Rank.* The Series B Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock.

Section 10. *Amendment.* The Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series B Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series B Preferred Stock, voting together as a single class.

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IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its Executive Vice President this 21st day of June, 1996.

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*Executive Vice President*

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**Exhibit B**

**Form of Right Certificate**

Certificate No. R- Rights \_\_\_\_\_

NOT EXERCISABLE AFTER JUNE 24, 2006 OR EARLIER IF REDEMPTION OR EXCHANGE OCCURS. THE RIGHTS ARE SUBJECT TO REDEMPTION AT \$.01 PER RIGHT AND TO EXCHANGE ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT.

**Right Certificate**

**BEAZER HOMES USA, INC.**

This certifies that \_\_\_\_\_, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of June 21, 1996 (the "*Rights Agreement*"), between Beazer Homes USA, Inc., a Delaware corporation (the "*Company*"), and First Chicago Trust Company of New York (the "*Rights Agent*"), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to 5:00 P.M., New York, time, on June 24, 2006 at the principal office of the Rights Agent, or at the office of its successor as Rights Agent, one hundredth of a fully paid non-assessable share of Series B Junior Participating Preferred Stock, par value \$0.01 per share (the "*Preferred Shares*"), of the Company, at a purchase price of \$80.00 per one hundredth of a Preferred Share (the "*Purchase Price*"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase duly executed. The number of Rights evidenced by this Right Certificate (and the number of one hundredths of a Preferred Share which may be purchased upon exercise hereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of June 24, 1996, based on the Preferred Shares as constituted at such date. As provided in the Rights Agreement, the Purchase Price and the number of one hundredths of a Preferred Share which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Rights Agreement are on file at the principal executive offices of the Company and the offices of the Rights Agent.

This Right Certificate, with or without other Right Certificates, upon surrender at the principal office of the Rights Agent, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of Preferred Shares as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Certificate (i) may be redeemed by the Company at a redemption price of \$.01 per Right or (ii) may be exchanged, in whole or in part, for Preferred Shares or shares of the Company's Common Stock, par value \$0.01 per share.

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No fractional Preferred Shares will be issued upon the exercise of any Right or Rights evidenced hereby (other than fractions which are integral multiples of one hundredth of a Preferred Share, which may, at the election of the Company, be evidenced by depositary receipts), but in lieu thereof a cash payment will be made, as provided in the Rights Agreement.

No holder of this Right Certificate shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Shares or of any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised as provided in the Rights Agreement.

This Right Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal. Dated as of \_\_\_\_\_, \_\_\_\_\_.

ATTEST: BEAZER HOMES USA, INC.

By

\_\_\_\_\_  
Name: Name:  
Title: Title:

Countersigned:

First Chicago Trust Company of New York

By \_\_\_\_\_  
Name:  
Title:

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Form of Reverse Side of Right Certificate

**FORM OF ASSIGNMENT**

(To be executed by the registered holder if such holder desires to transfer the Right Certificate.)

FOR VALUE RECEIVED \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_

(Please print name and address of transferee)

\_\_\_\_\_  
this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint \_\_\_\_\_  
\_\_\_\_\_  
Attorney, to transfer the within Right Certificate on the books of the within-named Company, with full power of substitution.

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature

Signature Guaranteed:

Signatures must be guaranteed by a member firm of a registered national securities exchange, a member of the National Association of Securities Dealers, Inc., or a commercial bank or trust company having an office or correspondent in the United States.

\_\_\_\_\_  
The undersigned hereby certifies that the Rights evidenced by this Right Certificate are not beneficially owned by an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement).

\_\_\_\_\_  
Signature

**FORM OF ELECTION TO PURCHASE**

(To be executed if holder desires to exercise Rights represented by the Right Certificate.)

To: **BEAZER HOMES USA, INC.**

The undersigned hereby irrevocably elects to exercise \_\_\_\_\_ Rights represented by this Right Certificate to purchase the Preferred Shares issuable upon the exercise of such Rights and requests that certificates for such Preferred Shares be issued in the name of:

Please insert social security  
or other identifying number

\_\_\_\_\_  
(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security  
or other identifying number

\_\_\_\_\_  
(Please print name and address)

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature

Signature Guaranteed:

Signatures must be guaranteed by a member firm of a registered national securities exchange, a member of the National Association of Securities Dealers, Inc., or a commercial bank or trust company having an office or correspondent in the United States.

**Form of Reverse Side of Right Certificate—continued**

The undersigned hereby certifies that the Rights evidenced by this Right Certificate are not beneficially owned by an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement).

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**NOTICE**

The signature in the Form of Assignment or Form of Election to Purchase, as the case may be, must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or the Form of Election to Purchase, as the case may be, is not completed, the Company and the Rights Agent will deem the beneficial owner of the Rights evidenced by this Right Certificate to be an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement) and such Assignment or Election to Purchase will not be honored.

**SUMMARY OF RIGHTS TO PURCHASE  
PREFERRED SHARES**

On June 21, 1996, the Board of Directors of Beazer Homes USA, Inc. (the "*Company*") announced a dividend of one preferred share purchase right (a "*Right*") for each outstanding share of common stock, par value \$0.01 per share (the "*Common Shares*"), of the Company. The dividend is payable immediately following approval of the rights for listing on the New York Stock Exchange to the stockholders of record on June 24, 1996 (the "*Record Date*"). Each Right entitles the registered holder to purchase from the Company one hundredth of a share of Series B Junior Participating Preferred Stock, par value \$0.01 per share (the "*Preferred Shares*"), of the Company at a price of \$80.00 per one hundredth of a Preferred Share (the "*Purchase Price*"), subject to adjustment. The description and terms of the Rights are set forth in a Rights Agreement (the "*Rights Agreement*") between the Company and First Chicago Trust Company of New York, as Rights Agent (the "*Rights Agent*").

Until the earlier to occur of (i) 10 days following a public announcement that a person or group of affiliated or associated persons (an "*Acquiring Person*") have acquired beneficial ownership of 20% or more of the outstanding Common Shares or (ii) 10 business days (or such later date as may be determined by action of the Board of Directors prior to such time as any person or group of affiliated persons becomes an Acquiring Person) following the commencement of, or announcement of an intention to make, a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 20% or more of the outstanding Common Shares (the earlier of such dates being the "*Distribution Date*"), the Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the record date, by such Common Share certificate with a copy of this summary of rights attached thereto.

The Rights Agreement provides that, until the Distribution Date (or earlier redemption or expiration of the Rights), the Rights will be transferred with and only with the Common Shares. Until the Distribution Date (or earlier redemption or expiration of the Rights), new Common Share certificates issued after the Record Date upon transfer or new issuance of Common Shares will contain a notation incorporating the Rights Agreement by reference. Until the Distribution Date (or earlier redemption or expiration of the Rights), the surrender for transfer of any certificates for Common Shares outstanding as of the Record Date, even without such notation or a copy of this Summary of Rights being attached thereto, will also constitute the transfer of the Rights associated with the Common Shares represented by such certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights ("*Right Certificates*") will be mailed to holders of record of the Common Shares as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire on June 24, 2006 (the "*Final Expiration Date*"), unless the Final Expiration Date is extended or unless the Rights are earlier redeemed or exchanged by the Company, in each case, as described below.

The Purchase Price payable, and the number of Preferred Shares or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Shares, (ii) upon the grant to holders of the Preferred Shares of certain rights or warrants to subscribe for or purchase Preferred Shares at a price, or securities convertible into Preferred Shares with a conversion price, less than the then-current market price of the Preferred Shares or (iii) upon the distribution to holders of the Preferred Shares of evidences of indebtedness or assets (excluding regular periodic cash dividends paid out of earnings or retained earnings or dividends payable in Preferred Shares) or of subscription rights or warrants (other than those referred to above).

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The number of outstanding Rights and the number of one hundredths of a Preferred Share issuable upon exercise of each Right are also subject to adjustment in the event of a stock split of the Common Shares or a stock dividend on the Common Shares payable in Common Shares or subdivisions, consolidations or combinations of the Common Shares occurring, in any such case, prior to the Distribution Date.

Preferred Shares purchasable upon exercise of the Rights will not be redeemable. Each Preferred Share will be entitled to a minimum preferential quarterly dividend payment of \$1 per share but will be entitled to an aggregate dividend of 100 times the dividend declared per Common Share. In the event of liquidation, the holders of the Preferred Shares will be entitled to a minimum preferential liquidation payment of \$100 per share but will be entitled to an aggregate payment of 100 times the payment made per Common Share. Each Preferred Share will have 100 votes, voting together with the Common Shares. Finally, in the event of any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 100 times the amount received per Common Share. These rights are protected by customary antidilution provisions.

Because of the nature of the Preferred Shares' dividend, liquidation and voting rights, the value of the one hundredth interest in a Preferred Share purchasable upon exercise of each Right should approximate the value of one Common Share.

In the event that the Company is acquired in a merger or other business combination transaction or 50% or more of its consolidated assets or earning power are sold after a person or group has become an Acquiring Person, proper provision will be made so that each holder of a Right will thereafter have the right to receive, upon the exercise thereof at the then current exercise price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction will have a market value of two times the exercise price of the Right. In the event that any person or group of affiliated or associated persons becomes an Acquiring Person, proper provision shall be made so that each holder of a Right, other than Rights beneficially owned by the Acquiring Person (which will thereafter be void), will thereafter have the right to receive upon exercise that number of Common Shares having a market value of two times the exercise price of the Right.

At any time after any person or group becomes an Acquiring Person and prior to the acquisition by such person or group of 50% or more of the outstanding Common Shares, the Board of Directors of the Company may exchange the Rights (other than Rights owned by such person or group which will have become void), in whole or in part, at an exchange ratio of one Common Share, or one hundredth of a Preferred Share (or of a share of a class or series of the Company's preferred stock having equivalent rights, preferences and privileges), per Right (subject to adjustment).

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional Preferred Shares will be issued (other than fractions which are integral multiples of one hundredth of a Preferred Share, which may, at the election of the Company, be evidenced by depositary receipts) and, in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Shares on the last trading day prior to the date of exercise.

At any time prior to the acquisition by a person or group of affiliated or associated persons of beneficial ownership of 20% or more of the outstanding Common Shares, the Board of Directors of the Company may redeem the Rights, in whole but not in part, at a price of \$.01 per Right (the "*Redemption Price*").

The redemption of the Rights may be made effective at such time on such basis with such conditions as the Board of Directors, in its sole discretion, may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

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The terms of the Rights may be amended by the Board of Directors of the Company without the consent of the holders of the Rights, including an amendment to lower certain thresholds described above to not less than the greater of (i) the sum of .001% and the largest percentage of the outstanding Common Shares then known to the Company to be beneficially owned by any person or group of affiliated or associated persons and (ii) 10%, except that from and after such time as any person or group of affiliated or associated persons becomes an Acquiring Person no such amendment may adversely affect the interests of the holders of the Rights.

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

A copy of the Rights Agreement has been filed with the Securities and Exchange Commission as an Exhibit to a Registration Statement on Form 8-A dated June 21, 1996. A copy of the Rights Agreement is available free of charge from the Company. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, which is hereby incorporated herein by reference.

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QuickLinks

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BEAZER HOMES USA, INC. AND THE SUBSIDIARY GUARANTORS PARTY HERETO

6<sup>1</sup>/<sub>2</sub>% Senior Notes due 2013

Second Supplemental Indenture

Dated as of November 13, 2003

U.S. BANK NATIONAL ASSOCIATION,  
Trustee

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*Exhibits*

Exhibit A	—	Form of Note
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SECOND SUPPLEMENTAL INDENTURE dated as of November 13, 2003 (the "*Supplemental Indenture*"), to the Indenture dated as of April 17, 2002 (as amended, modified or supplemented from time to time in accordance therewith, the "*Indenture*"), by and among BEAZER HOMES USA, INC., a Delaware corporation (the "*Company*"), each of the Subsidiary Guarantors (as defined herein) and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "*Trustee*").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the holders of Notes (as defined herein):

WHEREAS, the Company, the Subsidiary Guarantors and the Trustee have duly authorized the execution and delivery of the Indenture to provide for the issuance from time to time of senior debt securities ("*Securities*") to be issued in one or more series as in the Indenture provided;

WHEREAS, the Company and the Subsidiary Guarantors desire and have requested the Trustee to join them in the execution and delivery of this Supplemental Indenture in order to establish and provide for the issuance by the Company of a series of Securities designated as its 6<sup>1</sup>/<sub>2</sub>% Senior Notes due 2013, in the aggregate principal amount of \$200,000,000. The 6<sup>1</sup>/<sub>2</sub>% Senior Notes due 2013 shall be substantially in the form attached hereto as *Exhibit A* (the "*Initial Notes*") and the 6<sup>1</sup>/<sub>2</sub>% Senior Notes due 2013 to be offered in exchange for the Initial Notes pursuant to the terms of the Registration Rights Agreement, shall be substantially in the form attached hereto as *Exhibit B* (the "*Exchange Notes*" and together with the Initial Notes, the "*Notes*"), guaranteed by the Subsidiary Guarantors, on the terms set forth herein;

WHEREAS, Section 2.01 of the Indenture provides that a supplemental indenture may be entered into by the Company, the Subsidiary Guarantors and the Trustee for such purpose provided certain conditions are met;

WHEREAS, the conditions set forth in the Indenture for the execution and delivery of this Supplemental Indenture have been complied with; and

WHEREAS, all things necessary to make this Supplemental Indenture a valid agreement of the Company, the Subsidiary Guarantors and the Trustee, in accordance with its terms, and a valid amendment of, and supplement to, the Indenture have been done;

NOW, THEREFORE:

In consideration of the premises and the purchase and acceptance of the Notes by the holders thereof the Company and the Subsidiary Guarantors mutually covenant and agree with the Trustee, for the equal and ratable benefit of the holders, that the Indenture is supplemented and amended, to the extent expressed herein, as follows:

## ARTICLE ONE

### The 6<sup>1</sup>/<sub>2</sub>% Senior Notes Due 2013

#### Section 1.01. *Designation of 6<sup>1</sup>/<sub>2</sub>% Senior Notes Due 2013.*

The changes, modifications and supplements to the Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and govern the terms of, the Notes, which shall not be limited in aggregate principal amount, and shall not apply to any other Securities that may be issued under the Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. Pursuant to this Supplemental Indenture, there is hereby created and designated a series of Securities under the Indenture entitled "6<sup>1</sup>/<sub>2</sub>% Senior Notes Due 2013." The Notes shall be in the form of *Exhibit A* and *Exhibit B* hereto. The Notes shall be guaranteed by the Subsidiary Guarantors as provided herein. The Notes may bear an appropriate legend regarding original issue discount for federal income tax purposes. Subject to the terms herein, including compliance with Section 3.03 hereof, the Company may, at its option, without consent from the Holders, issue additional Notes from time to time.

#### Section 1.02. *Interest.*

The Notes shall bear interest at the rate set forth in the Notes. Interest on the Notes shall be payable to the persons in whose name the Notes are registered at the close of business on the record date for such interest payment. The date from which interest shall accrue for each Note shall be the most recent to occur of November 13, 2003 or the most recent Interest Payment Date.

#### Section 1.03. *Redemption.*

The Company, at its option, may redeem the Notes in accordance with the provisions of and at the Redemption Prices set forth in the Notes and in accordance with the provisions of the Indenture, including, without limitation, Article Three thereof.

#### Section 1.04. *Maturity.*

The date on which the principal of the Notes is payable, unless accelerated pursuant to the terms hereof, shall be November 15, 2013.

#### Section 1.05. *Other Terms of the Notes.*

Without limiting the foregoing provisions of this Article One, the terms of the Notes shall be as set forth in the forms of Note set forth in *Exhibit A* and *Exhibit B* hereto and as provided in the Indenture.

The Notes shall be payable and may be presented for payment, purchase, conversion, registration of transfer and exchange, without service charge, at the office of the Company maintained for such purpose in New York, New York, which shall initially be the office or agency of the Trustee.

## ARTICLE TWO

### Certain Definitions

The following terms have the meanings set forth below in this Supplemental Indenture. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Indenture. To the extent terms defined herein differ from the Indenture the terms defined herein will govern.

"*Acquisition Indebtedness*" means Indebtedness of any Person and its Subsidiaries existing at the time such Person became a Subsidiary of the Company (or such Person is merged with or into the Company or one of the Company's Subsidiaries) or assumed in connection with the acquisition of assets from any such Person, including, without limitation, Indebtedness Incurred in connection with, or in contemplation of (a) such Person being merged with or into or becoming a Subsidiary of the Company or one of its Subsidiaries (but excluding Indebtedness of such Person which is extinguished, retired or repaid in connection with such Person being merged with or into or becoming a Subsidiary of the Company or one of its Subsidiaries) or (b) such acquisition of assets from any such Person.

"*Affiliate*" of any Person means any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes hereof, each executive officer and director of the Company and each Subsidiary of the Company will be an Affiliate of the Company. In addition, for purposes hereof, control of a Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, the term "*Affiliate*" will not include, with respect to the Company or any Restricted Subsidiary which is a Wholly Owned Subsidiary of the Company, any Restricted Subsidiary which is a Wholly Owned Subsidiary of the Company.

"*Applicable Debt*" means all Indebtedness of the Company or any of its Restricted Subsidiaries (i) under the Bank Credit Facility or (ii) that is publicly traded (including in the Rule 144A market),

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including without limitation the Company's senior notes and senior subordinated notes outstanding on the Issue Date.

"*Asset Sale*" for any Person means the sale, lease, conveyance or other disposition (including, without limitation, by merger, consolidation or sale and leaseback transaction, and whether by operation of law or otherwise) of any of that Person's assets (including, without limitation, the sale or other disposition of Capital Stock of any Subsidiary of such Person, whether by such Person or such Subsidiary), whether owned on the date hereof or subsequently acquired in one transaction or a series of related transactions, in which such Person and/or its Subsidiaries receive cash and/or other consideration (including, without limitation, the unconditional assumption of Indebtedness of such Person and/or its Subsidiaries) having an aggregate Fair Market Value of \$500,000 or more as to each such transaction or series of related transactions; *provided, however*, that

(i) a transaction or series of related transactions that results in a Change of Control will not constitute an Asset Sale,

(ii) sales of homes in the ordinary course of business will not constitute Asset Sales,

(iii) sales, leases, conveyances or other dispositions, including, without limitation, exchanges or swaps of real estate in the ordinary course of business, for development of the Company's or any of its Subsidiaries' projects, will not constitute Asset Sales,

(iv) sales, leases, sale-leasebacks or other dispositions of amenities, model homes and other improvements at the Company's or its Subsidiaries' projects in the ordinary course of business will not constitute Asset Sales, and

(v) transactions between the Company and any of its Restricted Subsidiaries which are Wholly Owned Subsidiaries, or among such Restricted Subsidiaries which are Wholly Owned Subsidiaries of the Company, will not constitute Asset Sales.

"*Bank Credit Facility*" means the credit facility among the Company, as borrower thereunder, the Subsidiary Guarantors and the financial institutions named therein, as such facility may be amended, restated, supplemented or otherwise modified from time to time, and includes any facility extending the maturity of, refinancing or restructuring (including, without limitation, the inclusion of additional borrowers thereunder that are Unrestricted Subsidiaries) all or any portion of, the Indebtedness under such facility or any successor facilities and includes any facility with one or more lenders refinancing or replacing all or any portion of the Indebtedness under such facility or any successor facilities.

"*Bankruptcy Law*" means title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

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

"*Capital Stock*" of any Person means any and all shares, rights to purchase, warrants or options (whether or not currently exercisable), participations or other equivalents of or interests in (however designated and whether voting or non-voting) the equity (which includes, but is not limited to, common stock, preferred stock and partnership and joint venture interests) of such Person (excluding any debt securities that are convertible into, or exchangeable for, such equity).

"*Capitalized Lease Obligations*" of any Person means the obligations of such Person to pay rent or other amounts under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, and the amount of such obligation will be the capitalized amount thereof determined in accordance with GAAP.

"Change of Control" means any of the following:

- (i) the sale, lease, conveyance or other disposition of all or substantially all of the Company's assets as an entirety or substantially as an entirety to any Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) in one or a series of transactions; *provided* that a transaction where the holders of all classes of Common Equity of the Company immediately prior to such transaction own, directly or indirectly, 50 percent or more of the aggregate voting power of all classes of Common Equity of such Person or group immediately after such transaction will not be a Change of Control;
- (ii) the acquisition by the Company and/or any of its Subsidiaries of 50 percent or more of the aggregate voting power of all classes of Common Equity of the Company in one transaction or a series of related transactions;
- (iii) the liquidation or dissolution of the Company; *provided* that a liquidation or dissolution of the Company which is part of a transaction or series of related transactions that does not constitute a Change of Control under the "provided" clause of clause (i) above will not constitute a Change of Control under this clause (iii);
- (iv) any transaction or a series of related transactions (as a result of a tender offer, merger, consolidation or otherwise) that results in, or that is in connection with, (a) any Person, including a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) acquiring "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50 percent or more of the aggregate voting power of all classes of Common Equity of the Company or of any Person that possesses "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50 percent or more of the aggregate voting power of all classes of Common Equity of the Company or (b) less than 50 percent (measured by the aggregate voting power of all classes) of the Common Equity of the Company being registered under Section 12(b) or 12(g) of the Exchange Act; or
- (v) a majority of the Board of Directors of the Company not being comprised of Continuing Directors.

"Commission" means the U.S. Securities and Exchange Commission.

"Common Equity" of any Person means all Capital Stock of such Person that is generally entitled to (i) vote in the election of directors of such Person, or (ii) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management and policies of such Person.

"Consolidated Cash Flow Available for Fixed Charges" of the Company and its Restricted Subsidiaries means for any period, the sum of the amounts for such period of

- (i) Consolidated Net Income, *plus*
- (ii) Consolidated Income Tax Expense (without regard to income tax expense or credits attributable to extraordinary and nonrecurring gains or losses on Asset Sales), *plus*
- (iii) Consolidated Interest Expense, *plus*
- (iv) all depreciation, and, without duplication, amortization (including, without limitation, capitalized interest amortized to cost of sales), *plus*
- (v) all other non-cash items reducing Consolidated Net Income during such period,

*minus* all other non-cash items increasing Consolidated Net Income during such period, all as determined on a consolidated basis for the Company and its Restricted Subsidiaries in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" of the Company means, with respect to any determination date, the ratio of (i) Consolidated Cash Flow Available for Fixed Charges of the Company for the prior four full fiscal quarters for which financial results have been reported immediately preceding the determination date, to (ii) the aggregate Consolidated Interest Incurred of the Company for the prior four full fiscal quarters for which financial results have been reported immediately preceding the determination date; *provided* that

- (i) with respect to any Indebtedness Incurred during, and remaining outstanding at the end of, such four full fiscal quarter period, such Indebtedness will be assumed to have been incurred as of the first day of such four full fiscal quarter period,
- (ii) with respect to Indebtedness repaid (other than a repayment of revolving credit obligations repaid solely out of operating cash flows) during such four full fiscal quarter period, such Indebtedness will be assumed to have been repaid on the first day of such four full fiscal quarter period,
- (iii) with respect to the Incurrence of any Acquisition Indebtedness, such Indebtedness and any proceeds therefrom will be assumed to have been Incurred and applied as of the first day of such four full fiscal quarter period, and the results of operations of any Person and any Subsidiary of such Person that, in connection with or in contemplation of such Incurrence, becomes a Subsidiary of the Company or is merged with or into the Company or one of the Company's Subsidiaries or whose assets are acquired, will be included, on a pro forma basis, in the calculation of the Consolidated Fixed Charge Coverage Ratio as if such transaction had occurred on the first day of such four full fiscal quarter period, and
- (iv) with respect to any other transaction pursuant to which any Person becomes a Subsidiary of the Company or is merged with or into the Company or one of the Company's Subsidiaries or pursuant to which any Person's assets are acquired, such Consolidated Fixed Charge Coverage Ratio shall be calculated on a pro forma basis as if such transaction had occurred on the first day of such four full fiscal quarter period, but only if such transaction would require a pro forma presentation in financial statements prepared pursuant to Rule 11-02 of Regulation S-X under the Securities Act.

"*Consolidated Income Tax Expense*" of the Company for any period means the income tax expense of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Interest Expense*" of the Company for any period means the Interest Expense of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Interest Incurred*" of the Company for any period means the Interest Incurred of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

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

(i) the net income (or loss) of any Person (other than a Restricted Subsidiary) in which any Person (including, without limitation, an Unrestricted Subsidiary) other than the Company or any Restricted Subsidiary has an ownership interest, except to the extent that any such income has actually been received by the Company or any Restricted Subsidiary in the form of cash dividends

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or similar cash distributions during such period, or in any other form but converted to cash during such period,

(ii) except to the extent includable in Consolidated Net Income pursuant to the foregoing clause (i), the net income (or loss) of any Person that accrued prior to the date that (a) such Person becomes a Restricted Subsidiary or is merged with or into or consolidated with the Company or any of its Restricted Subsidiaries or (b) the assets of such Person are acquired by the Company or any of its Restricted Subsidiaries,

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

(iv) in the case of a successor to the Company by consolidation, merger or transfer of its assets, any earnings of the successor prior to such merger, consolidation or transfer of assets and

(v) the gains (but not losses) realized during such period by the Company or any of its Restricted Subsidiaries resulting from (a) the acquisition of securities issued by the Company or extinguishment of Indebtedness of the Company or any of its Restricted Subsidiaries, (b) Asset Sales by the Company or any of its Restricted Subsidiaries and (c) other extraordinary items realized by the Company or any of its Restricted Subsidiaries.

Notwithstanding the foregoing, in calculating Consolidated Net Income, the Company will be entitled to take into consideration the tax benefits associated with any loss described in clause (v) of the preceding sentence, but only to the extent such tax benefits are actually recognized by the Company or any of its Restricted Subsidiaries during such period; *provided, further*, that there will be included in such net income, without duplication, the net income of any Unrestricted Subsidiary to the extent such net income is actually received by the Company or any of its Restricted Subsidiaries in the form of cash dividends or similar cash distributions during such period, or in any other form but converted to cash during such period.

"*Consolidated Tangible Assets*" of the Company as of any date means the total amount of assets of the Company and its Restricted Subsidiaries (less applicable reserves) on a consolidated basis at the end of the fiscal quarter immediately preceding such date, as determined in accordance with GAAP, less: (i) Intangible Assets and (ii) appropriate adjustments on account of minority interests of other Persons holding equity investments in Restricted Subsidiaries, in the case of each of clauses (i) and (ii) above, as reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the fiscal quarter immediately preceding such date.

"*Consolidated Tangible Net Worth*" of the Company as of any date means the stockholders' equity (including any Preferred Stock that is classified as equity under GAAP, other than Disqualified Stock) of the Company and its Restricted Subsidiaries on a consolidated basis at the end of the fiscal quarter immediately preceding such date, as determined in accordance with GAAP, plus any amount of unvested deferred compensation included, in accordance with GAAP, as an offset to stockholders' equity, less the amount of Intangible Assets reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the fiscal quarter immediately preceding such date.

"*Continuing Director*" means at any date a member of the Board of Directors of the Company who

(i) was a member of the Board of Directors of the Company on the initial issuance date of the Notes hereunder or

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(ii) was nominated for election or elected to the Board of Directors of the Company with the affirmative vote of at least a majority of the directors who were Continuing Directors at the time of such nomination or election.

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

"*Default*" means any event, act or condition that is, or after notice or the passage of time, or both, would be, an Event of Default.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the final maturity date of the Notes; *provided* that any Capital Stock which would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require the Company to repurchase or redeem such Capital Stock upon the occurrence of a change of control occurring prior to the final maturity of the Notes will not constitute Disqualified Stock if the change of control provisions applicable to such Capital Stock are no more favorable to the holders of such Capital Stock than those contained in Section 3.05 hereof and such Capital Stock specifically provides

that the Company will not repurchase or redeem (or be required to repurchase or redeem) any such Capital Stock pursuant to such provisions prior to the Company's repurchase of Notes pursuant to Section 3.05 hereof.

"*Disqualified Stock Dividend*" of any Person means, for any dividend payable with regard to Disqualified Stock issued by such Person, the amount of such dividend multiplied by a fraction, the numerator of which is one and the denominator of which is one minus the maximum statutory combined federal, state and local income tax rate (expressed as a decimal number between 1 and 0) then applicable to such Person.

"*Equity Offering*" means a public or private equity offering or sale by the Company for cash of Capital Stock, other than an offering or sale of Disqualified Stock.

"*Event of Default*" has the meaning set forth in Section 5.01 hereof.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Exchange Notes*" has the meaning provided in the Recitals.

"*Existing Indebtedness*" means all of the Indebtedness of the Company and its Subsidiaries that is outstanding on the date hereof.

"*Extinguished Covenants*" has the meaning set forth in Section 3.13 hereof.

"*Fair Market Value*" with respect to any asset or property means the sale value that would be obtained in an arm's length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy. Fair Market Value shall be determined by the Board of Directors of the Company acting in good faith and shall be evidenced by a board resolution (certified by the Secretary or Assistant Secretary of the Company) delivered to the Trustee.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and interpretations of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and interpretations of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect on April 17, 2002.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any interest rate swap agreement, foreign currency exchange agreement, interest rate collar agreement, option or futures contract or other similar agreement or arrangement relating to interest rates or foreign exchange rates.

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

"*Incur*" means to, directly or indirectly, create, incur, assume, guarantee, extend the maturity of, or otherwise become liable with respect to any Indebtedness; *provided, however*, that neither the accrual of interest (whether such interest is payable in cash or kind) nor the accretion of original issue discount shall be considered an Incurrence of Indebtedness.

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"*Indebtedness*" of any Person at any date means, without duplication,

(i) all indebtedness of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof),

(ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments,

(iii) all fixed obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto), other than standby letters of credit issued for the benefit of, or surety and performance bonds issued by, such Person in the ordinary course of business,

(iv) all obligations of such Person with respect to Hedging Obligations (other than those that fix or cap the interest rate on variable rate Indebtedness otherwise permitted hereunder or that fix the exchange rate in connection with Indebtedness denominated in a foreign currency and otherwise permitted hereunder),

(v) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, including, without limitation, all conditional sale obligations of such Person and all obligations under any title retention agreement; *provided, however*, that (a) any obligations described in this clause (v) which are non-interest bearing and which have a maturity of not more than six months from the date of Incurrence thereof shall not constitute Indebtedness and (b) trade payables and accrued expenses Incurred in the ordinary course of business shall not constitute Indebtedness,

(vi) all Capitalized Lease Obligations of such Person,

(vii) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person,

(viii) all Indebtedness of others guaranteed by, or otherwise the liability of, such Person to the extent of such guarantee or liability, and

(ix) all Disqualified Stock issued by such Person (the amount of Indebtedness represented by any Disqualified Stock will equal the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends).

The amount of Indebtedness of any Person at any date will be

(a) the outstanding balance at such date of all unconditional obligations as described above,

(b) the maximum liability of such Person for any contingent obligations under clause (viii) above and

(c) in the case of clause (vii) (if the Indebtedness referred to therein is not assumed by such Person), the lesser of the (A) Fair Market Value of all assets subject to a Lien securing the Indebtedness of others on the date that the Lien attaches and (B) amount of the Indebtedness secured.

"*Independent Financial Advisor*" means an accounting, appraisal or investment banking firm of nationally recognized standing that is, in the reasonable judgment of the Company's Board of Directors, (i) qualified to perform the task for which it has been engaged, and (ii) disinterested and independent, in a direct and indirect manner, of the parties to the Affiliate Transaction with respect to which such firm has been engaged.

"*Initial Notes*" has the meaning provided in the Recitals.

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"*interest*" means, with respect to the Notes, the sum of interest and any Liquidated Damages on the Notes.

"*Intangible Assets*" of the Company means all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights and all other items which would be treated as intangibles on the consolidated balance sheet of the Company and its Restricted Subsidiaries prepared in accordance with GAAP.

"*Interest Expense*" of any Person for any period means, without duplication, the aggregate amount of (i) interest which, in conformity with GAAP, would be set opposite the caption "interest expense" or any like caption on an income statement for such Person (including, without limitation, imputed interest included in Capitalized Lease Obligations, all commissions, discounts and other fees and charges owed with respect to letters of credit securing financial obligations and bankers' acceptance financing, the net costs associated with Hedging Obligations, amortization of other financing fees and expenses, the interest portion of any deferred payment obligation, amortization of discount or premium, if any, and all other non-cash interest expense other than interest and other charges amortized to cost of sales) and includes, with respect to the Company and its Restricted Subsidiaries, without duplication (including duplication of the foregoing items), all interest amortized to cost of sales for such period, and (ii) the amount of Disqualified Stock Dividends recognized by the Company on any Disqualified Stock whether or not paid during such period.

"*Interest Incurred*" of any Person for any period means, without duplication, the aggregate amount of (i) interest which, in conformity with GAAP, would be set opposite the caption "interest expense" or any like caption on an income statement for such Person (including, without limitation, imputed interest included in Capitalized Lease Obligations, all commissions, discounts and other fees and charges owed with respect to letters of credit securing financial obligations and bankers' acceptance financing, the net costs associated with Hedging Obligations, amortization of other financing fees and expenses, the interest portion of any deferred payment obligation, amortization of discount or premium, if any, and all other non-cash interest expense other than interest and other charges amortized to cost of sales) and includes, with respect to the Company and its Restricted Subsidiaries, without duplication (including duplication of the foregoing items), all interest capitalized for such period, all interest attributable to discontinued operations for such period to the extent not set forth on the income statement under the caption "interest expense" or any like caption, and all interest actually paid by the Company or a Restricted Subsidiary under any guarantee of Indebtedness (including, without limitation, a guarantee of principal, interest or any combination thereof) of any other Person during such period and (ii) the amount of Disqualified Stock Dividends recognized by the Company on any Disqualified Stock whether or not declared during such period.

"*Investment Grade*" means, with respect to a debt rating of the Notes, a rating of Baa3 or higher by Moody's together with a rating of BBB- or higher by S&P or, in the event S&P or Moody's or both shall cease rating the Notes (for reasons outside the control of the Company) and the Company shall select any other Rating Agency, the equivalent of such ratings by such other Rating Agency.

"*Investments*" of any Person means all (i) investments by such Person in any other Person in the form of loans, advances or capital contributions, (ii) guarantees of Indebtedness or other obligations of any other Person by such Person, (iii) purchases (or other acquisitions for consideration) by such Person of Indebtedness, Capital Stock or other securities of any other Person and (iv) other items that would be classified as investments on a balance sheet of such Person determined in accordance with GAAP.

"*Issue Date*" means the initial date of issuance of the Notes.

"*Legal Holiday*" means Saturday, Sunday or a day on which banking institutions in New York, New York, Chicago, Illinois, or at a place of payment are authorized or obligated by law, regulation or

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executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment shall be made at that place on the next succeeding day that is not a Legal Holiday.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or other similar encumbrance of any kind upon or in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including, without limitation, 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).

"*Liquidated Damages*" shall have the meaning provided in paragraph 6 of the Initial Note.

"*Material Subsidiary*" means any Subsidiary of the Company which accounted for five percent or more of the Consolidated Tangible Assets or Consolidated Cash Flow Available for Fixed Charges of the Company on a consolidated basis for the fiscal year ending immediately prior to any Default or Event of Default.

"*Moody's*" means Moody's Investors Service, Inc. or any successor to its debt rating business.

"*Net Proceeds*" means

(i) cash (in U.S. dollars or freely convertible into U.S. dollars) received by the Company or any Restricted Subsidiary from an Asset Sale net of

(a) all brokerage commissions, investment banking fees and all other fees and expenses (including, without limitation, fees and expenses of counsel, financial advisors, accountants and investment bankers) related to such Asset Sale,

(b) provisions for all income and other taxes measured by or resulting from such Asset Sale of the Company or any of its Restricted Subsidiaries,

(c) payments made to retire Indebtedness that was Incurred in accordance with the terms hereof and that either (1) is secured by a Lien incurred in accordance with the terms hereof on the property or assets sold or (2) is required in connection with such Asset Sale to the extent actually repaid in cash,

(d) amounts required to be paid to any Person (other than the Company or a Restricted Subsidiary) owning a beneficial interest in the assets subject to the Asset Sale and

(e) appropriate amounts to be provided by the Company or any Restricted Subsidiary thereof, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary thereof, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations or post-closing purchase price adjustments associated with such Asset Sale, all as reflected in an Officers' Certificate delivered to the Trustee, and

(ii) all non-cash consideration received by the Company or any of its Restricted Subsidiaries from such Asset Sale upon the liquidation or conversion of such consideration into cash, without duplication, net of all items enumerated in subclauses (a) through (e) of clause (i) hereof.

"Non-Recourse Indebtedness" with respect to any Person means Indebtedness of such Person for which (i) the sole legal recourse for collection of principal and interest on such Indebtedness is against the specific property identified in the instruments evidencing or securing such Indebtedness and such property was acquired with the proceeds of such Indebtedness or such Indebtedness was Incurred

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within 90 days after the acquisition of such property and (ii) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness.

"Officer" means the chairman, the chief executive officer, the president, the chief financial officer, the chief operating officer, the chief accounting officer, the treasurer, or any assistant treasurer, the controller, the secretary, any assistant secretary or any executive vice president or vice president of a Person.

"Officers' Certificate" means a certificate signed by two Officers, one of whom must be the Person's chief executive officer, chief operating officer, chief financial officer, chief accounting officer or executive vice president.

"Paying Agent" means any office or agency where Notes and the Subsidiary Guarantees may be presented for payment.

"Permitted Investments" of any Person means Investments of such Person in (i) direct obligations of the United States or any agency thereof or obligations guaranteed by the United States or any agency thereof, in each case maturing within 180 days of the date of acquisition thereof, (ii) certificates of deposit maturing within 180 days of the date of acquisition thereof issued by a bank, trust company or savings and loan association which is organized under the laws of the United States or any state thereof having capital, surplus and undivided profits aggregating in excess of \$250 million and a Keefe Bank Watch Rating of C or better, (iii) certificates of deposit maturing within 180 days of the date of acquisition thereof issued by a bank, trust company or savings and loan association organized under the laws of the United States or any state thereof other than banks, trust companies or savings and loan associations satisfying the criteria in (ii) above, provided that the aggregate amount of all certificates of deposit issued to the Company at any one time by such bank, trust company or savings and loan association will not exceed \$100,000, (iv) commercial paper given the highest rating by two established national credit rating agencies and maturing not more than 180 days from the date of the acquisition thereof, (v) repurchase agreements or money-market accounts which are fully secured by direct obligations of the United States or any agency thereof and (vi) in the case of the Company and its Subsidiaries, any receivables or loans taken by the Company or a Subsidiary in connection with the sale of any asset otherwise permitted hereunder.

"Permitted Liens" means

(i) Liens for taxes, assessments or governmental charges or claims that either (a) are not yet delinquent or (b) are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established or other provisions have been made in accordance with GAAP,

(ii) statutory Liens of landlords and carriers', warehousemen's, mechanics', suppliers', materialmen's, repairmen's or other Liens imposed by law and arising in the ordinary course of business and with respect to amounts that, to the extent applicable, either (a) are not yet delinquent or (b) are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established or other provisions have been made in accordance with GAAP,

(iii) Liens (other than any Lien imposed by the Employee Retirement Income Security Act of 1974, as amended) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security,

(iv) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory obligations, surety and appeal bonds, progress payments, government contracts and other obligations of like nature (exclusive of obligations for the payment of borrowed money), in each case incurred in the ordinary course of business of the Company and its Subsidiaries,

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(v) attachment or judgment Liens not giving rise to a Default or an Event of Default and which are being contested in good faith by appropriate proceedings,

(vi) easements, rights-of-way, restrictions and other similar charges or encumbrances not materially interfering with the ordinary course of business of the Company and its Subsidiaries,

(vii) zoning restrictions, licenses, restrictions on the use of real property or minor irregularities in title thereto which do not materially impair the use of such real property in the ordinary course of business of the Company and its Subsidiaries or the value of such real property for the purpose of such business,

(viii) leases or subleases granted to others not materially interfering with the ordinary course of business of the Company and its Subsidiaries,

(ix) purchase money mortgages (including, without limitation, Capitalized Lease Obligations and purchase money security interests),

(x) Liens securing Refinancing Indebtedness; *provided* that such Liens only extend to assets which are similar to the type of assets securing the Indebtedness being refinanced and such refinanced Indebtedness was previously secured by such similar assets,

(xi) Liens securing Indebtedness of the Company and its Restricted Subsidiaries permitted to be Incurred hereunder; *provided* that the aggregate amount of Indebtedness secured by Liens (other than Non-Recourse Indebtedness secured by Liens) will not exceed 40 percent of Consolidated Tangible Assets,

(xii) any interest in or title of a lessor to property subject to any Capitalized Lease Obligations incurred in compliance with the provisions hereof,

(xiii) Liens existing on the date hereof, including, without limitation, Liens securing Existing Indebtedness,

(xiv) any option, contract or other agreement to sell an asset; *provided* such sale is not otherwise prohibited by the terms hereof,

(xv) Liens securing Non-Recourse Indebtedness of the Company or a Restricted Subsidiary thereof; *provided* that such Liens apply only to the property financed out of the net proceeds of such Non-Recourse Indebtedness within 90 days of the Incurrence of such Non-Recourse Indebtedness,

(xvi) Liens on property or assets of any Restricted Subsidiary securing Indebtedness of such Restricted Subsidiary owing to the Company or one or more Restricted Subsidiaries,

(xvii) Liens securing Indebtedness of an Unrestricted Subsidiary,

(xviii) any right of a lender or lenders to which the Company or a Restricted Subsidiary may be indebted to offset against, or appropriate and apply to the payment of, such Indebtedness any and all balances, credits, deposits, accounts or monies of the Company or a Restricted Subsidiary with or held by such lender or lenders,

(xix) any pledge or deposit of cash or property in conjunction with obtaining surety and performance bonds and letters of credit required to engage in constructing on-site and off-site improvements required by municipalities or other governmental authorities in the ordinary course of business of the Company or any Restricted Subsidiary,

(xx) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

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(xxi) Liens encumbering customary initial deposits and margin deposits, and other Liens that are customary in the industry and incurred in the ordinary course of business securing Indebtedness under Hedging Obligations and forward contracts, options, futures contracts, futures options or similar agreements or arrangements designed to protect the Company or any of its Subsidiaries from fluctuations in the price of commodities,

(xxii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Company or any of its Subsidiaries in the ordinary course of business,

(xxiii) Liens on property acquired by the Company or a Restricted Subsidiary and Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Company or any Restricted Subsidiary or becomes a Restricted Subsidiary; *provided* that in each case such Liens (A) were in existence prior to the contemplation of such acquisition, merger or consolidation and (B) do not extend to any asset other than those of the Person merged with or into or consolidated with the Company or the Restricted Subsidiary or the property acquired by the Company or the Restricted Subsidiary, and

(xxiv) Liens replacing any of the Liens described in clauses (xiii) and (xxiii) above; *provided* that (A) the principal amount of the Indebtedness secured by such Liens shall not be increased (except to the extent of reasonable premiums or other payments required to be paid in connection with the repayment of the previously secured Indebtedness or Incurrence of related Refinancing Indebtedness and expenses Incurred in connection therewith), (B) the principal amount of new Indebtedness secured by such Liens, determined as of the date of Incurrence, has a Weighted Average Life of Maturity at least equal to the remaining Weighted Average Life to Maturity of the previously secured Indebtedness, (C) the maturity of the new Indebtedness secured by such Liens is not earlier than that of the previously secured Indebtedness Incurred or repaid, and (D) the new Liens shall be limited to the property or part thereof which secured the Lien so replaced or property substituted therefor as a result of the destruction, condemnation or damage of such property.

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

"Preferred Stock" of any Person means all Capital Stock of such Person which has a preference in liquidation or with respect to the payment of dividends.

"Rating Agency" means a statistical rating agency or agencies, as the case may be, nationally recognized in the United States and selected by the Company (as certified by a resolution of the Board of Directors of the Company) which shall be substituted for S&P or Moody's, or both, as the case may be.

"Refinancing Indebtedness" means Indebtedness that refunds, refinances or extends any Existing Indebtedness or other Indebtedness permitted to be incurred by the Company or its Restricted Subsidiaries pursuant to the terms hereof, but only to the extent that

- (i) the Refinancing Indebtedness is subordinated to the Notes or the Subsidiary Guarantees, as the case may be, to the same extent as the Indebtedness being refunded, refinanced or extended, if at all,
- (ii) the Refinancing Indebtedness is scheduled to mature either (a) no earlier than the Indebtedness being refunded, refinanced or extended, or (b) after the maturity date of the Notes,
- (iii) the portion, if any, of the Refinancing Indebtedness that is scheduled to mature on or prior to the maturity date of the Notes has a Weighted Average Life to Maturity at the time such

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Refinancing Indebtedness is Incurred that is equal to or greater than the Weighted Average Life to Maturity of the portion of the Indebtedness being refunded, refinanced or extended that is scheduled to mature on or prior to the maturity date of the Notes,

- (iv) such Refinancing Indebtedness is in an aggregate amount that is equal to or less than the aggregate amount then outstanding (including accrued interest) under the Indebtedness being refunded, refinanced or extended plus an amount necessary to pay any reasonable fees and expenses, including premiums and defeasance costs, related to such refinancing,
- (v) such Refinancing Indebtedness is Incurred by the same Person that initially Incurred the Indebtedness being refunded, refinanced or extended, except that the Company may Incur Refinancing Indebtedness to refund, refinance or extend Indebtedness of any Restricted Subsidiary, and
- (vi) such Refinancing Indebtedness is Incurred within 180 days after the Indebtedness being refunded, refinanced or extended is so refunded, refinanced or extended.

"Registrar" means an office or agency where Notes may be presented for registration of transfer or for exchange.

"Registration Rights Agreement" means that certain registration rights agreement by and among the Company, the Subsidiary Guarantors and the Initial Purchasers dated as of November 13, 2003.

"Restricted Investment" with respect to any Person means any Investment (other than any Permitted Investment) by such Person in any (i) of its Affiliates, (ii) executive officer or director or any Affiliate of such Person, or (iii) any other Person other than a Restricted Subsidiary. Notwithstanding the above, a Subsidiary Guarantee shall not be deemed a Restricted Investment.

"Restricted Payment" with respect to any Person means

- (i) the declaration of any dividend or the making of any other payment or distribution of cash, securities or other property or assets in respect of such Person's Capital Stock (except that a dividend payable solely in Capital Stock (other than Disqualified Stock) of such Person will not constitute a Restricted Payment),
- (ii) any payment on account of the purchase, redemption, retirement or other acquisition for value of such Person's Capital Stock or any other payment or distribution made in respect thereof (other than payments or distributions excluded from the definition of Restricted Payment in clause (i) above), either directly or indirectly,
- (iii) any Restricted Investment, and
- (iv) any principal payment, redemption, repurchase, defeasance or other acquisition or retirement of any Indebtedness of any Unrestricted Subsidiary or of Indebtedness of the Company which is subordinated in right of payment to the Notes or of Indebtedness of a Restricted Subsidiary which is subordinated in right of payment to its Subsidiary Guarantee;

provided, however, that with respect to the Company and its Subsidiaries, Restricted Payments will not include (a) any payment described in clause (i), (ii) or (iii) above made to the Company or any of its Restricted Subsidiaries which are Wholly Owned Subsidiaries by any of the Company's Subsidiaries, or (b) any purchase, redemption, retirement or other acquisition for value of Indebtedness or Capital Stock of such Person or its Subsidiaries if the consideration therefor consists solely of Capital Stock (other than Disqualified Stock) of such Person.

"Restricted Subsidiary" means any Subsidiary of the Company which is not an Unrestricted Subsidiary.

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"S&P" means Standard and Poor's Ratings Service, a division of McGraw Hill, Inc., a New York corporation, or any successor to its debt rating business.

"Security Register" is a register of the Notes and of their transfer and exchange kept by the Registrar.

"Subsidiary" of any Person means any (i) corporation of which at least a majority of the aggregate voting power of all classes of the Common Equity is directly or indirectly beneficially owned by such Person, and (ii) any entity other than a corporation of which such Person, directly or indirectly, beneficially owns at least a majority of the Common Equity.

"Subsidiary Guarantee" means the guarantee of the Notes by each Subsidiary Guarantor hereunder.

"*Subsidiary Guarantors*" means each of (i) Beazer Homes Corp., a Tennessee corporation, Beazer/Squires Realty, Inc., a North Carolina corporation, Beazer Homes Sales Arizona, Inc., a Delaware corporation, Beazer Realty Corp., a Georgia corporation, Beazer Mortgage Corporation, a Delaware corporation, Beazer Homes Holdings Corp., a Delaware corporation, Beazer Homes Texas Holdings, Inc., a Delaware corporation, Beazer Homes Texas, L.P., a Delaware limited partnership, April Corporation, a Colorado corporation, Beazer SPE, LLC, a Georgia limited liability company, Beazer Homes Investment Corp., a Delaware corporation, Beazer Realty, Inc., a New Jersey corporation, Beazer Clarksburg, LLC, a Maryland limited liability company, Homebuilders Title Services of Virginia, Inc., a Virginia corporation, Homebuilders Title Services, Inc., a Delaware corporation, Texas Lone Star Title, L.P., a Texas limited partnership, Beazer Allied Companies Holdings, Inc., a Delaware corporation, Crossmann Communities of North Carolina, Inc., a North Carolina corporation, Crossmann Communities of Ohio, Inc., an Ohio corporation, Crossmann Communities of Tennessee, LLC, a Tennessee limited liability company, Crossmann Communities Partnership, an Indiana general partnership, Crossmann Investments, Inc., an Indiana corporation, Crossmann Management, Inc., an Indiana corporation, Crossmann Mortgage Corp., an Indiana corporation, Cutter Homes, Ltd., a Kentucky corporation, Deluxe Homes of Lafayette, Inc., an Indiana corporation, Deluxe Homes of Ohio, Inc., an Ohio corporation, Beazer Realty, Inc. (formerly Merit Realty, Inc.), an Indiana corporation, Paragon Title, LLC, an Indiana limited liability company, Pinehurst Builders LLC, a South Carolina limited liability company, and Trinity Homes LLC, an Indiana limited liability company and (ii) each of the Company's Subsidiaries that becomes a guarantor of the Notes pursuant to the provisions of this Supplemental Indenture.

"*Trust Officer*" means any vice president, trust officer or other authorized person of the Trustee assigned by the Trustee to administer its corporate trust matters.

"*Trustee*" means the party named as such until a successor replaces such party in accordance with the applicable provisions of the Indenture and thereafter means the successor trustee serving under the Indenture.

"*Unrestricted Subsidiary*" means United Home Insurance Corporation, a Vermont corporation, and Security Title Insurance Company, Inc., a Vermont corporation, and each of the Subsidiaries of the Company so designated by a resolution adopted by the Board of Directors of the Company as provided below and *provided* that (a) neither the Company nor any of its other Subsidiaries (other than Unrestricted Subsidiaries) (1) provides any direct or indirect credit support for any Indebtedness of such Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness) or (2) is directly or indirectly liable for any Indebtedness of such Subsidiary, (b) the creditors with respect to Indebtedness for borrowed money of such Subsidiary have agreed in writing that they have no recourse, direct or indirect, to the Company or any other Subsidiary of the Company (other than Unrestricted Subsidiaries), including, without limitation, recourse with respect to the payment of principal or interest on any Indebtedness of such Subsidiary and (c) no default with respect to any Indebtedness of such Subsidiary (including any right which the holders thereof may have to take

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enforcement action against such Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Company and of its other Subsidiaries (other than other Unrestricted Subsidiaries), to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity. The Board of Directors of the Company may designate an Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that (i) any such redesignation will be deemed to be an Incurrence by the Company and its Restricted Subsidiaries of the Indebtedness (if any) of such redesignated Subsidiary in accordance with Section 3.03 hereof as of the date of such redesignation, (ii) immediately after giving effect to such redesignation and the Incurrence of any such additional Indebtedness, the Company and its Restricted Subsidiaries could incur \$1.00 of additional Indebtedness under the Consolidated Fixed Charge Coverage Ratio contained in Section 3.03 hereof and (iii) the Liens of such Unrestricted Subsidiary could then be incurred in accordance with Section 3.07 hereof as of the date of such redesignation. Subject to the foregoing, the Board of Directors of the Company also may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (i) all previous Investments by the Company and its Restricted Subsidiaries in such Restricted Subsidiary (net of any returns previously paid on such Investments) will be deemed to be Restricted Payments at the time of such designation and will reduce the amount available for Restricted Payments under Section 3.02 hereof, (ii) immediately after giving effect to such designation and reduction of amounts available for Restricted Payments under Section 3.02 hereof, the Company and its Restricted Subsidiaries could incur \$1.00 of additional Indebtedness under the Consolidated Fixed Charge Coverage Ratio contained in Section 3.03 hereof and (iii) no Default or Event of Default shall have occurred or be continuing. Any such designation or redesignation by the Board of Directors of the Company will be evidenced to the Trustee by the filing with the Trustee of a certified copy of the resolution of the Board of Directors of the Company giving effect to such designation or redesignation and an Officers' Certificate certifying that such designation or redesignation complied with the foregoing conditions and setting forth the underlying calculations.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness or portion thereof, at any date, the number of years obtained by dividing (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including, without limitation, payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the sum of all such payments described in clause (a) above.

"*Wholly Owned Subsidiary*" of any Person means (i) a Subsidiary, of which 100 percent of the Common Equity (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) is owned directly by such Person or through one or more other Wholly Owned Subsidiaries of such Person, or (ii) any entity other than a corporation in which such Person, directly or indirectly, owns all of the Common Equity of such entity.

"*Working Capital Facilities*" means, collectively, the Bank Credit Facility and one or more other facilities among the Company, any Subsidiary Guarantor and one or more lenders pursuant to which the Company or any Subsidiary Guarantor may Incur Indebtedness for working capital purposes or to finance the acquisition, holding or development of property by the Company and the Restricted Subsidiaries (including the financing of any related interest reserve), as any such facility may be amended, restated, supplemented or otherwise modified from time to time, and includes any agreement extending the maturity of, or restructuring (including, without limitation, the inclusion of additional borrowers thereunder that are Unrestricted Subsidiaries), all or any portion of the Indebtedness under such facility or any successor facilities and includes any facility with one or more lenders refinancing or replacing all or any portion of the Indebtedness under such facility or any successor facility.

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## ARTICLE THREE

### Covenants

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, make any Asset Sale unless

(i) the Company or the Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value for the shares or assets sold or otherwise disposed of; *provided* that the aggregate Fair Market Value of the consideration received from any Asset Sale that is not in the form of cash or cash equivalents (in U.S. dollars or freely convertible into U.S. dollars) will not, when aggregated with the Fair Market Value of all other non-cash consideration received by the Company and its Restricted Subsidiaries from all previous Asset Sales since the date of the Indenture that has not been converted into cash or cash equivalents (in U.S. dollars or freely convertible into U.S. dollars), exceed five percent of the Consolidated Tangible Assets of the Company at the time of the Asset Sale under consideration, and

(ii) the Company will apply or will cause one or more of its Restricted Subsidiaries to apply an amount equal to the aggregate Net Proceeds received by the Company or any Restricted Subsidiary from all Asset Sales occurring subsequent to the date of the Indenture as follows: (A) to repay any outstanding Indebtedness of the Company that is not subordinated to the Notes or other Indebtedness of the Company, or to the payment of any Indebtedness of any Restricted Subsidiary that is not subordinated to the Subsidiary Guarantee of such Restricted Subsidiary, in each case within one year after such Asset Sale; or (B) to acquire properties and assets that will be used in the businesses of the Company and its Restricted Subsidiaries existing on the date hereof within one year after such Asset Sale,

*provided, however,* that (x) in the case of applications contemplated by clause (ii)(A) the payment of such Indebtedness will result in a permanent reduction in committed amounts, if any, under the Indebtedness repaid at least equal to the amount of the payment made, (y) in the case of applications contemplated by clause (ii)(B), the Board of Directors has, within such one year period, adopted in good faith a resolution committing such Net Proceeds to such use and (z) none of such Net Proceeds shall be used to make any Restricted Payment.

The amount of such Net Proceeds neither used to repay the Indebtedness described above nor used or invested as set forth in the preceding sentence constitutes "*Excess Proceeds.*" Notwithstanding the above, any Asset Sale that is subject to Section 3.10 hereof shall not be subject to this Section 3.01.

(b) Notwithstanding this Section 3.01 hereof, to the extent the Company or any of its Restricted Subsidiaries receives securities or other non-cash property or assets as proceeds of an Asset Sale, the Company will not be required to make any application of such non-cash proceeds required by clause (ii) of this Section 3.01 until it receives cash or cash equivalent proceeds from a sale, repayment, exchange, redemption or retirement of or extraordinary dividend or return of capital on such non-cash property. Any amounts deferred pursuant to the preceding sentence shall be applied in accordance with clause (ii) of this Section 3.01 when cash or cash equivalent proceeds are thereafter received from a sale, repayment, exchange, redemption or retirement of or extraordinary dividend or return of capital on such non-cash property.

(c) When the aggregate amount of Excess Proceeds equals \$10,000,000 or more, the Company shall so notify the Trustee in writing by delivery of an Officers' Certificate and will offer to purchase from all Holders (an "*Excess Proceeds Offer*"), and shall purchase from Holders accepting such Excess Proceeds Offer on the date fixed for the closing of such Excess Proceeds Offer (the "*Asset Sale Offer*")

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*Date*"), the maximum principal amount (expressed as a multiple of \$1,000) of Notes plus accrued and unpaid interest thereon, if any, to the Asset Sale Offer Date that may be purchased and paid, as the case may be, out of the Excess Proceeds, at an offer price (the "*Asset Sale Offer Price*") in cash in an amount equal to 100 percent of the principal amount thereof plus accrued and unpaid interest, if any, to the Asset Sale Offer Date, in accordance with the procedures set forth in this Section 3.01. To the extent that the aggregate amount of Notes tendered pursuant to an Excess Proceeds Offer is less than the Excess Proceeds relating thereto, then the Company may use such Excess Proceeds, or a portion thereof, for general corporate purposes in the business of the Company and its Restricted Subsidiaries existing on the date hereof. Upon completion of an Excess Proceeds Offer, the amount of Excess Proceeds shall be reset at zero.

(d) Within 30 days after the date on which the amount of Excess Proceeds equals \$10,000,000 or more, the Company (with notice to the Trustee) or the Trustee at the Company's request (and at the expense of the Company) will send or cause to be sent by first-class mail to all Persons who were Holders on the date such Excess Proceeds equaled \$10,000,000, at their respective addresses appearing in the Security Register, a notice of such occurrence and of such Holders' rights arising as a result thereof. Such notice will contain all instructions and materials necessary to enable Holders to tender their Notes to the Company. Such notice, which will govern the terms of the Excess Proceeds Offer, will state:

(i) that the Excess Proceeds Offer is being made pursuant to this Section 3.01 and the length of time such Excess Proceeds Offer will remain open;

(ii) that the Holder has the right to require the Company to repurchase such Holder's Notes at the Asset Sale Offer Price;

(iii) that any Note not tendered will continue to accrue interest;

(iv) that any Note accepted for payment pursuant to the Excess Proceeds Offer will cease to accrue interest on the Asset Sale Offer Date;

(v) that the Asset Sale Offer Date will be no earlier than 45 days nor later than 60 days from the date such notice is mailed;

(vi) that Holders electing to have a Note purchased pursuant to any Excess Proceeds Offer will be required to surrender the Note to the Company, a depository, if appointed by the Company, or a Paying Agent at the address specified in the notice prior to termination of the Excess Proceeds Offer;

(vii) that Holders will be entitled to withdraw their election if the Company, depository or Paying Agent, as the case may be, receives, not later than the expiration of the Excess Proceeds Offer, or such longer period as may be required by law, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have the Note purchased;

(viii) that Holders whose Notes are purchased only in part will be issued Notes equal in principal amount to the unpurchased portion of the Notes surrendered; and

(ix) information concerning the details of the Excess Proceeds Offer and the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Sales otherwise described in the offering materials relating to the Excess Proceeds Offer (or

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corresponding successor reports) (or in the event the Company is not required to prepare any of the foregoing Forms, the comparable information required pursuant to Section 3.11 hereof); *provided* that the Company may at its option incorporate by reference any such filed reports in the notice, (B) a description of material developments in the Company's business subsequent to the date of the latest of such reports and (C) if material, appropriate pro forma financial information.

(e) In the event the aggregate principal amount of Notes surrendered by Holders together with accrued interest thereon exceeds the amount of Excess Proceeds, the Company will select the Notes to be purchased on a pro rata basis from all Notes so surrendered, with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of \$1,000, or integral multiples thereof, will be purchased. To the extent that the Excess Proceeds remaining are less than \$1,000, the Company may use such Excess Proceeds for general corporate purposes. Holders whose Notes are purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(f) Not later than one Business Day after the Asset Sale Offer Date in connection with which the Excess Proceeds Offer is being made, the Company will (i) accept for payment Notes or portions thereof tendered pursuant to the Excess Proceeds Offer (on a pro rata basis if required), (ii) deposit with the Paying Agent money sufficient, in immediately available funds, to pay the purchase price of all Notes or portions thereof so accepted and (iii) deliver to the Paying Agent an Officers' Certificate identifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent will promptly mail or deliver to Holders so accepted payment in an amount equal to the Asset Sale Offer Price of the Notes purchased from each such Holder, and the Company will execute and upon receipt of an Officers' Certificate of the Company the Trustee will promptly authenticate and mail or deliver to such Holder a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted will be promptly mailed or delivered by the Paying Agent at the Company's expense to the Holder thereof. The Company will publicly announce the results of the Excess Proceeds Offer promptly after the Asset Sale Offer Date. For purposes of this Section 3.01(f), the Company will choose a Paying Agent which will not be the Company or a Subsidiary thereof.

(g) Any Excess Proceeds Offer will be conducted by the Company in compliance with applicable law, including, without limitation, Section 14(e) of the Exchange Act and Rule 14e -1 thereunder, if applicable.

(h) Whenever Excess Proceeds are received by the Company, and prior to the allocation of such Excess Proceeds pursuant to this Section 3.01, such Excess Proceeds will be set aside by the Company in a separate account to be held in trust for the benefit of the Holders; *provided, however*, that in the event the Company will be unable to set aside such Excess Proceeds in a separate account because of provisions of applicable law or of the Working Capital Facilities, the Company will not be required to set aside such Excess Proceeds.

(i) Notwithstanding the foregoing, an Excess Proceeds Offer may be made by one or more Restricted Subsidiaries in lieu of the Company.

#### Section 3.02. *Limitations on Restricted Payments.*

(a) The Company shall not, and shall not cause or permit any of its Restricted Subsidiaries to, make any Restricted Payment, directly or indirectly, after the date hereof if at the time of such Restricted Payment:

(i) the amount of such proposed Restricted Payment (the amount of such Restricted Payment, if other than in cash, will be determined in good faith by a majority of the disinterested members of the Board of Directors of the Company), when added to the aggregate amount of all Restricted Payments, or payments that would have been Restricted Payments if the Supplemental

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Indenture had been in effect at the time of such payments, declared or made after April 17, 2002, exceeds the sum of:

(1) \$100 million, *plus*

(2) 50 percent of the Company's Consolidated Net Income accrued during the period (taken as a single period) commencing April 1, 2002 and ending on the last day of the fiscal quarter immediately preceding the fiscal quarter in which the Restricted Payment is to occur (or, if such aggregate Consolidated Net Income is a deficit, minus 100 percent of such aggregate deficit), *plus*

(3) the Net Proceeds derived from the issuance and sale of Capital Stock of the Company and its Restricted Subsidiaries that is not Disqualified Stock (other than a sale to a Subsidiary of the Company) after April 17, 2002, *plus*

(4) 100 percent of the principal amount of, or, if issued at a discount, the accreted value of, any Indebtedness of the Company or a Restricted Subsidiary which is issued (other than to a Subsidiary of the Company) after April 17, 2002 that is converted into or exchanged for Capital Stock of the Company that is not Disqualified Stock, *plus*

(5) 100 percent of the aggregate amounts received by the Company or any Restricted Subsidiary from the sale, disposition or liquidation (including by way of dividends) of any Investment (other than to any Subsidiary of the Company and other than to the extent sold, disposed of or liquidated with recourse to the Company or any of its Subsidiaries or to any of their respective properties or assets) but only to the extent (x) not included in clause (2) above and (y) that the making of such Investment constituted a permitted Restricted Investment (assuming for such purpose that the Supplemental Indenture had been in effect since April 17, 2002), *plus*

(6) 100 percent of the principal amount of, or if issued at a discount, the accreted value of, any Indebtedness or other obligation that is the subject of a guarantee by the Company which is released (other than due to a payment on such guarantee) after April 17, 2002, but only to the extent that such guarantee constituted a permitted Restricted Payment (assuming for such purpose that the Supplemental Indenture had been in effect since April 17, 2002); or

(ii) the Company would be unable to incur \$1.00 of additional Indebtedness under the Consolidated Fixed Charge Coverage Ratio contained in Section 3.03 hereof; or

(iii) a Default or Event of Default has occurred and is continuing or occurs as a consequence thereof.

(b) Notwithstanding the foregoing, the provisions of this Section 3.02 shall not prevent:

(i) the payment of any dividend within 60 days after the date of declaration thereof if the payment thereof would have complied with the limitations of the Indenture on the date of declaration, *provided* that (x) such dividend shall be deemed to have been paid as of its date of declaration for the purposes of this Section 3.02 and (y) at the time of payment of such dividend no other Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) the retirement of shares of the Company's Capital Stock or the Company's or a Restricted Subsidiary of the Company's Indebtedness for, or out of the net proceeds of a substantially concurrent sale (other than a sale to a Subsidiary of the Company) of, other shares of its Capital Stock (other than Disqualified Stock), *provided* that the proceeds of any such sale shall be excluded in any computation made under clause (3) above;

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(iii) the redemption, repurchase, defeasance or retirement for value of Indebtedness, including premium, if any, with the proceeds of Refinancing Indebtedness;

(iv) payments or distributions pursuant to or in connection with a merger, consolidation or transfer of assets that complies with the provisions hereof applicable to mergers, consolidations and transfers of all or substantially all of the property and assets of the Company or any Guarantor; or

(v) any purchase, redemption, retirement or other acquisition for value of Capital Stock of the Company or any Subsidiary held by officers or employees or former officers or employees of the Company or any Subsidiary (or their estates or beneficiaries under their estates) not to exceed \$500,000 in any calendar year and \$5 million in the aggregate since April 17, 2002.

#### Section 3.03. *Limitations on Additional Indebtedness.*

(a) The Company shall not, and shall not cause or permit any of its Restricted Subsidiaries, directly or indirectly, to, Incur any Indebtedness including Acquisition Indebtedness; *provided* that the Company and the Subsidiary Guarantors may Incur Indebtedness, including Acquisition Indebtedness, if, after giving effect thereto and the application of the proceeds therefrom, either (i) the Company's Consolidated Fixed Charge Coverage Ratio on the date thereof would be at least 2.0 to 1.0 or (ii) the ratio of Indebtedness of the Company and the Restricted Subsidiaries to Consolidated Tangible Net Worth is less than 2.25 to 1.

(b) Notwithstanding the foregoing, the provisions hereof shall not prevent:

(i) the Company or any Subsidiary Guarantor from Incurring (A) Refinancing Indebtedness or (B) Non-Recourse Indebtedness,

(ii) the Company from Incurring Indebtedness evidenced by the Notes issued on the Issue Date or the Exchange Notes,

(iii) the Company or any Subsidiary Guarantor from Incurring Indebtedness under Working Capital Facilities not to exceed the greater of \$250 million or 15 percent of Consolidated Tangible Assets,

(iv) any Subsidiary Guarantee of Indebtedness of the Company under the Notes,

(v) the Company and its Restricted Subsidiaries from Incurring Indebtedness under any deposits made to secure performance of tenders, bids, leases, statutory obligations, surety and appeal bonds, progress statements, government contracts and other obligations of like nature (exclusive of the obligation for the payment of borrowed money),

(vi) any Subsidiary Guarantor from guaranteeing Indebtedness of the Company or any other Subsidiary Guarantor, or the Company from guaranteeing Indebtedness of any Subsidiary Guarantor, in each case permitted to be Incurred under the Indenture (other than Non-Recourse Indebtedness),

(vii) (a) any Restricted Subsidiary from Incurring Indebtedness owing to the Company or any Subsidiary Guarantor that is both a Wholly Owned Subsidiary and a Restricted Subsidiary; *provided* that (I) such Indebtedness is subordinated to any Subsidiary Guarantee of such Restricted Subsidiary, if any, and (II) such Indebtedness shall only be permitted pursuant to this clause (vii)(a) for so long as the Person to whom such Indebtedness is owing is the Company or a Subsidiary Guarantor that is both a Wholly Owned Subsidiary and a Restricted Subsidiary, and (b) the Company from Incurring Indebtedness owing to any Subsidiary Guarantor that is both a Wholly Owned Subsidiary and a Restricted Subsidiary; *provided* that (I) such Indebtedness is subordinated to the Company's obligations under the Notes and the provisions hereof, and (II) such Indebtedness shall only be permitted pursuant to this clause (vii)(b) for so long as the

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(viii) the Company and any Subsidiary Guarantor from Incurring Indebtedness under Capitalized Lease Obligations or purchase money obligations, in each case Incurred for the purpose of acquiring or financing all or any part of the purchase price or cost of construction or improvement of property or equipment used in the business of the Company or such Subsidiary Guarantor, as the case may be, in an aggregate amount not to exceed \$20 million, and

(ix) Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount at any time outstanding not to exceed \$20 million.

(c) The Company shall not, and the Company will not cause or permit any Subsidiary Guarantor that is a Restricted Subsidiary to, directly or indirectly, in any event Incur any Indebtedness that purports to be by its terms (or by the terms of any agreement governing such Indebtedness) subordinated to any other Indebtedness of the Company or of such Subsidiary Guarantor, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinated to the Notes or the Subsidiary Guarantee of such Subsidiary Guarantor, as the case may be, to the same extent and in the same manner as such Indebtedness is subordinated to such other Indebtedness of the Company or such Subsidiary Guarantor, as the case may be.

(d) For purposes of determining compliance with this Section 3.03, in the event an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in the above clauses of this Section 3.03, the Company, in its sole discretion, shall classify such item of Indebtedness in any manner that complies with this covenant and may from time to time reclassify such item of Indebtedness in any manner in which such item could be Incurred at the time of such reclassification.

#### Section 3.04. *Limitations and Restrictions on Issuance of Capital Stock of Restricted Subsidiaries.*

The Company will not permit any Restricted Subsidiary to issue, or permit to be outstanding at any time, Preferred Stock or any other Capital Stock constituting Disqualified Stock other than any such Capital Stock issued to or held by the Company or any Restricted Subsidiary of the Company which is a Wholly Owned Subsidiary.

#### Section 3.05. *Change of Control.*

(a) Following the occurrence of any Change of Control, the Company shall so notify the Trustee in writing by delivery of an Officers' Certificate and shall offer to purchase (a "Change of Control Offer") from all Holders, and shall purchase from Holders accepting such Change of Control Offer on the date fixed for the closing of such Change of Control Offer (the "Change of Control Payment Date"), the outstanding principal amount of Notes at an offer price (the "Change of Control Price") in cash in an amount equal to 101 percent of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to the Change of Control Payment Date in accordance with the procedures set forth in this Section 3.05.

(b) Within 30 days after the date on which a Change of Control occurs, the Company (with notice to the Trustee) or the Trustee at the Company's request (and at the expense of the Company), will send or cause to be sent by first class mail, postage prepaid, to all Persons who were Holders on the date of the Change of Control at their respective addresses appearing in the Security Register, a notice of such occurrence and of such Holders' rights arising as a result thereof. Such notice will contain all instructions and materials necessary to enable Holders to tender their Notes to the Company. Such notice, which will govern the terms of the Change of Control Offer, will state:

(i) that the Change of Control Offer is being made pursuant to Section 3.05(a) hereof and the length of time the Change of Control Offer will remain open;

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(ii) that the Holder has the right to require the Company to repurchase such Holder's Notes at the Change of Control Price;

(iii) that any Note not tendered will continue to accrue interest;

(iv) that any Note accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(v) that the Change of Control Payment Date will be no earlier than 45 days nor later than 60 days from the date such notice is mailed;

(vi) that Holders electing to have a Note purchased pursuant to any Change of Control Offer will be, required to surrender the Note to the Company, a depository, if appointed by the Company, or a Paying Agent at the address specified in the notice prior to termination of the Change of Control Offer;

(vii) that Holders will be entitled to withdraw their election if the Company, depository or Paying Agent, as the case may be, receives, not later than the expiration of the Change of Control Offer, or such longer period as may be required by law, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have the Note purchased;

(viii) that Holders which elect to have their Notes purchased only in part will be issued new Notes in a principal amount equal to the unpurchased portion of the Notes surrendered;

(ix) information concerning the date and details of the Change of Control and the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Sales otherwise described in the offering materials relating to the Change of Control Offer (or corresponding successor reports) (or in the event the Company is not required to prepare any of the foregoing Forms, the comparable information required pursuant to Section 4.03 hereof); *provided* that the Company may at its option incorporate by reference any such filed reports in the notice, (B) a description of material developments in the Company's business subsequent to the date of the latest of such reports, and (C) if material, appropriate pro forma financial information).

(c) In the event of a Change of Control Offer, the Company will only be required to accept Notes in denominations of \$1,000 or integral multiples thereof.

(d) Not later than one Business Day after the Change of Control Payment Date in connection with which the Change of Control Offer is being made, the Company will (i) accept for payment Notes or portions thereof tendered pursuant to the Change of Control Offer, (ii) deposit with the Paying Agent money sufficient, in immediately available funds, to pay the purchase price of all Notes or portions thereof so accepted and (iii) deliver to the Paying Agent an Officers' Certificate identifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent will promptly mail or deliver to Holders of Notes so accepted payment in an amount equal to the Change of Control Price of the Notes purchased from each such Holder, and the Company will execute and, upon receipt of an Officers' Certificate of the Company, the Trustee will promptly authenticate and mail or deliver to such Holder a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted will be promptly mailed or delivered by the Paying Agent at the Company's expense to the Holder thereof. The Company shall publicly announce the results of the

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Change of Control Offer promptly after the Change of Control Payment Date. For purposes of this Section 3.05(d), the Company will choose a Paying Agent which will not be the Company or a Subsidiary thereof.

(e) Any Change of Control Offer will be conducted by the Company in compliance with applicable law, including, without limitation, Section 14(e) of the Exchange Act and Rule 14e-1 thereunder.

*Section 3.06. Limitations on Transactions with Stockholders and Affiliates.*

The Company shall not, and shall not permit any of its Subsidiaries to, make any Investment, loan, advance, guarantee or capital contribution to or for the benefit of, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or for the benefit of, or purchase or lease any property or assets from, or enter into or amend any contract, agreement or understanding with, or for the benefit of, (i) any Affiliate of the Company or any Affiliate of the Company's Subsidiaries or (ii) any Person (or any Affiliate of such person) holding 10 percent or more of the Common Equity of the Company or any of its Subsidiaries (each an "Affiliate Transaction"), except on terms that are no less favorable to the Company or the relevant Subsidiary, as the case may be, than those that could have been obtained in a comparable transaction on an arm's length basis from a person that is not an Affiliate.

The Company shall not, and shall not permit any of its Subsidiaries to, enter into any Affiliate Transaction involving or having a value of more than \$5 million, unless, in each case, such Affiliate Transaction has been approved by a majority of the disinterested members of the Company's Board of Directors.

The Company will not, and will not permit any of its Subsidiaries to, enter into an Affiliate Transaction involving or having a value of more than \$20 million unless the Company has delivered to the Trustee an opinion of an Independent Financial Advisor to the effect that the transaction is fair to the Company or the relevant Subsidiary, as the case may be, from a financial point of view.

Notwithstanding the foregoing, an Affiliate Transaction shall not include (i) any contract, agreement or understanding with, or for the benefit of, or plan for the benefit of, employees of the Company or its Subsidiaries (in their capacity as such) that has been approved by the Company's Board of Directors, (ii) Capital Stock issuances to members of the Board of Directors, officers and employees, of the Company or its Subsidiaries pursuant to plans approved by the stockholders of the Company, (iii) any Restricted Payment otherwise permitted under Section 3.02 hereof, (iv) any transaction between the Company and a Restricted Subsidiary or a Restricted Subsidiary and another Restricted Subsidiary or (v) any transaction pursuant to the tax sharing agreement, the agreement with Beazer Homes Ltd. regarding use of name and the cross-indemnity agreement, in each case with the Company's former parent or affiliates, as such agreements are in effect on the date hereof.

*Section 3.07. Limitations on Liens.*

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Liens, other than Permitted Liens, on any of its or their assets, property, income or profits therefrom unless contemporaneously therewith or prior thereto all payments due under the Indenture and the Notes are secured on an equal and ratable basis with the obligation or liability so secured until such time as such obligation or liability is no longer secured by a Lien. No Liens will be permitted to be created or suffered to exist on any Indebtedness from the Company in favor of any Restricted Subsidiary and that such Indebtedness will not be permitted to be sold, disposed of or otherwise transferred.

*Section 3.08. Limitations on Restrictions on Distributions from Restricted Subsidiaries.*

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, create, assume or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on

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the ability of any Restricted Subsidiary to (i) pay dividends or make any other distributions on its Capital Stock or any other interest or participation in, or measured by, its profits, owned by the Company or any of its other Restricted Subsidiaries, or pay interest on or principal of any Indebtedness owed to the Company or any of its other Restricted Subsidiaries, (ii) make loans or advances to the Company or any of its other Restricted Subsidiaries, or (iii) transfer any of its properties or assets to the Company or any of its other Restricted Subsidiaries, except for encumbrances or restrictions existing under or by reason of (a) applicable law, (b) covenants or restrictions contained in the agreements evidencing Existing Indebtedness as in effect on the date of the Indenture, (c) any restrictions or encumbrances arising under Acquisition Indebtedness; *provided* that such encumbrance or restriction applies only to the obligor on such Indebtedness and its Subsidiaries and that such Acquisition Indebtedness was not incurred by the Company or any of its Subsidiaries or by the Person being acquired in connection with or in anticipation of such acquisition, (d) any restrictions or encumbrances arising in connection with Refinancing Indebtedness; *provided* that any restrictions and encumbrances of the type described in this clause (d) that arise under such Refinancing Indebtedness are not more restrictive than those under the agreement creating or evidencing the Indebtedness being refunded, refinanced, replaced or extended, (e) any agreement restricting the sale or other disposition of property securing Indebtedness permitted by the Indenture if such agreement does not expressly restrict the ability of a Subsidiary of the Company to pay dividends or make loans or advances, and (f) reasonable and customary borrowing base covenants set forth in agreements evidencing Indebtedness otherwise permitted by the Indenture, which covenants restrict or limit the distribution of revenues or sale proceeds from real estate or a real estate project based upon the amount of indebtedness outstanding on such real estate or real estate project and the value of some or all of the remaining real estate or the project's remaining assets, and customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Company or any of its Restricted Subsidiaries.

(a) In the event that the Consolidated Tangible Net Worth of the Company is less than \$85 million at the end of any two consecutive fiscal quarters (the last day of the second fiscal quarter being referred to herein as the "Deficiency Date"), within 30 days after the end of each such period or 60 days in the event that the end of the period is the end of the Company's fiscal year, the Company shall so notify the Trustee in writing by delivery of an Officers' Certificate and will offer to purchase from all Holders (a "Net Worth Offer"), and shall purchase from Holders accepting such Net Worth Offer on the date fixed for the closing of such Net Worth Offer (the "Net Worth Offer Date"), 10 percent of the original outstanding principal amount of the Notes (the "Net Worth Amount") at an offer price (the "Net Worth Offer Price") in cash in an amount equal to 100 percent of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to the Net Worth Offer Date; provided that no such offer shall be required if, following such two fiscal quarters but prior to the date the Company is required to make such offer, capital in cash or cash equivalents is contributed to the Company in an Equity Offering sufficient to increase the Company's Consolidated Tangible Net Worth after giving effect to such contribution to an amount equal to or greater than \$85 million. To the extent that the aggregate amount of Notes tendered pursuant to a Net Worth Offer is less than the Net Worth Amount relating thereto, then the Company may use the excess of the Net Worth Amount over the amount of Notes tendered, or a portion thereof, for general corporate purposes. In no event shall the Company's failure to meet the Consolidated Tangible Net Worth threshold at the end of any fiscal quarter be counted toward the making of more than one Net Worth Offer. The Company may reduce the principal amount of Notes to be purchased pursuant to the Net Worth Offer by subtracting 100 percent of the principal amount (excluding premium) of Notes acquired by the Company or any Wholly Owned Subsidiary subsequent to the Deficiency Date and surrendered for cancellation through purchase, redemption (other than pursuant to this Section 3.09) or exchange, and that were not previously used as a credit against any obligation to repurchase Notes pursuant to this Section 3.09.

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(b) Subject to the proviso contained in Section 3.09(a) above, in the event the Consolidated Tangible Net Worth of the Company is less than \$85,000,000 at the end of any two consecutive fiscal quarters, within 30 days after the end of such period, the Company (with notice to the Trustee) or the Trustee at the Company's request (and at the expense of the Company) will send or cause to be sent by first-class mail, postage pre-paid, to all Persons who were Holders on the date of the end of the second such consecutive fiscal quarter, at their respective addresses appearing in the Security Register, a notice of such occurrence and of each Holder's rights arising as a result thereof. Such notice will contain all instructions and materials necessary to enable Holders to tender their Notes to the Company. Such notice, which will govern the terms of the Net Worth Offer, will state:

- (i) that the Net Worth Offer is being made pursuant to Section 3.09(a) hereof and the length of time such Net Worth Offer will remain open;
- (ii) that the Holder has the right to require the Company to repurchase such Holder's Notes at the Net Worth Offer Price;
- (iii) that any Note not tendered will continue to accrue interest;
- (iv) that any Note accepted for payment pursuant to the Net Worth Offer will cease to accrue interest on the Net Worth Offer Date;
- (v) that the Net Worth Offer Date will be no earlier than 45 days nor later than 60 days from the date such notice is mailed;
- (vi) that Holders electing to have a Note purchased pursuant to any Net Worth Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, to the Company, a depository, if appointed by the Company, or a Paying Agent at the address specified in the notice prior to termination of the Net Worth Offer;
- (vii) that Holders will be entitled to withdraw their election if the Company, depository or Paying Agent, as the case may be, receives, not later than the expiration of the Net Worth Offer, or such longer period as may be required by law, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for the purchase and a statement that such Holder is withdrawing its election to have the Note purchased;
- (viii) that Holders whose Notes are purchased only in part will be issued Notes equal in principal amount to the unpurchased portion of the Notes surrendered; and
- (ix) information concerning the period and details of the events requiring the Net Worth Offer and the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Sales otherwise described in the offering materials relating to the Net Worth Offer (or corresponding successor reports) (or in the event the Company is not required to prepare any of the foregoing Forms, the comparable information required pursuant to Section 3.11 hereof); provided that the Company may, at its option, incorporate by reference any such filed reports in the notice, (B) a description of material developments in the Company's business subsequent to the date of the latest of such reports, and (C) if material, appropriate pro forma financial information).

(c) In the event that the aggregate principal amount of Notes surrendered by Holders exceeds the Net Worth Amount, the Company will select the Notes to be purchased on a *pro rata* basis from all Notes so surrendered, with such adjustments as may be deemed appropriate by the Company so that

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only Notes in denominations of \$1,000, or integral multiples thereof, will be purchased. To the extent that the Net Worth Amount remaining is less than \$1,000, the Company may use such Net Worth Amount for general corporate purposes. Holders whose Notes are purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(d) Not later than one Business Day after the Net Worth Offer Date in connection with which the Net Worth Offer is being made, the Company will (i) accept for payment Notes or portions thereof tendered pursuant to the Net Worth offer (on a *pro rata* basis if required pursuant to Section 3.09(c) above), (ii) deposit with the Paying Agent money sufficient, in immediately available funds, to pay the purchase price of all Notes or portions thereof so accepted and (iii) deliver to the Paying Agent an Officers' Certificate identifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent will promptly mail or deliver to Holders of Notes so accepted payment in an amount equal to the Net Worth Offer Price of the Notes purchased from each such Holder, and the Company will execute and the Trustee will promptly authenticate and mail or deliver to such Holder a new Note equal in principal amount to any

unpurchased portion of the Note surrendered. Any Notes not so accepted will be promptly mailed or delivered by the Paying Agent at the Company's expense to the Holder thereof. The Company will publicly announce the results of the Net Worth Offer promptly after the Net Worth Offer Date.

(e) Any Net Worth Offer will be conducted by the Company in compliance with applicable law, including, without limitation, Section 14(e) of the Exchange Act and Rule 14e-1 thereunder, if applicable.

### Section 3.10. *Limitations on Mergers and Consolidations.*

Section 5.01 of the Indenture is hereby replaced in its entirety by the following:

(a) Neither the Company nor any Subsidiary Guarantor shall consolidate or merge with or into, or sell, lease, convey or otherwise dispose of all or substantially all of its assets (including, without limitation, by way of liquidation or dissolution), or assign any of its obligations under the Notes or the Guarantees or hereunder (as an entirety or substantially in one transaction or series of related transactions), to any Person or permit any of its Restricted Subsidiaries to do any of the foregoing (in each case other than with the Company or another Wholly Owned Restricted Subsidiary) unless:

(i) the Person formed by or surviving such consolidation or merger (if other than the Company or such Subsidiary Guarantor, as the case may be), or to which such sale, lease, conveyance or other disposition or assignment shall be made (collectively, the "Successor"), is a solvent corporation or other legal entity organized and existing under the laws of the United States or any state thereof or the District of Columbia, and the Successor assumes by supplemental indenture in a form reasonably satisfactory to the Trustee all of the obligations of the Company or such Subsidiary Guarantor, as the case may be, under the Notes or such Subsidiary Guarantor's Subsidiary Guarantee, as the case may be, and hereunder,

(ii) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing,

(iii) immediately after giving effect to such transaction and the use of any net proceeds therefrom, on a pro forma basis, the Consolidated Tangible Net Worth of the Company or the Successor (in the case of a transaction involving the Company), as the case may be, would be at least equal to the Consolidated Tangible Net Worth of the Company immediately prior to such transaction,

(iv) immediately after giving effect to such transaction and the use of any net proceeds therefrom, on a pro forma basis, the Consolidated Fixed Charge Coverage Ratio of the Company or the Successor (in the case of a transaction involving the Company), as the case may be, would

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be such that the Company or the Successor (in the case of a transaction involving the Company), as the case may be, would be entitled to Incur at least \$1.00 of additional Indebtedness under such Consolidated Fixed Charge Coverage Ratio test set forth in Section 3.03 hereof, and

(v) The Company or any Subsidiary Guarantor, as the case may be, will deliver to the Trustee prior to the consummation of the proposed transaction an Officers' Certificate to the foregoing effect and an opinion of counsel stating that the proposed transaction and such supplemental indenture comply with this Supplemental Indenture.

(b) Upon any consolidation or merger, or any sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company or any assignment of its obligations under this Supplemental Indenture or the Notes in accordance with this Section 3.10, upon assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of, premium, if any, and interest on all of the Notes and the due and punctual performance and observance of all the covenants and conditions of this Supplemental Indenture to be performed or observed by the Company, the Successor formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance or other disposition or assignment is made will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Supplemental Indenture with the same effect as if such Successor has been named as the Company herein and such Successor may cause to be signed and may issue in its own name or in the name of the Company, any or all Notes issuable hereunder and the predecessor Company, in the case of a sale, lease, conveyance or other disposition or assignment, will be released from all obligations under this Supplemental Indenture and the Notes.

(c) The foregoing provisions shall not apply to a transaction involving the consolidation or merger of a Subsidiary Guarantor with or into another Person, or the sale, lease, conveyance or other disposition of all or substantially all of the assets of such Subsidiary Guarantor, that results in such Subsidiary Guarantor being released from its Subsidiary Guarantee as provided under Section 4.04.

(d) Any consolidation, merger, sale, lease or conveyance permitted under subsection (a) above is also subject to the condition that the Trustee receive an Officers' Certificate and an Opinion of Counsel to the effect that any such consolidation, merger, sale, lease or conveyance, and the assumption by any successor corporation, complies with the provisions of this Section 3.10 and that all conditions precedent herein provided for relating to such transaction have been complied with.

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### Section 3.11. *Reports.*

As long as any of the Notes are outstanding, the Company shall deliver to the Trustee and mail to each Holder within 15 days after the filing of the same with the Commission copies of the quarterly and annual reports and of the information, documents and other reports with respect to the Company and the Subsidiary Guarantors, if any, which the Company and the Subsidiary Guarantors may be required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. Notwithstanding that neither the Company nor any of the Subsidiary Guarantors may be required to remain subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall continue to file with the Commission and provide the Trustee and Holders with such annual and quarterly reports and such information, documents and other reports with respect to the Company and the Subsidiary Guarantors as are required under Sections 13 and 15(d) of the Exchange Act. If filing of documents by the Company with the Commission as aforementioned in this paragraph is not permitted under the

Exchange Act, the Company shall promptly upon written notice supply copies of such documents to any prospective holder. The Company and each Subsidiary Guarantor shall also comply with the other provisions of Section 314(a) of the Trust Indenture Act.

Section 3.12. *Subsidiary Guarantees.*

After the date hereof, the Company will cause each of its Subsidiaries that is or becomes a Restricted Subsidiary (other than, in the Company's discretion, any Restricted Subsidiary the assets of which have a book value of not more than \$5,000,000) to be a Subsidiary Guarantor hereunder in accordance with the provisions of Section 4.03 hereof. The Company may, in its discretion, cause any Unrestricted Subsidiary to become a Subsidiary Guarantor hereunder in the same manner.

Section 3.13. *Limitation of Applicability of Certain Covenants if the Notes Are Rated Investment Grade.*

(a) The Company and its Restricted Subsidiaries' obligations to comply with the provisions of the Supplemental Indenture under this Article 3 (except for Sections 3.05, 3.07, 3.10 (other than clauses (iii) and (iv) of subsection (a) thereof) and 3.11 hereof) will terminate (such terminated covenants, the "*Extinguished Covenants*") and cease to have any further effect from and after the first date when the Notes issued under this Supplemental Indenture are rated Investment Grade; *provided* that if the Notes subsequently cease to be rated Investment Grade, then, from and after the time the Notes cease to be rated Investment Grade, the Company and its Restricted Subsidiaries' obligation to comply with the Extinguished Covenants shall be reinstated.

(b) Notwithstanding the foregoing, in the event of any such reinstatement, no action taken or omitted to be taken by the Company or any of its Subsidiaries prior to such reinstatement shall give rise to a Default or Event of Default under the Supplemental Indenture upon reinstatement; *provided* that (i) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made after April 17, 2002 will be calculated as though Section 3.02 had been in effect during the entire period after such date and (ii) with respect to Indebtedness, all Indebtedness Incurred from the date of the achievement of such Investment Grade ratings to the date of any such reinstatement will be classified as having been Incurred pursuant to and permitted under the Consolidated Fixed Charge Coverage Ratio or one of the clauses set forth in Section 3.03(b) (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the date of such reinstatement and after giving effect to Indebtedness Incurred prior to the date of achievement of such Investment Grade rating and outstanding on the date of such reinstatement). To the extent any Indebtedness would not be permitted to be Incurred pursuant to the Consolidated Fixed Charge Coverage Ratio or any of the clauses set forth in Section 3.03(b), such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as Existing Indebtedness and permitted to be refinanced as Refinancing Indebtedness under Section 3.03(b)(i)(A).

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**ARTICLE FOUR**

**Subsidiary Guarantees**

Section 4.01. *Subsidiary Guarantees of Notes.*

Subject to the provisions of this Article Four, each Subsidiary Guarantor hereby jointly and severally unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Supplemental Indenture, the Notes or the obligations of the Company or any other Subsidiary Guarantor to the Holders or the Trustee hereunder or thereunder, that: (a) the principal of, premium, if any, and interest on the Notes will be duly and punctually paid in full when due, whether at maturity, by acceleration or otherwise, and interest on the overdue principal and (to the extent permitted by law) interest, if any, on the Notes and all other obligations of the Company or the Subsidiary Guarantors to the Holders or the Trustee hereunder or thereunder (including fees, expenses or other) and all other obligations with respect to the Notes, this Supplemental Indenture and the Indenture will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes, the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed, or failing performance of any other obligation of the Company to the Holders, for whatever reason, each Subsidiary Guarantor will be obligated to pay, or to perform or cause the performance of, the same immediately. An Event of Default under the Indenture, this Supplemental Indenture or the Notes shall constitute an event of default under this Subsidiary Guarantee, and shall entitle the Holders of Notes to accelerate the obligations of the Subsidiary Guarantors hereunder in the same manner and to the same extent as the obligations of the Company and the Subsidiary Guarantors.

Each of the Subsidiary Guarantors hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture or this Supplemental Indenture, the absence of any action to enforce the same, any waiver or consent by any holder of the Notes with respect to any provisions hereof or thereof, any release of any other Subsidiary Guarantor, the recovery of any judgment against the Company, any action to enforce the same, whether or not a Subsidiary Guarantee is affixed to any particular Note, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Subsidiary Guarantor. Each of the Subsidiary Guarantors hereby waives the benefit of diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that its Subsidiary Guarantee will not be discharged except by complete performance of the obligations contained in the Notes, this Supplemental Indenture and this Subsidiary Guarantee. If any Holder or the Trustee is required by any court or otherwise to return to the Company or to any Subsidiary Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or such Subsidiary Guarantor, any amount paid by the Company or such Subsidiary Guarantor to the Trustee or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Subsidiary Guarantor further agrees that, as between it, on the one hand, and the Holders of Notes and the Trustee, on the other hand, (a) subject to this Article Four, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Five hereof or Article Five of the Indenture for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (b) in the event of any acceleration of such obligations as provided in Article Five hereof or Article Five of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Subsidiary Guarantee.

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This Subsidiary Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be

appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Subsidiary Guarantees shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

No stockholder, officer, director, employer or incorporator, past, present or future, or any Subsidiary Guarantor, as such, shall have any personal liability under this Subsidiary Guarantee by reason of his, her or its status as such stockholder, officer, director, employer or incorporator.

The Subsidiary Guarantors shall have the right to seek contribution from any non-paying Subsidiary Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Subsidiary Guarantee.

Each Subsidiary Guarantor, and by its acceptance hereof each Holder, hereby confirms that it is the intention of all such parties that the guarantee by each Subsidiary Guarantor pursuant to its Subsidiary Guarantee not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar Federal or state law. To effectuate the foregoing intention, the Holders and each Subsidiary Guarantor hereby irrevocably agree that the obligations of each Subsidiary Guarantor under the Subsidiary Guarantees shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of each Subsidiary Guarantor, result in the obligations of each Subsidiary Guarantor under the Subsidiary Guarantees not constituting such fraudulent transfer or conveyance.

#### Section 4.02. *Execution and Delivery of Subsidiary Guarantee.*

To further evidence the Subsidiary Guarantee set forth in Section 4.01, each Subsidiary Guarantors hereby agrees that a notation of such Subsidiary Guarantee, substantially in the form included in Exhibit C hereto, shall be endorsed on each Note authenticated and delivered by the Trustee after such Subsidiary Guarantee is executed and executed by either manual or facsimile signature of an Officer of each Subsidiary Guarantor. The validity and enforceability of any Subsidiary Guarantee shall not be affected by the fact that it is not affixed to any particular Note.

Each of the Subsidiary Guarantors hereby agrees that its Subsidiary Guarantee set forth in Section 4.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

If an Officer of a Subsidiary Guarantor whose signature is on this Supplemental Indenture or a Note no longer holds that office at the time the Trustee authenticates such Note or at any time thereafter, such Subsidiary Guarantor's Subsidiary 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 Subsidiary Guarantee set forth in this Supplemental Indenture on behalf of the Subsidiary Guarantor.

#### Section 4.03. *Additional Subsidiary Guarantors.*

Any Person may become a Subsidiary Guarantor by executing and delivering to the Trustee (a) a supplemental indenture in form and substance satisfactory to the Trustee which subjects such Person to the provisions of this Supplemental Indenture as a Subsidiary Guarantor, and (b) an opinion of

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Counsel to the effect that such supplemental indenture has been duly authorized and executed by such Person and constitutes the legal, valid, binding and enforceable obligation of such Person (subject to such customary exceptions concerning fraudulent conveyance laws, creditors' rights and equitable principles as may be acceptable to the Trustee in its discretion).

#### Section 4.04. *Release of a Subsidiary Guarantor.*

(a) Except in the case where the prohibition on transfer in Section 3.10 is applicable, if all or substantially all of the assets of any Subsidiary Guarantor or all of the capital stock of any Subsidiary Guarantor is sold (including by issuance or otherwise) by the Company or any of its Subsidiaries in a transaction constituting an Asset Sale, and if the Net Proceeds from such Asset Sale are used in accordance with Section 3.01, then such Subsidiary Guarantor (in the event of a sale or other disposition of all of the capital stock of such Subsidiary Guarantor) or the corporation acquiring such assets (in the event of a sale or other disposition of all or substantially all of the assets of such Subsidiary Guarantor) shall be deemed automatically and unconditionally released and discharged from all obligations under this Article Four without any further action required on the part of the Trustee or any Holder, *provided* that each such Subsidiary Guarantor (or its assets) is sold or disposed of in accordance with Section 3.01.

(b) Upon the release of the guarantee by a Subsidiary Guarantor under all then outstanding Applicable Debt, at any time after the suspension of the Extinguished Covenants pursuant to Section 3.13 hereof, the Subsidiary Guarantee of such Subsidiary Guarantor under the Supplemental Indenture will be released and discharged at such time and no Restricted Subsidiary thereafter acquired or created will be required to be a Subsidiary Guarantor; *provided* that the foregoing shall not apply to any release of any Subsidiary Guarantor done in contemplation of, or in connection with, any cessation of the Notes being rated Investment Grade. In the event that (i) any such released Subsidiary Guarantor thereafter guarantees any Applicable Debt (or if any released guarantee under any Applicable Debt is reinstated or renewed) or (ii) the Extinguished Covenants cease to be suspended pursuant to Section 3.13 hereof, then any such released Subsidiary Guarantor and any other Restricted Subsidiary of the Company then existing will guarantee the Notes on the terms and conditions set forth in the Supplemental Indenture. For purposes of this clause (b), Applicable Debt secured by a Lien on such Restricted Subsidiary's Property or issued by such Restricted Subsidiary shall be deemed guaranteed by such Restricted Subsidiary.

(c) The Trustee shall deliver an appropriate instrument evidencing the release of a Subsidiary Guarantor upon receipt of a request of the Company accompanied by an Officers' Certificate certifying as to the compliance with this Section 4.04. Any Subsidiary Guarantor not so released or the entity surviving such Subsidiary Guarantor, as applicable, will remain or be liable under its Subsidiary Guarantee as provided in this Article Four.

The Trustee shall execute any documents reasonably requested by the Company or a Subsidiary Guarantor in order to evidence the release of such Subsidiary Guarantor from its obligations under its Subsidiary Guarantee endorsed on the Notes and under this Article Four.

Except as set forth in Article Three hereof and this Section 4.04, nothing contained in this Supplemental Indenture or in any of the Notes shall prevent any consolidation or merger of a Subsidiary Guarantor with or into the Company or another Subsidiary Guarantor or shall prevent any sale or conveyance of the property of a Subsidiary Guarantor as an entirety or substantially as an entirety to the Company or another Subsidiary Guarantor.

Section 4.05. *Waiver of Subrogation.*

Each Subsidiary Guarantor hereby irrevocably waives any claim or other rights which it may now or hereafter acquire against the Company or any of its Subsidiaries that arise from the existence, payment, performance or enforcement of such Subsidiary Guarantor's obligations under this Subsidiary

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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 Company or any of its Subsidiaries, 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 Company or any of its Subsidiaries, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Subsidiary 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 Subsidiary Guarantor for the benefit of, and held in trust for the benefit of, the Holders of the Notes, 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 Subsidiary 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 4.05 is knowingly made in contemplation of such benefits.

**ARTICLE FIVE**

**Miscellaneous**

Section 5.01. *Events of Default.*

Sections 6.01 and 6.02 of the Indenture are hereby replaced in their entirety by the following:

(a) "Event of Default," wherever used herein, means any of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the failure by the Company to pay interest on any Note when the same becomes due and payable and the continuance of any such failure for a period of 30 days;

(ii) the failure by the Company to pay the principal or premium of any Note when the same becomes due and payable at maturity, upon acceleration or otherwise (including the failure to make payment pursuant to a Change of Control Offer, a Net Worth Offer or an Excess Proceeds Offer);

(iii) the failure by the Company or any of its Subsidiaries to comply with any of its agreements or covenants in, or provisions of, the Notes, the Subsidiary Guarantees or this Supplemental Indenture and such failure continues for the period and after the notice specified below;

(iv) the acceleration of any Indebtedness (other than Non-Recourse Indebtedness) of the Company or any of its Subsidiaries that has an outstanding principal amount of \$10 million or more in the aggregate;

(v) the failure by the Company or any of its Subsidiaries to make any principal or interest payment in respect of Indebtedness (other than Non-Recourse Indebtedness) of the Company or any of its Subsidiaries with an outstanding aggregate amount of \$10 million or more within five days of such principal or interest payment becoming due and payable (after giving effect to any applicable grace period set forth in the documents governing such Indebtedness); *provided* that if such failure to pay shall be remedied, waived or extended, then the Event of Default hereunder shall be deemed likewise to be remedied, waived or extended without further action by the Company;

(vi) a final judgment or judgments that exceed \$10 million or more in the aggregate, for the payment of money, having been entered by a court or courts of competent jurisdiction against the

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Company or any of its Subsidiaries and such judgment or judgments is not satisfied, stayed, annulled or rescinded within 60 days of being entered;

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

(A) commences a voluntary case,

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

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

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

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

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

(B) appoints a Custodian of the Company or any Material Subsidiary or a Custodian for all or substantially all of the property of the Company or any Material Subsidiary, or

(C) orders the liquidation of the Company or any Material Subsidiary and the order or decree remains unstayed and in effect for 60 days; or

(ix) any Subsidiary Guarantee ceases to be in full force and effect (other than in accordance with the terms of such Subsidiary Guarantee and this Supplemental Indenture) or is declared null and void and unenforceable or found to be invalid or any Subsidiary Guarantor denies its liability under its Subsidiary Guarantee (other than by reason of release of a Subsidiary Guarantor from its Subsidiary Guarantee in accordance with the terms of this Supplemental Indenture and the Subsidiary Guarantee).

(b) The Trustee will not be deemed to know of a Default unless a Trust Officer has actual knowledge of such Default or receives written notice of such Default with specific reference to such Default.

(c) A Default under Section 5.01(a)(iii) hereof will not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25 percent in principal amount of the then outstanding Notes notify the Company and the Trustee, of the Default and the Company does not cure the Default within 60 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, it ceases.

(d) If an Event of Default (other than an Event of Default with respect to the Company specified in clause (vii) or (viii) of Section 5.01(a) hereof) shall have occurred and be continuing under this Supplemental Indenture, the Trustee by notice to the Company, or the Holders of at least 25 percent in principal amount of the Notes then outstanding by notice to the Company and the Trustee, may declare all Notes to be due and payable immediately. Upon such declaration of acceleration, the amounts due and payable on the Notes, as determined in Section 5.01(e) hereof, will be due and payable immediately. If an Event of Default with respect to the Company specified in clause (vii) or (viii) of Section 5.01(a) hereof occurs, such an amount will *ipso facto* become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee and the Company or any Holder. The Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee and the Company may waive such Default or Event of Default (other than any Default or Event of Default in payment of principal or interest) on the Notes under this Supplemental

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Indenture. Holders of a majority in principal amount of the then outstanding Notes may rescind an acceleration and its consequences (except an acceleration due to nonpayment of principal or interest on the Notes) if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived.

(e) In the event that the maturity of the Notes is accelerated pursuant to Section 5.01(d) hereof, 100 percent of the principal amount of the Notes (or, in the case of a default under Section 5.01(b)(ii) or (iii) hereof resulting from a breach of the covenant set forth in Section 3.05 hereof, 101 percent of the principal amount of the Notes) will become due and payable plus accrued interest, if any, to the date of payment.

(f) The Company shall deliver to the Trustee a quarterly statement regarding compliance with the provisions under this Supplemental Indenture, and include in such statement, if any Officer of the Company is aware of any Default or Event of Default, a statement specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto. In addition, the Company shall deliver to the Trustee prompt written notice of the occurrence of any Default or Event of Default and any other development, financial or otherwise, which might materially affect its business, properties or affairs or the ability of the Company to perform its obligations under this Supplemental Indenture.

#### Section 5.02. *Amendment, Supplement and Waiver.*

Subject to certain exceptions, this Supplemental Indenture or the Notes may be amended or supplemented with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of at least a majority in principal amount of the Notes then outstanding, and any existing Default or Event of Default (other than any continuing Default or Event of Default in the payment of interest on or the principal of the Notes) under, or compliance with any provision of, the Indenture or this Supplemental Indenture may be waived with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of a majority in principal amount of the Notes then outstanding. Without the consent of any Holder, the Company, the Subsidiary Guarantors and the Trustee may amend this Supplemental Indenture or the Notes or waive any provision of the Indenture or this Supplemental Indenture to cure any ambiguity, defect or inconsistency, to comply with Section 3.10; to provide for uncertificated Notes in addition to certificated Notes; to make any change that does not adversely affect the legal rights under this Supplemental Indenture of any Holder; to comply with or qualify the Indenture under the Trust Indenture Act; or to reflect a Subsidiary Guarantor ceasing to be liable on the Subsidiary Guarantees because it is no longer a Subsidiary of the Company.

Without the consent of each Holder affected, the Company may not

(i) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver,

(ii) reduce the rate of or change the time for payment of interest, including default interest, on any Note,

(iii) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to redemption under the "Optional Redemption" section set forth in the Notes or with respect to mandatory offers to repurchase Notes pursuant to Sections 3.01, 3.05 and 3.09 of this Supplemental Indenture,

(iv) make any Note payable in money other than that stated in the Note,

(v) make any change in the "Waiver of Past Defaults" or "Right of Holders to Receive Payment" or in part, the "With Consent of Holders" sections set forth in the Indenture,

(vi) modify the ranking or priority of the Notes or any Subsidiary Guarantee,

(vii) release any Subsidiary Guarantor from any of its obligations under its Subsidiary Guarantee or the Indenture otherwise than in accordance with the terms of the Indenture, or

(viii) waive a continuing Default or Event of Default in the payment of principal of or interest on the Notes.

The right of any Holder to participate in any consent required or sought pursuant to any provision of the Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any Notes with respect to which such consent is required or sought as of a date identified by the Trustee in a notice furnished to Holders in accordance with the terms of the Indenture.

Section 5.03. *Indenture.*

In the event of any conflict between this Supplemental Indenture and the Indenture, the provisions of this Supplemental Indenture shall prevail.

Section 5.04. *Governing Law.*

The laws of the State of New York shall govern this Supplemental Indenture, the Securities of the Series created hereby and the Subsidiary Guarantees thereof.

Section 5.05. *No Adverse Interpretation of Other Agreements.*

This Supplemental Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Supplemental Indenture.

Section 5.06. *Successors and Assigns.*

All covenants and agreements of the Company and the Subsidiary Guarantors in this Supplemental Indenture and the Notes shall bind its successors and assigns. All agreements of the Trustee in this Supplemental Indenture shall bind its successors and assigns.

Section 5.07. *Duplicate Originals.*

The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 5.08. *Severability.*

In case any one or more of the provisions contained in this Supplemental Indenture or in the Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Supplemental Indenture or of the Notes.

[Signature Pages Follow]

**SIGNATURES**

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

BEAZER HOMES USA, INC.

By: \_\_\_\_\_

Name:

Title:

APRIL CORPORATION  
 BEAZER ALLIED COMPANIES HOLDINGS, INC.  
 BEAZER HOMES CORP.  
 BEAZER HOMES HOLDINGS CORP.  
 BEAZER HOMES INVESTMENT CORP.  
 BEAZER HOMES SALES ARIZONA, INC.  
 BEAZER HOMES TEXAS HOLDINGS, INC.  
 BEAZER MORTGAGE CORPORATION  
 BEAZER REALTY CORP.  
 BEAZER REALTY, INC.  
 BEAZER/SQUIRES REALTY, INC.  
 CROSSMANN COMMUNITIES OF NORTH CAROLINA, INC.  
 CROSSMANN COMMUNITIES OF OHIO, INC.

CROSSMANN INVESTMENTS, INC.  
CROSSMANN MANAGEMENT, INC.  
CROSSMANN MORTGAGE CORP.  
CUTTER HOMES, LTD.  
DELUXE HOMES OF LAFAYETTE, INC.  
DELUXE HOMES OF OHIO, INC.  
HOMEBUILDERS TITLE SERVICES OF VIRGINIA, INC.  
HOMEBUILDERS TITLE SERVICES, INC.  
BEAZER REALTY, INC., fka MERIT REALTY, INC.

By:

\_\_\_\_\_  
Name:

Title:

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BEAZER CLARKSBURG, LLC

By: BEAZER HOMES CORP., its managing partner

By: \_\_\_\_\_

Name:

Title:

BEAZER HOMES TEXAS, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC.,  
its managing partner

By: \_\_\_\_\_

Name:

Title:

BEAZER SPE, LLC

By: BEAZER HOMES CORP., its managing member

By: \_\_\_\_\_

Name:

Title:

CROSSMANN COMMUNITIES OF TENNESSEE, LLC

By: CROSSMANN COMMUNITIES OF NORTH  
CAROLINA, INC., its managing member

By: \_\_\_\_\_

Name:

Title:

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CROSSMANN COMMUNITIES PARTNERSHIP

By: BEAZER HOMES INVESTMENT CORP., its  
partner

By: \_\_\_\_\_

Name:

Title:

PARAGON TITLE, LLC

By: BEAZER HOMES INVESTMENT CORP., its  
partner

By: \_\_\_\_\_

Name:

Title:

PINEHURST BUILDERS LLC

By: CROSSMANN COMMUNITIES OF TENNESSEE,  
LLC, its managing member

By: CROSSMANN COMMUNITIES OF NORTH  
CAROLINA, INC., its managing member

By: \_\_\_\_\_

Name:

Title:

TEXAS LONE STAR TITLE, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC.,  
its managing partner

By: \_\_\_\_\_

Name:

Title:

TRINITY HOMES LLC

By: BEAZER HOMES INVESTMENT CORP.,  
its manager

By: \_\_\_\_\_

Name:

Title:

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U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_

Name:

Title:

D-4

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QuickLinks

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UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY, OR BY ANY SUCH NOMINEE OF THE DEPOSITORY, OR BY THE DEPOSITORY OR NOMINEE OF SUCH SUCCESSOR DEPOSITORY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITORY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITORY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO AN 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 IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON 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 INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.17 OF THE INDENTURE REFERRED TO HEREIN.<sup>1</sup>

<sup>1</sup> This paragraph should be included if the Note is issued in global form.

THE NOTE (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AND THE NOTE EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE NOTE EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER OR ANOTHER EXEMPTION UNDER THE SECURITIES ACT. THE HOLDER OF THE NOTE EVIDENCED HEREBY AGREES FOR THE BENEFIT OF BEAZER HOMES USA, INC. THAT (A) SUCH NOTE MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (1)(A) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), PURCHASING FOR ITS OWN ACCOUNT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (D) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR") THAT IS PURCHASING AT LEAST \$100,000 OF NOTES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF AN INSTITUTIONAL ACCREDITED INVESTOR (AND BASED UPON AN OPINION OF COUNSEL IF BEAZER HOMES USA, INC. SO REQUESTS) OR (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED THAT IN THE CASE OF A TRANSFER UNDER CLAUSE (E) SUCH TRANSFER IS SUBJECT TO THE RECEIPT BY THE TRUSTEE (AND BEAZER HOMES USA, INC., IF IT SO REQUESTS) OF A CERTIFICATION OF THE TRANSFEROR AND AN OPINION OF COUNSEL TO THE EFFECT THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE

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SECURITIES ACT, (2) TO BEAZER HOMES USA, INC. OR ANY OF ITS SUBSIDIARIES OR (3) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND THE INDENTURE GOVERNING THE NOTES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER FROM IT OF THE NOTE EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE. IF ANY RESALE OR OTHER TRANSFER OF ANY NOTE IS PROPOSED TO BE MADE UNDER CLAUSE (A)(1)(D) ABOVE WHILE THESE TRANSFER RESTRICTIONS ARE IN FORCE THEN THE TRANSFEROR SHALL DELIVER A LETTER FROM THE TRANSFEREE TO BEAZER AND THE TRUSTEE WHICH SHALL PROVIDE, AMONG OTHER THINGS, THAT THE TRANSFEREE IS AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS ACQUIRING THE NOTES FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT.

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No.

CUSIP No.:

6<sup>1</sup>/<sub>2</sub>% Senior Notes due 2013, Series A

BEAZER HOMES USA, INC.  
a Delaware corporation

promises to pay to

or registered assigns  
the principal sum of

[Dollars] on November 15, 2013

Authenticated:

Dated:

[The Remainder of This Page Has Intentionally Been Left Blank.]

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IN WITNESS WHEREOF, the Company has caused this Note to be executed as of the date first above written.

BEAZER HOMES USA, INC.

[Seal]

By:

\_\_\_\_\_  
Name:

Title:

By:

\_\_\_\_\_  
Name:

Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee,  
certifies that this is one of the Notes referred to in the  
within mentioned Indenture.

By:

\_\_\_\_\_  
Authorized Signatory

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**BEAZER HOMES USA, INC.**

**6<sup>1</sup>/<sub>2</sub>% Senior Notes due 2013, Series A**

1. *Interest.*

BEAZER HOMES USA, INC. (the "*Company*"), a Delaware corporation, promises to pay interest on the principal amount of this Note at the rate per annum shown above. The Company will pay interest semiannually on May 15 and November 15 of each year, commencing May 15, 2004, until the principal is paid or made available for payment. Interest on the Notes will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid, from November 13, 2003. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. *Method of Payment.*

The Company will pay interest on the Notes (except defaulted interest, if any, which will be paid on such special payment date to Holders of record on such special record date as may be fixed by the Company) to the persons who are registered Holders of Notes at the close of business on May 1 and November 1. Holders must surrender Notes to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts.

3. *Paying Agent and Registrar.*

Initially, U.S. Bank National Association (the "*Trustee*") will act as Paying Agent and Registrar. The Company may change or appoint any Paying Agent, Registrar or co-Registrar without notice. The Company or any of its Subsidiaries may act as Paying Agent, Registrar or co-Registrar.

4. *Indenture.*

The Company issued the Notes under an Indenture dated as of April 17, 2002 (as amended or supplemented, the "*Indenture*") among the Company, the Subsidiary Guarantors and the Trustee. The terms of the Notes and the Subsidiary Guarantees include those stated in the Indenture (including those terms set forth in the Authorizing Resolution or supplemental indenture pertaining to the Notes of the Series of which this Note is a part) and those made part of the Indenture by reference to the Trust Indenture Act of 1939 ("*TIA*") as in effect on the date of the Indenture. The Notes and the Subsidiary Guarantees are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of them. The Notes include the Initial Notes and the Exchange Notes (each as defined in the Indenture) issued in exchange for the Initial Notes pursuant to the Registration Rights Agreement (as hereinafter defined).

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture and the applicable Authorizing Resolution or supplemental indenture. Requests may be made to: Beazer Homes USA, Inc., 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328, Attention: President.

5. *Optional Redemption.*

The Company may redeem all or any portion of the Notes at any time and from time to time on or after November 15, 2008 and prior to maturity at the following redemption prices (expressed in percentages of the principal amount thereof) together, in each case, with accrued and unpaid interest

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to the date fixed for redemption if redeemed during the 12-month period beginning on November 15 of each year indicated below:

Year	Percentage
2008	103.250%
2009	102.167%
2010	101.083%
2011 and thereafter	100.000%

In addition, on or prior to November 15, 2006, the Company may, at its option, redeem up to 35% of the outstanding Notes with the net proceeds of an Equity Offering at 106.50% of the principal amount thereof plus accrued and unpaid interest, if any, to the date fixed for redemption; *provided*, that at least \$130.0 million principal amount of the Notes remain outstanding after such redemption. Notice of any such redemption must be given within 60 days after the date of the closing of the relevant Public Equity Offering.

Prior to November 15, 2008, we may at our option redeem the Notes, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed plus the Applicable Premium as of, and accrued and unpaid interest to, the redemption date (subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date). Notice of such redemption must be mailed by first-class mail to each Holder's registered address, not less than 30 nor more than 60 days prior to the redemption date.

"Applicable Premium" means, with respect to a Note at any redemption date, the greater of (i) 1.00% of the principal amount of such Note and (ii) the excess of (A) the present value at such redemption date of (1) the redemption price of such Note on November 15, 2008 (such redemption price being described in the first paragraph of this section 5 exclusive of any accrued interest) plus (2) all required remaining scheduled interest payments due on such Note through November 15, 2008 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate, over (B) the principal amount of such Note on such redemption date.

"Adjusted Treasury Rate" means, with respect to any redemption date, (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities", for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after November 15, 2008, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third Business Day immediately preceding the redemption date, plus 0.50%.

"Comparable Treasury Issue" means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the Notes from the redemption date to November 15, 2008, that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a maturity most nearly equal to November 15, 2008.

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"Comparable Treasury Price" means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate is applicable, the average of three, or such lesser number as is obtained by the Trustee, Reference Treasury Dealer Quotations for such redemption date.

"Quotation Agent" means the Reference Treasury Dealer selected by the Trustee after consultation with the Company.

"Reference Treasury Dealer" means UBS Securities LLC and its successors and assigns, and two other nationally recognized investment banking firms selected by the Company that are primary U.S. Government securities dealers.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day immediately preceding such redemption date.

In the event less than all of the Notes are to be redeemed at any time, selection of the Notes to be redeemed will be made by the Trustee from among the outstanding Notes on a *pro rata* basis, by lot or by any other method permitted by the Indenture. Notice of redemption will be mailed at least 15 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at the registered address of such Holder. On and after the redemption date, interest will cease to accrue on the Notes or portions thereof called for redemption.

The Indenture requires the Company

(i) to offer to purchase all of the outstanding Notes upon a Change of Control of the Company,

(ii) to offer to purchase a portion of the outstanding Notes using Net Proceeds neither used to repay certain Indebtedness nor used or invested as provided in the Supplemental Indenture or

(iii) to offer to purchase 10% of the original outstanding principal amount of the Notes in the event that, at the end of any two consecutive fiscal quarters, the Company's Consolidated Tangible Net Worth is less than \$85 million; *provided* that no such offer shall be required if, following such two fiscal quarters but prior to the date the Company is required to make such offer, capital in cash or cash equivalents is contributed to the Company in an Equity Offering sufficient to increase the Company's Consolidated Tangible Net Worth after giving effect to such contribution to an amount equal to or greater than \$85 million.

#### 6. *Registration Rights Agreement.*

The Holder of this Note is entitled to the benefits of a Registration Rights Agreement, dated as of November 13, 2003, among the Company, the Subsidiary Guarantors and the Initial Purchasers named therein (as such may be amended from time to time, the "*Registration Rights Agreement*"). Capitalized terms used in this subsection but not defined herein have the meanings assigned to them in the Registration Rights Agreement.

If (i) the Exchange Offer Registration Statement is not filed with the Commission on or before the 90th calendar day following the Issue Date or, if that day is not a Business Day, then the next day that is a Business Day; (ii) the Exchange Offer Registration Statement is not declared effective on or before the 150th calendar day following the Issue Date or, if that day is not a Business Day, then the next day that is a Business Day; (iii) the Exchange Offer is not completed on or before the 180th calendar day following the Issue Date or, if that day is not a Business Day, then the next day that is a Business Day; or (iv) the Shelf Registration Statement is required to be filed but is not filed or declared effective within the time periods required by the Registration Rights Agreement or is declared effective but

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thereafter ceases to be effective or usable (subject to certain exceptions) (each such event referred to in clauses (i) through (iv), a "*Registration Default*"), the interest rate borne by the Notes will be increased by 0.25% per annum upon the occurrence of a Registration Default. This rate will continue to increase by 0.25% each 90 day period that the Liquidated Damages (as defined below) continue to accrue under any such circumstance. However, the maximum total increase in the interest rate will in no event exceed one percent (1.0%) per year. The increase in the interest rate on the Notes is referred to as "*Liquidated Damages*." Such interest is payable in addition to any other interest payable from time to time with respect to the Initial Notes and the Exchange Notes in cash on each interest payment date to the Holders of record for such interest payment date.

#### 7. *Denominations, Transfer, Exchange.*

The Notes are in registered form without coupons in denominations of \$1,000 and integral multiples of \$1,000. A Holder may transfer or exchange Notes by presentation of such Notes to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal principal amount of Notes of other denominations. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Note selected for redemption, except the unredeemed part thereof if the Note is redeemed in part, or transfer or exchange any Notes for a period of 15 days before a selection of Notes to be redeemed.

#### 8. *Persons Deemed Owners.*

The registered Holder of this Note shall be treated as the owner of it for all purposes.

#### 9. *Unclaimed Money.*

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Company at its request. After that, Holders entitled to the money must look to the Company for payment unless an abandoned property law designates another person.

#### 10. *Amendment, Supplement, Waiver.*

Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of at least a majority in principal amount of the Notes then outstanding, and any existing Default or Event of Default (other than any continuing Default or Event of Default in the payment of interest on or the principal of the Notes) under, or compliance with any provision of, the Indenture may be waived with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holders of a majority in principal amount of the Notes then outstanding. Without the consent of any Holder, the Company, the Subsidiary Guarantors and the Trustee may amend the Indenture or the Notes or waive any provision of the Indenture to cure any ambiguity, defect or inconsistency, to comply with Section 3.10 of the Supplemental Indenture; to provide for uncertificated Notes in addition to certificated Notes; to make any change that does not adversely affect the legal rights under the Indenture of any Holder; to comply with or qualify the Indenture under the Trust Indenture Act; or to reflect a Subsidiary Guarantor ceasing to be liable on the Subsidiary Guarantees because it is no longer a Subsidiary of the Company.

#### 11. *Successor Corporation.*

When a successor corporation assumes all the obligations of its predecessor under the Notes and the Indenture, the predecessor corporation will be released from those obligations.

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#### 12. *Trustee Dealings With Company.*

U.S. Bank National Association, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its affiliates, and may otherwise deal with the Company or its affiliates, as if it were not Trustee.

#### 13. *No Recourse Against Others.*

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes 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 Note waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

14. *Discharge of Indenture.*

The Indenture contains certain provisions pertaining to defeasance, which provisions shall for all purposes have the same effect as if set forth herein.

15. *Authentication.*

This Note shall not be valid until the Trustee signs the certificate of authentication on the other side of this Note.

16. *Abbreviations.*

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

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**ASSIGNMENT FORM**

If you the Holder want to assign this Note, fill in the form below:

I or we assign and transfer this Note to

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

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(Print or type assignee's name, address, and zip code)

and irrevocably appoint

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

Date: \_\_\_\_\_

Your signature: \_\_\_\_\_

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

**SIGNATURE GUARANTEE**

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

In connection with any transfer of this Note occurring prior to the date which is the earlier of (i) the date of the declaration by the Commission of the effectiveness of a registration statement under the Securities Act of 1933, as amended (the "*Securities Act*") covering resales of this Note (which effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) two

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years from the Issue Date, the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with the transfer:

[Check One]

- (1)  to the Company or a subsidiary thereof; or
- (2)  pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- (3)  to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended) that has

furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter can be obtained from the Trustee); or

- (4) o outside the United States to a "foreign person" in compliance with Rule 904 of Regulation S under the Securities Act of 1933, as amended; or
- (5) o pursuant to the exemption from registration provided by Rule 144 under the Securities Act of 1933, as amended; or
- (6) o pursuant to an effective registration statement under the Securities Act of 1933, as amended; or
- (7) o pursuant to another available exemption from the registration requirements of the Securities Act of 1933, as amended;

and unless the box below is checked, the undersigned confirms that such Note is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended (an "Affiliate"):

- The transferee is an Affiliate of the Company.

Unless one of the items is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided, however*, that if item (3), (4), (5) or (7) is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, in their sole discretion, such written legal opinions, certifications (including an investment letter in the case of box (3) or (4)) and other information as the Trustee or the Company has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, as amended.

If none of the foregoing items are checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.14 of the Indenture shall have been satisfied.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Sign exactly as name appears on the other side of this Note)

Signature Subsidiary Guarantee:

\_\_\_\_\_

(SIGNATURE MUST BE GUARANTEED)

SIGNATURE GUARANTEE

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

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: \_\_\_\_\_

NOTICE: To be executed by an executive officer

[FORM OF NOTATION ON NOTE RELATING TO GUARANTEE]

GUARANTEE

Beazer Homes Corp., Beazer/Squires Realty, Inc., Beazer Homes Sales Arizona, Inc., Beazer Realty Corp., Beazer Mortgage Corporation, Beazer Homes Holdings Corp., Beazer Homes Texas Holdings, Inc., Beazer Homes Texas, L.P., April Corporation, Beazer SPE, LLC, Beazer Homes Investment Corp., Beazer Realty, Inc., Beazer Clarksburg, LLC, Homebuilders Title Services of Virginia, Inc., Homebuilders Title Services, Inc., Texas Lone Star Title, L.P., Beazer Allied Companies Holdings, Inc., Crossmann Communities of North Carolina, Inc., Crossmann Communities of Ohio, Inc., Crossmann Communities of Tennessee, LLC, Crossmann Communities Partnership, Crossmann Investments, Inc., Crossmann Management, Inc., Crossmann Mortgage Corp., Cutter Homes, Ltd., Deluxe Homes of Lafayette, Inc., Deluxe Homes of Ohio, Inc., Beazer Realty, Inc. (formerly Merit Realty, Inc.), Paragon Title, LLC, Pinehurst Builders LLC and Trinity Homes LLC (the "Subsidiary Guarantors") have unconditionally guaranteed, jointly and severally (such guarantee by each Subsidiary Guarantor being referred to herein as the "Subsidiary Guarantee") (i) the due and punctual payment of the principal of and interest on the Notes, whether at maturity, by acceleration or otherwise, the due and punctual payment of interest on the overdue principal and interest, if any, on the Notes, to the extent lawful, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms set forth in Article Nine of the Indenture and (ii) 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.

No past, present or future stockholder, officer, director, employee or incorporator, as such, of any of the Subsidiary Guarantors shall have any liability under the Subsidiary Guarantee by reason of such person's status as stockholder, officer, director, employee or incorporator. Each holder of a Note by accepting a Note

waives and releases all such liability. This waiver and release are part of the consideration for the issuance of the Subsidiary Guarantees.

Each holder of a Note by accepting a Note agrees that any Subsidiary Guarantor named below shall have no further liability with respect to its Subsidiary Guarantee if such Subsidiary Guarantor otherwise ceases to be liable in respect of its Subsidiary Guarantee in accordance with the terms of the Indenture.

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The Subsidiary Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Notes upon which the Subsidiary Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

SUBSIDIARY GUARANTORS:

APRIL CORPORATION  
BEAZER ALLIED COMPANIES HOLDINGS, INC.  
BEAZER HOMES CORP.  
BEAZER HOMES HOLDINGS CORP.  
BEAZER HOMES INVESTMENT CORP.  
BEAZER HOMES SALES ARIZONA, INC.  
BEAZER HOMES TEXAS HOLDINGS, INC.  
BEAZER MORTGAGE CORPORATION  
BEAZER REALTY CORP.  
BEAZER REALTY, INC.  
BEAZER/SQUIRES REALTY, INC.  
CROSSMANN COMMUNITIES OF NORTH CAROLINA, INC.  
CROSSMANN COMMUNITIES OF OHIO, INC.  
CROSSMANN INVESTMENTS, INC.  
CROSSMANN MANAGEMENT, INC.  
CROSSMANN MORTGAGE CORP.  
CUTTER HOMES, LTD.  
DELUXE HOMES OF LAFAYETTE, INC.  
DELUXE HOMES OF OHIO, INC.  
HOMEBUILDERS TITLE SERVICES OF VIRGINIA, INC.  
HOMEBUILDERS TITLE SERVICES, INC.  
BEAZER REALTY, INC., fka MERIT REALTY, INC.

By: \_\_\_\_\_

Name:

Title:

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BEAZER CLARKSBURG, LLC

By: BEAZER HOMES CORP., its managing member

By: \_\_\_\_\_

Name:

Title:

BEAZER HOMES TEXAS, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC., its managing partner

By: \_\_\_\_\_

Name:

Title:

BEAZER SPE, LLC

By: BEAZER HOMES CORP., its managing member

By: \_\_\_\_\_

Name:

Title:

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CROSSMANN COMMUNITIES OF TENNESSEE, LLC

By: CROSSMANN COMMUNITIES OF NORTH CAROLINA, INC.,  
its managing member

By:

\_\_\_\_\_

Name:

Title:

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CROSSMANN COMMUNITIES PARTNERSHIP

By: BEAZER HOMES INVESTMENT CORP., it partner

By:

\_\_\_\_\_

Name:

Title:

PARAGON TITLE, LLC

By: BEAZER HOMES INVESTMENT CORP., its partner

By:

\_\_\_\_\_

Name:

Title:

PINEHURST BUILDERS LLC

By: CROSSMANN COMMUNITIES OF TENNESSEE, LLC, its managing partner

By: CROSSMANN COMMUNITIES OF NORTH CAROLINA, INC.,  
its managing member

By:

\_\_\_\_\_

Name:

Title:

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TEXAS LONE STAR TITLE, L.P.

By: BEAZER HOMES TEXAS HOLDINGS, INC., its managing partner

By:

\_\_\_\_\_

Name:

Title:

TRINITY HOMES LLC

By: BEAZER HOMES INVESTMENT CORP., its manager

By:

\_\_\_\_\_

Name:

Title:

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QuickLinks

[ASSIGNMENT FORM](#)

[\[FORM OF NOTATION ON NOTE RELATING TO GUARANTEE\] GUARANTEE](#)

**BEAZER HOMES U.S.A., INC.**

**Non-Employee Director Stock Option Plan**

1. *Purpose of the Plan.*

The purpose of this Non-Employee Director Stock Option Plan (the "Plan") is to promote the success of Beazer Homes U.S.A., Inc. (the "Company") by attracting and retaining non-employee directors by supplementing their cash compensation and providing a means for such directors to increase their holdings of common stock of the Company.

2. *Definitions.*

As used herein, the following definitions shall apply:

2.0 The "Company" shall mean Beazer Homes U.S.A., Inc., a Delaware corporation, and any successor corporation.

2.1 "Annual Meeting Date" means the date of the annual meeting of the stockholders of the Company at which directors are elected.

2.2 "Board" means the Board of Directors of the Company.

2.3 "Common Stock" means the Common Stock, par value \$.01 per share, of the Company.

2.4 "Code" means the Internal Revenue Code of 1986, as amended.

2.5 "Corporation" means the Company and its Subsidiaries.

2.6 "Eligible Director" means any person who is a member of the Board and who is not an employee, full time or part time, of either the Corporation or of Hanson PLC and/or its subsidiaries; *provided*, that the Non-Executive Chairman of the Company as of the date of adoption of the Plan by the Board, Mr. Brian C. Beazer, shall be an Eligible Director.

2.7 "Initial Grant Date" means the date on which a person is initially elected as a member of the Board or, with respect to those persons who are Eligible Directors and who serve on the Board at the time of adoption of this Plan by the Board, the date of approval of the Plan by the Company's stockholders.

2.8 "Option" means a stock option granted pursuant to this Plan.

2.9 "Option Agreement" means the agreement between the Company and the Optionee for the grant of an Option.

2.10 "Option Stock" means stock subject to an Option granted pursuant to this Plan.

2.11 "Optionee" means a person who receives an Option.

2.12 "Plan" means the Company's Non-Employee Director Stock Option Plan.

2.13 "Shares" means shares of the Common Stock.

2.14 "Subsidiary" means a "subsidiary corporation" as defined in Section 425(f) and (g) of the Code.

3. *Stock Subject to the Plan.*

Subject to the provisions of Section 11 of this Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan, excluding those Shares constituting the unexercised portion of any canceled, terminated or expired options, is 100,000 Shares. Such Shares shall be authorized, but unissued, Common Stock. If an Option should expire or become unexercisable for any reason without having been exercised in full, the unpurchased Shares which were subject thereto shall,

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unless the Plan shall have been terminated, become available for the grant of other Options under the Plan.

4. *Administration of the Plan.*

This Plan shall be administered by the Board, which shall have authority to adopt such rules and regulations, and to make such determinations as are not inconsistent with the Plan and are necessary or desirable for its implementation and administration.

5. *Grants of Options.*

5.1 *Nondiscretionary Grants.* On the Initial Grant Date, each Eligible Director shall receive the grant of an Option to purchase 10,000 Shares.

5.2 *Adjustments.* The number of Shares subject to any Option shall be subject to adjustment from time to time in accordance with Section 11 hereof.

## 6. *Term of Plan.*

This Plan shall become effective as of January 1, 1995 (the "Effective Date") and upon its adoption by the Board, and shall continue in effect until all Options granted hereunder have expired or been exercised, unless soon terminated under the provisions relating thereto. No Option shall be granted after ten (10) years from the earlier of the date of adoption of this Plan or its approval by the stockholders as contemplated by Section 13.1.

## 7. *Terms of Option Agreement.*

Upon the grant of each Option, the Company and the Eligible Director shall enter into an Option Agreement which shall specify the grant date and the purchase price of the Option Shares, and shall include or incorporate by reference the substance of all of the following provisions and such other provisions consistent with this Plan as the Board may determine.

7.1 *Term.* The term ("Term") of an Option shall be ten years from its Grant Date, subject to earlier termination in accordance with Section 7.6 or 7.7 hereof.

7.2 *Exercise Schedule.* An Option shall not be exercisable until the third anniversary of the Grant Date, at which time it shall become exercisable for up to 100% of the Shares covered thereby. Notwithstanding the foregoing, an Option held by an Eligible Director shall become immediately exercisable in full upon (i) the death or disability of such Eligible Director, (ii) retirement of such Eligible Director from the Board, (iii) an unsuccessful attempt by such Eligible Director to win re-election to the Board, or (iv) the adoption by the Company of a plan for a dissolution, liquidation, merger, consolidation or reorganization as described in clauses (x), (y) or (z) of Section 7.7 (each of (i), (ii), (iii) and (iv), an "Acceleration Event").

7.3 *Purchase Price.* The purchase price of the Shares subject to each Option shall be the fair market value thereof on the grant date. For purposes of this Plan, fair market value shall mean the closing price of such Shares on the New York Stock Exchange ("NYSE") Composite Tape on the grant date or, in the event the Grant Date is not a day on which the NYSE is open for trading, the next day on which the NYSE is open for trading.

7.4 *Payment of Purchase Price.* The purchase price of Shares acquired pursuant to an Option shall be paid in full at the time the Option is exercised in cash or by delivery of any property other than cash (including Shares or other securities of the Company, so long as such property constitutes valid consideration for the Shares purchased under applicable law and is surrendered in good form for transfer, or by some combination of cash and such other property); provided, however, that the purchase price may not be paid by the delivery of Shares more frequently than once every six months.

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7.5 *Transferability.* No Option shall be transferable other than by will or the laws of descent and distribution, and an Option shall be exercisable during the Eligible Director's lifetime only by the Eligible Director.

7.6 *Termination of Membership on the Board.* If an Eligible Director's membership on the Board terminates as the result of an Acceleration Event as defined in Section 7.2, any Option held at the time of termination may be exercised in whole or in part at any time within one year after the date of such termination (but in no event after the Term of the Option expires) and shall thereafter automatically terminate.

7.7 *Change of Ownership.* In the event of (x) a dissolution or liquidation of the Company, (y) a merger or consolidation in which the Company is not the surviving corporation, or (z) any other capital reorganization in which more than fifty percent (50%) of the shares of the Company entitled to vote are exchanged, the Company shall give to each Eligible Director, at the time of adoption of the plan for liquidation, dissolution, merger, consolidation or reorganization, either, in the Company's sole discretion (i) a reasonable time thereafter within which to exercise the Option, prior to the effectiveness of such liquidation, dissolution, merger, consolidation or reorganization, at the end of which time the Option shall terminate, or (ii) the right to exercise the Option (or a substitute Option) as to an equivalent number of shares of stock of the corporation succeeding the Company or acquiring its business by reason of such liquidation, dissolution, merger, consolidation or reorganization.

## 8. *Use of Proceeds.*

Proceeds from the sale of Shares pursuant to this Plan shall be used by the Company for general corporate purposes.

## 9. *Term of Options.*

The term of each option granted under the Plan shall be ten (10) years from the date of the grant thereof, subject to earlier termination as herein provided.

## 10. *Exercise of Options.*

10.1 *Procedure for Exercise.* Any Option granted hereunder shall be exercisable in installments as specified in Section 7.2 hereof, under such conditions as the Board shall designate under the terms of the Plan and of the Option Agreement. To the extent not exercised, installments shall, unless otherwise provided in the Option Agreement, accumulate and be exercisable, in whole or in part, at any time after becoming exercisable, but not later than the date the Option expires.

An Option shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and full payment for the Shares with respect to which the Option is exercised has been received by the Company. Until the issuance of the stock certificates (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to option Shares notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other rights for which the record date is prior to the date the stock certificates are issued except as provided in Section 11 hereof.

10.2 *Exercise following Death.* In the case of an Optionee's death, exercise shall be by the person or persons (including his estate) to whom his rights under such Option shall have passed by will or by laws of descent and distribution.

10.3 *Compliance with Law.* The exercise of each Option shall be on the condition that the purchases of stock thereunder shall be for investment purposes, and not with a view to resale or distribution unless the Shares subject to such Option are registered under the Securities Act of 1933, as

amended, or if in the opinion of counsel for the Company such registration is not required under the Securities Act of 1933, as amended, or any other applicable law, regulation, or rule of any governmental agency.

#### 11. *Adjustment Upon Changes in Capitalization.*

11.1 *Changes in Capitalization.* If the number of Shares of the Company as a whole are increased, decreased or changed into, or exchanged for, a different number or kind of shares or securities of the Company, whether through merger, consolidation, reorganization, recapitalization, reclassification, stock dividend, stock split, combination of shares, exchange of shares, change in corporate structure or the like, an appropriate and proportionate adjustment shall be made in the number and kind of shares subject to this Plan, and in the number, kind, and per share exercise price of Shares subject to unexercised Options or portions thereof granted prior to any such change. Any such adjustment in an outstanding Option, however, shall be made without a change in the total price applicable to the unexercised portion of the Option but with a corresponding adjustment in the price for each Shares covered by the Option.

11.2 *Dissolution or Liquidation.* Upon the dissolution or liquidation of the Company, this Plan and the Options issued thereunder shall terminate.

#### 12. *Time of Granting Options.*

The grant date of an Option under this Plan shall be the Initial Grant Date. No option shall be granted after expiration of the term of this Plan.

#### 13. *Approval, Amendment and Termination of the Plan.*

13.1 *Approval.* The Plan shall be adopted by the Board, and shall be presented to the stockholders of the Company for their approval by vote of a majority of such stockholders present, or represented at a meeting duly held, such approval to be given within twelve (12) months before or after the date of adoption hereof. Options may be granted prior to such approval, but such Options shall be contingent upon such approval being obtained and may not be exercised prior to such approval.

13.2 *Amendment.* The Board, without further approval of the stockholders, may amend this Plan at any time and from time to time in such respects as the Board may deem advisable, subject to any stockholder or regulatory approval required by law, and to any conditions established by the terms of such amendment; provided that in no event shall the Plan be amended more than once every six (6) months; and provided, further, that no amendment that would:

- (a) materially increase the number of Shares that may be issued under the Plan;
- (b) materially modify the requirements as to eligibility for participation in the Plan;
- (c) otherwise materially increase the benefits accruing to participants under the Plan;
- (d) cause Rule 16b-3 to become unavailable with respect to the Plan; or
- (e) would violate the rules or regulations of the New York Stock Exchange, any other securities exchange or the National Association of Securities Dealers, Inc. that are applicable to the Company.

shall be made without the approval of the Company's stockholders.

13.3 *Termination and Suspension.* The Board, without further approval of the stockholders, may at any time terminate or suspend this Plan. Any such termination or suspension of the Plan shall not affect Options already granted and such Options shall remain in full force and effect as if this Plan had not been terminated or suspended. No Option may be granted while the Plan is suspended or after it is terminated. Rights and obligations under any Option granted while this Plan is in effect shall not be

altered or impaired by suspension or termination of this Plan, except with the consent of the person to whom the Option was granted. An Option may be terminated by agreement between an Optionee and the Company and, in lieu of the terminated Option, a new Option may be granted with an exercise price which may be higher or lower than the exercise price of the terminated Option.

#### 14. *Conditions upon Issuance of Shares.*

Shares shall not be issued with respect to any Option granted under this Plan unless the exercise of such Option and the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance. Inability of the Company to obtain authority from any regulatory body having jurisdictional authority deemed by its counsel to be necessary to the lawful issuance and sale of any Shares hereunder shall relieve the Company of any liability in respect of the non-issuance or sale of such Shares as to which such requisite authority shall not have been obtained.

#### 15. *Reservation of Shares.*

The Company, during the term of the Plan, will at all times reserve and keep available a number of Shares as shall be sufficient to satisfy the requirements of the Plan.

QuickLinks

[BEAZER HOMES U.S.A., INC. Non-Employee Director Stock Option Plan](#)

## AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is made effective as of the 31st day of March, 1995 by and between BEAZER HOMES USA, INC., a Delaware corporation (the "Company"), and Ian McCarthy, an individual resident of the State of Georgia ("Executive").

### WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an Employment Agreement dated March 2, 1994 (the "1994 Agreement"); and

WHEREAS, the Company and Executive desire to amend certain provisions of, and to restate in its entirety the 1994 Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the Company and Executive hereby agree as follows:

#### 1. *Employment*

1.1 *Employment and Duties.* The Company hereby agrees to employ Executive for the Term (as hereinafter defined) as its President & Chief Executive Officer, subject to the direction of the Board of Directors of the Company (the "Board") and, in connection therewith, to perform such duties as he shall reasonably be directed by the Board to perform. In performing such duties hereunder, Executive shall comply with the policies and procedures as adopted from time to time by the Board, shall give the Company the benefit of his special knowledge, skills, contacts and business experience, shall perform his duties and carry out his responsibilities hereunder in a diligent manner, shall be just and faithful in the performance of his duties and in carrying out his responsibilities and shall devote all of his business time, attention, ability and energy exclusively to the performance of his duties and responsibilities hereunder; *provided, however*, that Executive may, with the approval of the Board, from time to time, serve, or continue to serve, on the Board of Directors of, and hold any other offices or positions in, companies or organizations, which, in the Board's judgment, will not present any conflict of interest with the Company or any of its affiliates or divisions, or adversely affect the performance of Executive's duties pursuant to this Agreement. Executive hereby accepts such employment and agrees to render such services.

1.2 *Location.* The principal location for performance of Executive's services hereunder shall be at the offices of Beazer Homes USA, Inc. which are currently located in Atlanta, Georgia, subject to reasonable travel requirements during the course of such performance. In the event circumstances require a change in such location to another city, Executive shall have not less than three (3) months advance notice of the effective date of the relocation.

#### 2. *Employment Term*

2.1 *Term.* The term of Executive's employment hereunder (the "Term") shall commence effective as of the date hereof and shall end on September 30, 1996 (the "Initial Term"), unless sooner terminated as provided herein; *provided, however*, that the Term shall be extended and this Agreement shall be automatically renewed for successive one-year periods unless: (i) this Agreement is terminated as otherwise provided herein; or (ii) Executive or the Company provides written notice to the other of such party's desire not to extend this Agreement at least sixty (60) days prior to the expiration date of the Term of this Agreement pursuant to this Section 2.1.

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#### 3. *Compensation and Benefits*

##### 3.1 *Cash Compensation.*

(a) *Base Salary.* In consideration of Executive's services hereunder the Company shall pay Executive an aggregate base salary at an annualized rate, effective as of the date hereof (until adjusted as provided below), \$330,000, payable, in each case, in such nearly equal installments as may be customary for executive officers employed by the Company (but not less frequently than monthly) or as may otherwise be agreed to between the Company and Executive, in arrears (the "Base Salary"). The Base Salary for each year shall be prorated according to the number of days in such year during which this Agreement is in effect. Commencing October 1, 1995 and on each October 1 thereafter, the Base Salary may be adjusted (upward or downward) by the Compensation Committee of the Board, taking into consideration Executive's performance, general cost of living increases, the salaries provided by comparable businesses, the financial condition of the Company and other similar matters.

(b) *Bonuses; Stock Incentive Plans.* Executive will be eligible to participate in the Company's bonus and stock incentive plans (including, without limitation, the Company's 1994 Stock Incentive Plan) at the discretion of the Compensation Committee of the Board. The amount and terms of, and the targets, conditions and restrictions applicable to each bonus or other incentive award shall be subject to the provisions of any such plan and of the applicable award letter duly executed and delivered by the Company.

3.2 *Participation in Benefit Plans.* The payments provided in Section 3 hereof are in addition to any benefits to which Executive may be, or may become, entitled under any benefit plan or program of the Company for which key executives are or shall become eligible, including, without limitation, pension, 401(k), life and disability insurance benefits and/or plans. Further, Executive shall be eligible to receive during the period of his employment under this Agreement, all benefits and emoluments for which key executives are eligible under every such plan or program to the extent permissible under the general terms and provisions of such plans or programs and in accordance with the provisions thereof.

3.3 *Vacation.* Executive shall be entitled to twenty (20) working days of compensated vacation in each fiscal year, to be taken at times which do not unreasonably interfere with the performance of Executive's duties hereunder. Any unused vacation time from any fiscal year shall be subject to accumulation or forfeiture in accordance with Company policy as in effect from time to time.

3.4. *Expenses.* The Company will pay or reimburse Executive for all reasonable and necessary out-of-pocket expenses incurred by him in the performance of his duties under this Agreement. Executive shall keep detailed and accurate records of expenses incurred in connection with the performance of his duties hereunder and reimbursement therefor shall be in accordance with policies and procedures to be established from time to time by the Board.

#### 4. *Termination*

4.1 *General.* In addition to the right of either party to terminate this Agreement pursuant to Section 2 hereof, the Company shall have the right to terminate the employment of Executive as set forth in this Section 4.

4.2 *Termination for Cause.* In addition to any other remedies which the Company may have at law or in equity, the Board may immediately terminate Executive's employment under this Agreement by giving Executive written notice of such termination upon or at any time following the occurrence of any of the following events, and each such termination shall constitute a termination for "cause":

(i) any act or failure to act (or series or combination thereof) by Executive done with the intent to harm in any material respect the interests of the Company or any affiliate thereof;

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(ii) the commission by Executive of a felony;

(iii) the perpetration by Executive of a dishonest act or common law fraud against the Company or any affiliate thereof;

(iv) a grossly negligent act or failure to act (or series or combination thereof) by Executive detrimental in any material respect to the interests of the Company or any affiliate thereof;

(v) the material breach by Executive of his agreements or obligations under this Agreement; or

(vi) the continued refusal to follow the directives of the Board which are consistent with Executive's duties and responsibilities identified in Section 1.1 hereof.

Upon the early termination of Executive's employment under this Agreement by the Company for "cause" the Company shall pay to Executive (i) an amount equal to Executive's Base Salary accrued through the effective date of termination at the rate in effect at the time notice of termination is given, payable at the time such payment is due; and (ii) at the time such payments are due, all other amounts to which Executive is entitled hereunder (including expense reimbursement amounts accrued to the effective date of termination or amounts under any benefit plan of the Company, but expressly excluding any bonus or other incentive payment (or portion thereof) in respect of the fiscal year in which this Agreement is so terminated or any fiscal year of the Company thereafter), and, upon payment of such amounts, the Company shall have no further obligation to Executive under this Agreement.

4.3 *Disability of Executive.* Subject to applicable law, if Executive shall become ill or be injured or otherwise become disabled or incapacitated such that, in the opinion of the Board, he cannot fully carry out and perform his duties hereunder, and such disability or incapacity shall continue for a period of forty-five (45) consecutive days, the Board may, at any time thereafter, by giving Executive twenty (20)-days' prior written notice, fully and finally terminate his employment under this Agreement. Termination under this Section 4.3 shall be effective as of the date provided in such notice, which date shall not be fewer than ninety (90) days after such notice is delivered to Executive or his representative, and the Company shall pay Executive his Base Salary accrued to the effective date of termination at the rate in effect at the time of such notice, payable at the time such payment is due. Upon payment of (i) such accrued Base Salary; and (ii) all other amounts to which Executive may be entitled hereunder, including, without limitation, (A) subject to the terms of any such bonus or incentive award, any bonus or incentive payment to which the Executive would have been entitled pursuant to Section 3.1(b) hereof (prorated for the period up to the effective date of termination), provided the targets and other conditions applicable thereto are met, (B) any expense reimbursement amounts accrued to the effective date of termination, and (C) any amounts under any other benefit plan of the Company, in each case at the time such payments would otherwise have become due and payable in the absence of such termination, and the Company shall have no further obligation to Executive under this Agreement.

4.4 *Death of Executive.* This Agreement shall automatically terminate upon the death of Executive. Upon the early termination of this Agreement as a result of death, the Company shall pay Executive's estate: (i) an amount equal to Executive's Base Salary accrued through the effective date of termination at the rate in effect at the effective date of termination, payable at the time such payment is due; and (ii) all other amounts to which Executive is entitled hereunder, including, without limitation, (A) subject to the terms of any such bonus or incentive award, any bonus or incentive payment to which the Executive would have been entitled pursuant to Section 3.1(b) hereof (prorated for the period up to the effective date of termination), provided the targets and other conditions applicable thereto are met, (B) any expense reimbursement amounts accrued to the effective date of termination, and (C) any amounts under any other benefit plan of the Company, in each case at the time such payments would otherwise have become due and payable in the absence of such termination, and the Company shall have no further obligations to Executive under this Agreement.

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4.5 *Termination Not Otherwise Provided For.* This Section 4.5 governs all terminations of Executive's employment hereunder which are not otherwise provided for in this Section 4 and expressly contemplates a termination of Executive without "cause" and by reason of retirement. Except as otherwise provided in Section 4.2, 4.3 or 4.4, Executive's employment under this Agreement may be terminated by giving Executive written notice thereof, effective as of the date provided in such notice. Upon such termination of the employment of Executive, the Company shall pay to Executive: (i) an amount equal to Executive's Base Salary payable for the remainder of the Term at the time such payments would otherwise have become due and payable in the absence of such termination at the rate in effect on the date of termination; and (ii) all other amounts to which Executive is entitled, including (A) subject to the prior approval of the Compensation Committee of the Board of Directors of the Company (which approval shall not be unreasonably withheld) and subject to the terms of any such bonus or incentive award, any bonus or incentive payment to which the Executive would have been entitled pursuant to Section 3.1(b) hereof (prorated for the period up to the effective date of termination), provided the targets and other conditions applicable thereto are met, (B) any expense reimbursement amounts accrued to the effective date of termination, and (C) any amounts under any other benefit plan of the Company, in each case at the time such payments would otherwise have become due and payable in the absence of such termination, and the Company shall have no further obligations to Executive under this Agreement.

4.6 *Termination by Executive.* Executive may, with or without cause, terminate his employment under this Agreement by giving the Company at least sixty (60) days' prior written notice of such termination (which may be waived by the Company), and after the effective date of such termination, the Company

shall have no further obligation to Executive under this Agreement, including, without limitation, no obligation to pay any pro-rata amount of any bonus or incentive payment in respect of the period up to the date of termination.

## 5. *Employment Covenants.*

5.1 *Covenant Not to Compete.* Executive recognizes and acknowledges that the Company is placing its confidence and trust in Executive. Executive, therefore, covenants and agrees that during the Applicable Non-Compete Period (as defined below) Executive shall not, either directly or indirectly, without the prior written consent of the Board:

- A. Engage in or carry on any business or in any way become associated with any business which is similar to or is in competition with the Business of the Company (as such term is used and defined herein). As used in this Section 5, the term "Business of the Company" shall include all business activities in which the Company is now engaged, including but not limited to, the purchase of land (or options therefor) for development and the construction of residential homes for resale to consumers and shall further include any business in which the Company is engaged at any time during the Term;
- B. Solicit the business of any person or entity, on behalf of himself or any other person or entity, which is or has been at any time during the term of this Agreement a customer or supplier of the Company including, but not limited to, former or present customers or suppliers with whom Executive has had personal contact during, or by reason of, his relationship with the Company;
- C. Be or become an employee, agent, consultant, representative, director or officer of, or be otherwise in any manner associated with, any person, firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company;
- D. Solicit for employment or employ any person employed by the Company at any time during the twelve- (12)-month period immediately preceding such solicitation or employment; or

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- E. Be or become a shareholder, joint venturer, owner (in whole or in part), or partner, or be or become associated with or have any proprietary or financial interest in or of any firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company. Notwithstanding the preceding sentence, passive equity investments by Executive of \$25,000 or less in any entity or affiliated group of any entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company shall not be deemed to violate this Section 5.1.

Executive hereby recognizes and acknowledges that the existing Business of the Company extends throughout the States of Georgia, Tennessee, South Carolina, North Carolina, California, Arizona, Nevada, Florida and New Jersey and therefore agrees that the covenants not to compete contained in this Section 5.1 shall be applicable in and throughout such states, as well as throughout such additional areas or states in which the Company may be (or has prepared written plans to be) doing business as of the date of termination of Executive's employment. Executive further warrants and represents that, because of his varied skill and abilities, he does not need to compete with the Business of the Company and that this Agreement will not prevent him from earning a livelihood and acknowledges that the restrictions contained in this Section 5.1 constitute reasonable protections for the Company.

As used in this Section 5.1, "Applicable Non-Compete Period" shall mean:

- (i) unless and until the Executive's employment under this Agreement is terminated prior to the scheduled end of the Term, the period beginning on March 2, 1994 and ending on the date which is 180 days after the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);
- (ii) if the Executive's employment under this Agreement is terminated pursuant to Section 4.2 hereof or Section 4.3 hereof or for any other reason (other than as set forth in clause (iii) below), the period beginning on March 2, 1994 and ending on the date which is 180 days after the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);
- (iii) if the Executive's employment under this Agreement is terminated without "cause", the period beginning on March 2, 1994 and ending on the date of the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);
- (iv) if on or prior to the date of the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof), the Executive rejects an offer by the Company to extend this Agreement pursuant to Section 2.1 hereof on reasonable terms, the period beginning on March 2, 1994 and ending on the date which is 180 days after the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof); and
- (v) if the Company elects not to extend this Agreement pursuant to Section 2.1 hereof, the period beginning on March 2, 1994 and ending on the date of the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);

5.2 *Trade Secrets and Confidential Information.* Executive recognizes and acknowledges that certain information including, without limitation, information pertaining to the financial condition of the Company, its systems, methods of doing business, agreements with customers or suppliers or other aspects of the Business of the Company or which is sufficiently secret to derive economic value from not being disclosed ("Confidential Information") may be made available or otherwise come into the possession of Executive by reason of his employment with the Company. Accordingly, Executive agrees that he will not (either during or after the term of his employment with the Company) disclose any Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever or make use to his personal advantage or to the advantage of any third party, of

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any Confidential Information, without the prior written consent of the Board. Executive shall, upon termination of employment, return to the Company all documents which reflect Confidential Information (including copies thereof). Notwithstanding anything heretofore stated in this Section 5.2, Executive's obligations under this Section 5.2 shall not, after termination of Executive's employment with the Company, apply to information which has become generally

available to the public without any action or omission of Executive (except that any Confidential Information which is disclosed to any third party by an employee or representative of the Company who is not authorized to make such disclosure shall be deemed to remain confidential and protectable by Executive under this Section 5.2).

5.3 *Records.* All files, records, memoranda and other documents regarding former, existing or prospective customers of the Company or relating in any manner whatsoever to Confidential Information or the Business of the Company (collectively, "Records"), whether prepared by Executive or otherwise coming into his possession, shall be the exclusive property of the Company. All Records shall be immediately placed in the physical possession of the Company upon the termination of Executive's employment with the Company, or at any other time specified by the Board. The retention and use by Executive of duplicates in any form of Records is prohibited after the termination of Executive's employment with the Company.

5.4 *Breach.* Executive hereby recognizes and acknowledges that irreparable injury or damage shall result to the Company in the event of a breach or threatened breach by Executive of any of the terms or provisions of this Section 5, and Executive therefore agrees that the Company shall be entitled to an injunction restraining Executive from engaging in any activity constituting such breach or threatened breach. Nothing contained herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company at law or in equity for such breach or threatened breach, including but not limited to, the recovery of damages from Executive and, if Executive is an employee of the Company, the termination of his employment with the Company in accordance with the terms and provisions of this Agreement.

5.5 *Survival.* Notwithstanding the termination of the employment of Executive or the termination of this Agreement, the provisions of this Section 5 shall survive and be binding upon Executive unless a written agreement which specifically refers to the termination of the obligations and covenants of this Section 5 is executed by the Company.

## 6. *Miscellaneous*

6.1 *Notices.* Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing, via facsimile transmission or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be addressed to the parties as follows:

If to the Company:	Beazer Homes USA, Inc. 5775 Peachtree Dunwoody Road Suite C-550 Atlanta, Georgia 30342 Attn: President Facsimile: 404-250-3428
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If to Executive:	Ian McCarthy c/o Beazer Homes USA, Inc. 5775 Peachtree Dunwoody Rd. Suite C-550 Atlanta, GA 30342
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Any party may change his or its address by written notice in accordance with this Section 6.1. Notices delivered personally shall be deemed communicated as of actual receipt; notices sent via

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facsimile transmission shall be deemed communicated as of receipt by the sender of written confirmation of transmission thereof; mailed notices shall be deemed communicated as of three (3) days after proper mailing.

6.2 *Inclusion of Entire Agreement Herein.* This Agreement supersedes any and all other prior or contemporaneous agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof including, without limitation, the 1994 Agreement, and this Agreement contains all of the covenants and agreements between the parties with respect to employment of Executive by the Company, *provided, however*, that nothing contained herein shall impair Executive's right to (i) any salary, bonus or other payments accrued through the effective date hereof and owing to Executive pursuant to the 1994 Agreement or (ii) any award of restricted stock and grants of options to acquire shares of the Company's common stock referred to in the 1994 Agreement and the award letters delivered by the Company to Executive in connection therewith.

6.3 *LAW GOVERNING AGREEMENT.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.

6.4 *Waivers.* No waiver at any time of any term or provision of this Agreement shall be construed as a waiver of any other term or provision of this Agreement and that a waiver at any time of any term or provision of this Agreement shall not be construed as a waiver at any subsequent time of the same term or provision.

6.5 *Amendments.* Except as otherwise provided in Section 6.6 hereof, no amendment or modification of this Agreement shall be deemed effective unless and until executed in writing by each party hereto.

6.6 *Severability and Limitation.* All agreements and covenants contained herein are severable and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein. Should any court or other legally constituted authority determine that for any such agreement or covenant to be effective that it must be modified to limit its duration or scope, the parties hereto shall consider such agreement or covenant to be amended or modified with respect to duration and/or scope so as to comply with the orders of any such court or other legally constituted authority, and as to all other portions of such agreement or covenants they shall remain in full force and effect as originally written.

6.7 *Headings.* All headings set forth in this Agreement are intended for convenience only and shall not control or affect the meaning, construction or effect of this Agreement or of any of the provisions hereof.

6.8 *Assignment.* The Company shall have the right to assign this Agreement and to delegate all of its rights, duties and obligations hereunder to any entity which controls the Company, which the Company controls or which may be the result of the merger, consolidation, acquisition or reorganization of the Company and another entity. Executive agrees that this Agreement is personal to him and his rights and interests hereunder may not be assigned, nor may his obligations and duties hereunder be delegated (except as to delegation in the normal course of operation of the Company), and any attempted assignment or delegation in violation of this provision shall be void.

6.9 *Arbitration.* All controversies which may arise between the parties hereto including, but not limited to, those arising out of or related to this Agreement shall be determined by binding arbitration applying the laws of the State of Delaware as set forth in Section 6.3 hereof. Any arbitration pursuant to this Agreement shall be conducted in New York City before the American Arbitration Association in accordance with its arbitration rules. The arbitration shall be final and binding upon all the parties (so long as the award was not procured by corruption, fraud or undue means) and the arbitrator's award shall not be required to include factual findings or legal reasoning. Nothing in this Section 6.9 will prevent either party from resorting to judicial proceedings if interim injunctive relief under the laws of

the State of New York from a court is necessary to prevent serious and irreparable injury to one of the parties.

6.10 *Counterparts.* This Agreement may be executed via facsimile transmission signature and in counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

6.11 *Board of Director Determinations.* All matters to be determined by the Board pursuant to the terms of this Agreement shall be determined by the members of the Board or any duly authorized committee thereof without the vote of Executive.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this AMENDED AND RESTATED EMPLOYMENT AGREEMENT effective as of the date first written above.

BEAZER HOMES USA, INC.

By: /s/ DAVID S. WEISS

Name: David S. Weiss  
Title: *Executive Vice President and Chief Financial Officer*

EXECUTIVE

/s/ IAN MCCARTHY

Ian McCarthy

QuickLinks

[AMENDED AND RESTATED EMPLOYMENT AGREEMENT](#)

## AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is made effective as of the 31st day of March, 1995 by and between BEAZER HOMES USA, INC., a Delaware corporation (the "Company"), and John Skelton, an individual resident of the State of Georgia ("Executive").

### WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an Employment Agreement dated March 2, 1994 (the "1994 Agreement"); and

WHEREAS, the Company and Executive desire to amend certain provisions of, and to restate in its entirety the 1994 Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the Company and Executive hereby agree as follows:

#### 1. *Employment*

1.1 *Employment and Duties.* The Company hereby agrees to employ Executive for the Term (as hereinafter defined) as its Senior Vice President, Operations and Controller, Beazer Homes USA, Inc., subject to the direction of the Board of Directors of the Company (the "Board") and, in connection therewith, to perform such duties as he shall reasonably be directed by the Board to perform. In performing such duties hereunder, Executive shall comply with the policies and procedures as adopted from time to time by the Board, shall give the Company the benefit of his special knowledge, skills, contacts and business experience, shall perform his duties and carry out his responsibilities hereunder in a diligent manner, shall be just and faithful in the performance of his duties and in carrying out his responsibilities and shall devote all of his business time, attention, ability and energy exclusively to the performance of his duties and responsibilities hereunder; *provided, however*, that Executive may, with the approval of the Board, from time to time, serve, or continue to serve, on the Board of Directors of, and hold any other offices or positions in, companies or organizations, which, in the Board's judgment, will not present any conflict of interest with the Company or any of its affiliates or divisions, or adversely affect the performance of Executive's duties pursuant to this Agreement. Executive hereby accepts such employment and agrees to render such services.

1.2 *Location.* The principal location for performance of Executive's services hereunder shall be at the offices of Beazer Homes USA, Inc. which are currently located in Atlanta, Georgia, subject to reasonable travel requirements during the course of such performance. In the event circumstances require a change in such location to another city, Executive shall have not less than three (3) months advance notice of the effective date of the relocation.

#### 2. *Employment Term*

2.1 *Term.* The term of Executive's employment hereunder (the "Term") shall commence effective as of the date hereof and shall end on September 30, 1996 (the "Initial Term"), unless sooner terminated as provided herein; *provided, however*, that the Term shall be extended and this Agreement shall be automatically renewed for successive one-year periods unless: (i) this Agreement is terminated as otherwise provided herein; or (ii) Executive or the Company provides written notice to the other of such party's desire not to extend this Agreement at least sixty (60) days prior to the expiration date of the Term of this Agreement pursuant to this Section 2.1.

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#### 3. *Compensation and Benefits*

##### 3.1 *Cash Compensation.*

(a) *Base Salary.* In consideration of Executive's services hereunder the Company shall pay Executive an aggregate base salary at an annualized rate, effective as of the date hereof (until adjusted as provided below), \$175,000, payable, in each case, in such nearly equal installments as may be customary for executive officers employed by the Company (but not less frequently than monthly) or as may otherwise be agreed to between the Company and Executive, in arrears (the "Base Salary"). The Base Salary for each year shall be prorated according to the number of days in such year during which this Agreement is in effect. Commencing October 1, 1995 and on each October 1 thereafter, the Base Salary may be adjusted (upward or downward) by the Compensation Committee of the Board, taking into consideration Executive's performance, general cost of living increases, the salaries provided by comparable businesses, the financial condition of the Company and other similar matters.

(b) *Bonuses: Stock Incentive Plans.* Executive will be eligible to participate in the Company's bonus and stock incentive plans (including, without limitation, the Company's 1994 Stock Incentive Plan) at the discretion of the Compensation Committee of the Board. The amount and terms of, and the targets, conditions and restrictions applicable to each bonus or other incentive award shall be subject to the provisions of any such plan and of the applicable award letter duly executed and delivered by the Company.

3.2 *Participation in Benefit Plans.* The payments provided in Section 3 hereof are in addition to any benefits to which Executive may be, or may become, entitled under any benefit plan or program of the Company for which key executives are or shall become eligible, including, without limitation, pension, 401(k), life and disability insurance benefits and/or plans. Further, Executive shall be eligible to receive during the period of his employment under this Agreement, all benefits and emoluments for which key executives are eligible under every such plan or program to the extent permissible under the general terms and provisions of such plans or programs and in accordance with the provisions thereof.

3.3 *Vacation.* Executive shall be entitled to twenty (20) working days of compensated vacation in each fiscal year, to be taken at times which do not unreasonably interfere with the performance of Executive's duties hereunder. Any unused vacation time from any fiscal year shall be subject to accumulation or forfeiture in accordance with Company policy as in effect from time to time.

3.4. *Expenses.* The Company will pay or reimburse Executive for all reasonable and necessary out-of-pocket expenses incurred by him in the performance of his duties under this Agreement. Executive shall keep detailed and accurate records of expenses incurred in connection with the performance of his duties hereunder and reimbursement therefor shall be in accordance with policies and procedures to be established from time to time by the Board.

#### *Termination*

4.1 *General.* In addition to the right of either party to terminate this Agreement pursuant to Section 2 hereof, the Company shall have the right to terminate the employment of Executive as set forth in this Section 4.

4.2 *Termination for Cause.* In addition to any other remedies which the Company may have at law or in equity, the Board may immediately terminate Executive's employment under this Agreement by giving Executive written notice of such termination upon or at any time following the occurrence of any of the following events, and each such termination shall constitute a termination for "cause":

(i) any act or failure to act (or series or combination thereof) by Executive done with the intent to harm in any material respect the interests of the Company or any affiliate thereof;

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(ii) the commission by Executive of a felony;

(iii) the perpetration by Executive of a dishonest act or common law fraud against the Company or any affiliate thereof;

(iv) a grossly negligent act or failure to act (or series or combination thereof) by Executive detrimental in any material respect to the interests of the Company or any affiliate thereof;

(v) the material breach by Executive of his agreements or obligations under this Agreement; or

(vi) the continued refusal to follow the directives of the Board which are consistent with Executive's duties and responsibilities identified in Section 1.1 hereof.

Upon the early termination of Executive's employment under this Agreement by the Company for "cause" the Company shall pay to Executive (i) an amount equal to Executive's Base Salary accrued through the effective date of termination at the rate in effect at the time notice of termination is given, payable at the time such payment is due; and (ii) at the time such payments are due, all other amounts to which Executive is entitled hereunder (including expense reimbursement amounts accrued to the effective date of termination or amounts under any benefit plan of the Company, but expressly excluding any bonus or other incentive payment (or portion thereof) in respect of the fiscal year in which this Agreement is so terminated or any fiscal year of the Company thereafter), and, upon payment of such amounts, the Company shall have no further obligation to Executive under this Agreement.

4.3 *Disability of Executive.* Subject to applicable law, if Executive shall become ill or be injured or otherwise become disabled or incapacitated such that, in the opinion of the Board, he cannot fully carry out and perform his duties hereunder, and such disability or incapacity shall continue for a period of forty-five (45) consecutive days, the Board may, at any time thereafter, by giving Executive twenty (20)-days' prior written notice, fully and finally terminate his employment under this Agreement. Termination under this Section 4.3 shall be effective as of the date provided in such notice, which date shall not be fewer than ninety (90) days after such notice is delivered to Executive or his representative, and the Company shall pay Executive his Base Salary accrued to the effective date of termination at the rate in effect at the time of such notice, payable at the time such payment is due. Upon payment of (i) such accrued Base Salary; and (ii) all other amounts to which Executive may be entitled hereunder, including, without limitation, (A) subject to the terms of any such bonus or incentive award, any bonus or incentive payment to which the Executive would have been entitled pursuant to Section 3.1(b) hereof (prorated for the period up to the effective date of termination), provided the targets and other conditions applicable thereto are met, (B) any expense reimbursement amounts accrued to the effective date of termination, and (C) any amounts under any other benefit plan of the Company, in each case at the time such payments would otherwise have become due and payable in the absence of such termination, and the Company shall have no further obligation to Executive under this Agreement.

4.4 *Death of Executive.* This Agreement shall automatically terminate upon the death of Executive. Upon the early termination of this Agreement as a result of death, the Company shall pay Executive's estate: (i) an amount equal to Executive's Base Salary accrued through the effective date of termination at the rate in effect at the effective date of termination, payable at the time such payment is due; and (ii) all other amounts to which Executive is entitled hereunder, including, without limitation, (A) subject to the terms of any such bonus or incentive award, any bonus or incentive payment to which the Executive would have been entitled pursuant to Section 3.1(b) hereof (prorated for the period up to the effective date of termination), provided the targets and other conditions applicable thereto are met, (B) any expense reimbursement amounts accrued to the effective date of termination, and (C) any amounts under any other benefit plan of the Company, in each case at the time such payments would otherwise have become due and payable in the absence of such termination, and the Company shall have no further obligations to Executive under this Agreement.

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4.5 *Termination Not Otherwise Provided For.* This Section 4.5 governs all terminations of Executive's employment hereunder which are not otherwise provided for in this Section 4 and expressly contemplates a termination of Executive without "cause" and by reason of retirement. Except as otherwise provided in Section 4.2, 4.3 or 4.4, Executive's employment under this Agreement may be terminated by giving Executive written notice thereof, effective as of the date provided in such notice. Upon such termination of the employment of Executive, the Company shall pay to Executive: (i) an amount equal to Executive's Base Salary payable for the remainder of the Term at the time such payments would otherwise have become due and payable in the absence of such termination at the rate in effect on the date of termination; and (ii) all other amounts to which Executive is entitled, including (A) subject to the prior approval of the Compensation Committee of the Board of Directors of the Company (which approval shall not be unreasonably withheld) and subject to the terms of any such bonus or incentive award, any bonus or incentive payment to which the Executive would have been entitled pursuant to Section 3.1(b) hereof (prorated for the period up to the effective date of termination), provided the targets and other conditions applicable thereto are met, (B) any expense reimbursement amounts accrued to the effective date of termination, and (C) any amounts under any other benefit plan of the Company, in each case at the time such payments would otherwise have become due and payable in the absence of such termination, and the Company shall have no further obligations to Executive under this Agreement.

4.6 *Termination by Executive.* Executive may, with or without cause, terminate his employment under this Agreement by giving the Company at least sixty (60) days' prior written notice of such termination (which may be waived by the Company), and after the effective date of such termination, the Company

shall have no further obligation to Executive under this Agreement, including, without limitation, no obligation to pay any pro-rata amount of any bonus or incentive payment in respect of the period up to the date of termination.

## 5. *Employment Covenants.*

5.1 *Covenant Not to Compete.* Executive recognizes and acknowledges that the Company is placing its confidence and trust in Executive. Executive, therefore, covenants and agrees that during the Applicable Non-Compete Period (as defined below) Executive shall not, either directly or indirectly, without the prior written consent of the Board:

- A. Engage in or carry on any business or in any way become associated with any business which is similar to or is in competition with the Business of the Company (as such term is used and defined herein). As used in this Section 5, the term "Business of the Company" shall include all business activities in which the Company is now engaged, including but not limited to, the purchase of land (or options therefor) for development and the construction of residential homes for resale to consumers and shall further include any business in which the Company is engaged at any time during the Term;
- B. Solicit the business of any person or entity, on behalf of himself or any other person or entity, which is or has been at any time during the term of this Agreement a customer or supplier of the Company including, but not limited to, former or present customers or suppliers with whom Executive has had personal contact during, or by reason of, his relationship with the Company;
- C. Be or become an employee, agent, consultant, representative, director or officer of, or be otherwise in any manner associated with, any person, firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company;
- D. Solicit for employment or employ any person employed by the Company at any time during the twelve- (12)-month period immediately preceding such solicitation or employment; or

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- E. Be or become a shareholder, joint venturer, owner (in whole or in part), or partner, or be or become associated with or have any proprietary or financial interest in or of any firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company. Notwithstanding the preceding sentence, passive equity investments by Executive of \$25,000 or less in any entity or affiliated group of any entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company shall not be deemed to violate this Section 5.1.

Executive hereby recognizes and acknowledges that the existing Business of the Company extends throughout the States of Georgia, Tennessee, South Carolina, North Carolina, California, Arizona, Nevada, Florida and New Jersey and therefore agrees that the covenants not to compete contained in this Section 5.1 shall be applicable in and throughout such states, as well as throughout such additional areas or states in which the Company may be (or has prepared written plans to be) doing business as of the date of termination of Executive's employment. Executive further warrants and represents that, because of his varied skill and abilities, he does not need to compete with the Business of the Company and that this Agreement will not prevent him from earning a livelihood and acknowledges that the restrictions contained in this Section 5.1 constitute reasonable protections for the Company.

As used in this Section 5.1, "Applicable Non-Compete Period" shall mean:

- (i) unless and until the Executive's employment under this Agreement is terminated prior to the scheduled end of the Term, the period beginning on March 2, 1994 and ending on the date which is 180 days after the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);
- (ii) if the Executive's employment under this Agreement is terminated pursuant to Section 4.2 hereof or Section 4.3 hereof or for any other reason (other than as set forth in clause (iii) below), the period beginning on March 2, 1994 and ending on the date which is 180 days after the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);
- (iii) if the Executive's employment under this Agreement is terminated without "cause", the period beginning on March 2, 1994 and ending on the date of the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);
- (iv) if on or prior to the date of the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof), the Executive rejects an offer by the Company to extend this Agreement pursuant to Section 2.1 hereof on reasonable terms, the period beginning on March 2, 1994 and ending on the date which is 180 days after the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof); and
- (v) if the Company elects not to extend this Agreement pursuant to Section 2.1 hereof, the period beginning on March 2, 1994 and ending on the date of the scheduled end of the Term (as such Term may be extended from time to time pursuant to Section 2.1 hereof);

5.2 *Trade Secrets and Confidential Information.* Executive recognizes and acknowledges that certain information including, without limitation, information pertaining to the financial condition of the Company, its systems, methods of doing business, agreements with customers or suppliers or other aspects of the Business of the Company or which is sufficiently secret to derive economic value from not being disclosed ("Confidential Information") may be made available or otherwise come into the possession of Executive by reason of his employment with the Company. Accordingly, Executive agrees that he will not (either during or after the term of his employment with the Company) disclose any Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever or make use to his personal advantage or to the advantage of any third party, of

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any Confidential Information, without the prior written consent of the Board. Executive shall, upon termination of employment, return to the Company all documents which reflect Confidential Information (including copies thereof). Notwithstanding anything heretofore stated in this Section 5.2, Executive's obligations under this Section 5.2 shall not, after termination of Executive's employment with the Company, apply to information which has become generally

available to the public without any action or omission of Executive (except that any Confidential Information which is disclosed to any third party by an employee or representative of the Company who is not authorized to make such disclosure shall be deemed to remain confidential and protectable by Executive under this Section 5.2).

5.3 *Records.* All files, records, memoranda and other documents regarding former, existing or prospective customers of the Company or relating in any manner whatsoever to Confidential Information or the Business of the Company (collectively, "Records"), whether prepared by Executive or otherwise coming into his possession, shall be the exclusive property of the Company. All Records shall be immediately placed in the physical possession of the Company upon the termination of Executive's employment with the Company, or at any other time specified by the Board. The retention and use by Executive of duplicates in any form of Records is prohibited after the termination of Executive's employment with the Company.

5.4 *Breach.* Executive hereby recognizes and acknowledges that irreparable injury or damage shall result to the Company in the event of a breach or threatened breach by Executive of any of the terms or provisions of this Section 5, and Executive therefore agrees that the Company shall be entitled to an injunction restraining Executive from engaging in any activity constituting such breach or threatened breach. Nothing contained herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company at law or in equity for such breach or threatened breach, including but not limited to, the recovery of damages from Executive and, if Executive is an employee of the Company, the termination of his employment with the Company in accordance with the terms and provisions of this Agreement.

5.5 *Survival.* Notwithstanding the termination of the employment of Executive or the termination of this Agreement, the provisions of this Section 5 shall survive and be binding upon Executive unless a written agreement which specifically refers to the termination of the obligations and covenants of this Section 5 is executed by the Company.

## 6. *Miscellaneous*

6.1 *Notices.* Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing, via facsimile transmission or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be addressed to the parties as follows:

If to the Company:	Beazer Homes USA, Inc. 5775 Peachtree Dunwoody Road Suite C-550 Atlanta, Georgia 30342 Attn: President Facsimile: 404-250-3428
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If to Executive:	John Skelton c/o Beazer Homes USA, Inc. 5775 Peachtree Dunwoody Rd. Suite C-550 Atlanta, GA 30342
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Any party may change his or its address by written notice in accordance with this Section 6.1. Notices delivered personally shall be deemed communicated as of actual receipt; notices sent via

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facsimile transmission shall be deemed communicated as of receipt by the sender of written confirmation of transmission thereof; mailed notices shall be deemed communicated as of three (3) days after proper mailing.

6.2 *Inclusion of Entire Agreement Herein.* This Agreement supersedes any and all other prior or contemporaneous agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof including, without limitation, the 1994 Agreement, and this Agreement contains all of the covenants and agreements between the parties with respect to employment of Executive by the Company, *provided, however*, that nothing contained herein shall impair Executive's right to (i) any salary, bonus or other payments accrued through the effective date hereof and owing to Executive pursuant to the 1994 Agreement or (ii) any award of restricted stock and grants of options to acquire shares of the Company's common stock referred to in the 1994 Agreement and the award letters delivered by the Company to Executive in connection therewith.

6.3 *LAW GOVERNING AGREEMENT.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.

6.4 *Waivers.* No waiver at any time of any term or provision of this Agreement shall be construed as a waiver of any other term or provision of this Agreement and that a waiver at any time of any term or provision of this Agreement shall not be construed as a waiver at any subsequent time of the same term or provision.

6.5 *Amendments.* Except as otherwise provided in Section 6.6 hereof, no amendment or modification of this Agreement shall be deemed effective unless and until executed in writing by each party hereto.

6.6 *Severability and Limitation.* All agreements and covenants contained herein are severable and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein. Should any court or other legally constituted authority determine that for any such agreement or covenant to be effective that it must be modified to limit its duration or scope, the parties hereto shall consider such agreement or covenant to be amended or modified with respect to duration and / or scope so as to comply with the orders of any such court or other legally constituted authority, and as to all other portions of such agreement or covenants they shall remain in full force and effect as originally written.

6.7 *Headings.* All headings set forth in this Agreement are intended for convenience only and shall not control or affect the meaning, construction or effect of this Agreement or of any of the provisions hereof.

6.8 *Assignment.* The Company shall have the right to assign this Agreement and to delegate all of its rights, duties and obligations hereunder to any entity which controls the Company, which the Company controls or which may be the result of the merger, consolidation, acquisition or reorganization of the Company and another entity. Executive agrees that this Agreement is personal to him and his rights and interests hereunder may not be assigned, nor may his obligations and duties hereunder be delegated (except as to delegation in the normal course of operation of the Company), and any attempted assignment or delegation in violation of this provision shall be void.

6.9 *Arbitration.* All controversies which may arise between the parties hereto including, but not limited to, those arising out of or related to this Agreement shall be determined by binding arbitration applying the laws of the State of Delaware as set forth in Section 6.3 hereof. Any arbitration pursuant to this Agreement shall be conducted in New York City before the American Arbitration Association in accordance with its arbitration rules. The arbitration shall be final and binding upon all the parties (so long as the award was not procured by corruption, fraud or undue means) and the arbitrator's award shall not be required to include factual findings or legal reasoning. Nothing in this Section 6.9 will prevent either party from resorting to judicial proceedings if interim injunctive relief under the laws of

the State of New York from a court is necessary to prevent serious and irreparable injury to one of the parties.

6.10 *Counterparts.* This Agreement may be executed via facsimile transmission signature and in counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

6.11 *Board of Director Determinations.* All matters to be determined by the Board pursuant to the terms of this Agreement shall be determined by the members of the Board or any duly authorized committee thereof without the vote of Executive.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this AMENDED AND RESTATED EMPLOYMENT AGREEMENT effective as of the date first written above.

BEAZER HOMES USA, INC.

By: /s/ IAN J. MCCARTHY

Name: Ian J. McCarthy

Title: *President/CEO*

EXECUTIVE

/s/ JOHN SKELTON

John Skelton

QuickLinks

[AMENDED AND RESTATED EMPLOYMENT AGREEMENT](#)

## EMPLOYMENT AGREEMENT

AGREEMENT by and between Beazer Homes USA, Inc., a Delaware corporation (the "Company") and Ian J. McCarthy (the "Executive"), dated as of the 17 day of July, 1996.

The Board of Directors of the Company (the "Board"), has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. *Certain Definitions.* (a) The "Effective Date" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control (as defined in Section 2) occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (ii) otherwise arose in connection with or anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment.

(b) The "Change of Control Period" shall mean the period commencing on the date hereof and ending on the second anniversary of the date hereof; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "Renewal Date"), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate two years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. *Change of Control.* For the purpose of this Agreement, a "Change of Control" shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (iv) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (c) of this Section 2; or

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any

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individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

3. *Employment Period.* The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of

such date (the "Employment Period").

4. *Terms of Employment.* (a) *Position and Duties.* (i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement

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for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) *Compensation.* (i) *Base Salary.* During the Employment Period, the Executive shall receive an annual base salary ("Annual Base Salary"), which shall be paid at a monthly rate, at least equal to twelve times the highest monthly base salary paid or payable, including any base salary which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "affiliated companies" shall include any company controlled by, controlling or under common control with the Company.

(ii) *Annual Bonus.* In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "Annual Bonus") in cash at least equal to the Executive's highest bonus under the Company's annual incentive plans, for the last three full fiscal years prior to the Effective Date (annualized in the event that the Executive was not employed by the Company for the whole of such fiscal year) (the "Recent Annual Bonus"). Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) *Incentive, Savings and Retirement Plans.* During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) *Welfare Benefit Plans.* During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and

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programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) *Expenses.* During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) *Fringe Benefits.* During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) *Office and Support Staff.* During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 120-day period immediately preceding the Effective

Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) *Vacation.* During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. *Termination of Employment.* (a) *Death or Disability.* The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

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(b) *Cause.* The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "Cause" shall mean:

(i) the willful and continued failure of the Executive to perform substantially the Executive's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties, or

(ii) the willful engaging by the Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) *Good Reason.* The Executive's employment may be terminated by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" shall mean:

(i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than as provided in Section 4(a) (i) (B) hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

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(v) any failure by the Company to comply with and satisfy Section 11(c) of this Agreement.

For purposes of this Section 5(c), any good faith determination of "Good Reason" made by the Executive shall be conclusive. Anything in this Agreement to the contrary notwithstanding, a termination by the Executive for any reason during the 30-day period immediately following the first anniversary of the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement.

(d) *Notice of Termination.* Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date

shall be not more than thirty days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) *Date of Termination.* "Date of Termination" means (i) if the Executive's employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

6. *Obligations of the Company upon Termination.* (a) *Good Reason; Other Than for Cause, Death or Disability.* If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) the product of (x) the higher of (I) the Recent Annual Bonus and (II) the Annual Bonus paid or payable, including any bonus or portion thereof which has been earned but deferred (and annualized for any fiscal year consisting of less than twelve full months or during which the Executive was employed for less than twelve full months), for the most recently completed fiscal year during the Employment Period, if any (such higher amount being referred to as the "Highest Annual Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (3) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2), and (3) shall be hereinafter referred to as the "Accrued Obligations"); and

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B. the amount equal to the product of (1) 3, and (2) the sum of (x) the Executive's Annual Base Salary and (y) the Highest Annual Bonus; and

C. an amount equal to the excess of (a) the actuarial equivalent of the benefit under the Company's qualified defined benefit retirement plan (the "Retirement Plan") (utilizing actuarial assumptions no less favorable to the Executive than those in effect under the Company's Retirement Plan immediately prior to the Effective Date), and any excess or supplemental retirement plan in which the Executive participates (together, the "SERP") which the Executive would receive if the Executive's employment continued for 3 years after the Date of Termination assuming for this purpose that all accrued benefits are fully vested, and, assuming that the Executive's compensation in each of the three years is that required by Section 4 (b) (i) and Section 4 (b) (ii), over (b) the actuarial equivalent of the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP as of the Date of Termination;

(ii) for three years after the Executive's Date of Termination, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 4 (b) (iv) of this Agreement if the Executive's employment had not been terminated or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility. For purposes of determining eligibility (but not the time of commencement of benefits) of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until three years after the Date of Termination and to have retired on the last day of such period;

(iii) the Company shall, at its sole expense as incurred, provide the Executive with outplacement services the scope and provider of which shall be selected by the Executive in his sole discretion; and

(iv) to the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) *Death.* If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 6(b) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and affiliated companies to the estates and beneficiaries of peer executives of the Company and such affiliated companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death with respect to other peer executives of the Company and its affiliated companies and their beneficiaries.

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(c) *Disability.* If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 6(c) shall include, and the Executive shall be entitled after the Disability

Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and its affiliated companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its affiliated companies and their families.

(d) *Cause; Other than for Good Reason.* If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive (x) his Annual Base Salary through the Date of Termination, (y) the amount of any compensation previously deferred by the Executive, and (z) Other Benefits, in each case to the extent theretofore unpaid. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. *Non-exclusivity of Rights.* Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor, subject to Section 12(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. *Full Settlement.* The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the full extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest by the Company, provided that the Executive prevails in at least one material issue, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code").

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9. *Certain Additional Payments by the Company.*

(a) Anything in this Agreement to the contrary notwithstanding and except as set forth below, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 9) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. Notwithstanding the foregoing provisions of this Section 9(a), if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the Payments do not exceed 110% of the greatest amount (the "Reduced Amount") that could be paid to the Executive such that the receipt of Payments would not give rise to any Excise Tax, then no Gross-Up Payment shall be made to the Executive and the Payments, in the aggregate, shall be reduced to the Reduced Amount.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by Deloitte & Touche LLP or such other certified public accounting firm as may be designated by the Executive (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive shall appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 9, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If

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the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

- (i) give the Company any information reasonably requested by the Company relating to such claim,
- (ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,
- (iii) cooperate with the Company in good faith in order effectively to contest such claim, and
- (iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

10. *Confidential Information.* The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may

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otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. *Successors.* (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. *Miscellaneous.* (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

*If to the Executive:*

Ian J. McCarthy  
600 Blue Teal Court  
Atlanta, Georgia 30327

*If to the Company:*

5775 Peachtree Dunwoody Road  
Suite C-550

Attention: Company Secretary

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment

for Good Reason pursuant to Section 5(c)(i)-(v) of this Agreement, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is "at will" and, subject to Section 1 hereof, prior to the Effective Date, the Executive's employment and/or this Agreement may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ IAN J. MCCARTHY

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Ian J. McCarthy

BEAZER HOMES USA, INC.

By /s/ [ILLEGIBLE]

QuickLinks

[EMPLOYMENT AGREEMENT](#)

## EMPLOYMENT AGREEMENT

AGREEMENT by and between Beazer Homes USA, Inc., a Delaware corporation (the "Company") and John Skelton (the "Executive"), dated as of the 17 day of July, 1996.

The Board of Directors of the Company (the "Board"), has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. *Certain Definitions.* (a) The "Effective Date" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control (as defined in Section 2) occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (ii) otherwise arose in connection with or anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment.

(b) The "Change of Control Period" shall mean the period commencing on the date hereof and ending on the second anniversary of the date hereof; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "Renewal Date"), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate two years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. *Change of Control.* For the purpose of this Agreement, a "Change of Control" shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (iv) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (c) of this Section 2; or

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any

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individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

3. *Employment Period.* The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of

such date (the "Employment Period").

4. *Terms of Employment.* (a) *Position and Duties.* (i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement

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for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) *Compensation.* (i) *Base Salary.* During the Employment Period, the Executive shall receive an annual base salary ("Annual Base Salary"), which shall be paid at a monthly rate, at least equal to twelve times the highest monthly base salary paid or payable, including any base salary which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "affiliated companies" shall include any company controlled by, controlling or under common control with the Company.

(ii) *Annual Bonus.* In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "Annual Bonus") in cash at least equal to the Executive's highest bonus under the Company's annual incentive plans, for the last three full fiscal years prior to the Effective Date (annualized in the event that the Executive was not employed by the Company for the whole of such fiscal year) (the "Recent Annual Bonus"). Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) *Incentive, Savings and Retirement Plans.* During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) *Welfare Benefit Plans.* During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and

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programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) *Expenses.* During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) *Fringe Benefits.* During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) *Office and Support Staff.* During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 120-day period immediately preceding the Effective

Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) *Vacation*. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. *Termination of Employment*. (a) *Death or Disability*. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

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(b) *Cause*. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "Cause" shall mean:

(i) the willful and continued failure of the Executive to perform substantially the Executive's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties, or

(ii) the willful engaging by the Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) *Good Reason*. The Executive's employment may be terminated by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" shall mean:

(i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than as provided in Section 4(a)(i)(B) hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

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(v) any failure by the Company to comply with and satisfy Section 11(c) of this Agreement.

For purposes of this Section 5(c), any good faith determination of "Good Reason" made by the Executive shall be conclusive. Anything in this Agreement to the contrary notwithstanding, a termination by the Executive for any reason during the 30-day period immediately following the first anniversary of the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement.

(d) *Notice of Termination*. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date

shall be not more than thirty days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) *Date of Termination.* "Date of Termination" means (i) if the Executive's employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

6. *Obligations of the Company upon Termination.* (a) *Good Reason; Other Than for Cause, Death or Disability.* If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) the product of (x) the higher of (I) the Recent Annual Bonus and (II) the Annual Bonus paid or payable, including any bonus or portion thereof which has been earned but deferred (and annualized for any fiscal year consisting of less than twelve full months or during which the Executive was employed for less than twelve full months), for the most recently completed fiscal year during the Employment Period, if any (such higher amount being referred to as the "Highest Annual Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (3) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2), and (3) shall be hereinafter referred to as the "Accrued Obligations"); and

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B. the amount equal to the product of (1) 1.5, and (2) the sum of (x) the Executive's Annual Base Salary and (y) the Highest Annual Bonus; and

C. an amount equal to the excess of (a) the actuarial equivalent of the benefit under the Company's qualified defined benefit retirement plan (the "Retirement Plan") (utilizing actuarial assumptions no less favorable to the Executive than those in effect under the Company's Retirement Plan immediately prior to the Effective Date), and any excess or supplemental retirement plan in which the Executive participates (together, the "SERP") which the Executive would receive if the Executive's employment continued for 1.5 years after the Date of Termination assuming for this purpose that all accrued benefits are fully vested, and, assuming that the Executive's compensation in each of the three years is that required by Section 4(b)(i) and Section 4(b)(ii), over (b) the actuarial equivalent of the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP as of the Date of Termination;

(ii) for 1.5 years after the Executive's Date of Termination, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement if the Executive's employment had not been terminated or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility. For purposes of determining eligibility (but not the time of commencement of benefits) of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until one and one-half years after the Date of Termination and to have retired on the last day of such period;

(iii) the Company shall, at its sole expense as incurred, provide the Executive with outplacement services the scope and provider of which shall be selected by the Executive in his sole discretion; and

(iv) to the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) *Death.* If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 6(b) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and affiliated companies to the estates and beneficiaries of peer executives of the Company and such affiliated companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death with respect to other peer executives of the Company and its affiliated companies and their beneficiaries.

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(c) *Disability.* If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the

provision of Other Benefits, the term Other Benefits as utilized in this Section 6(c) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and its affiliated companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its affiliated companies and their families.

(d) *Cause; Other than for Good Reason.* If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive (x) his Annual Base Salary through the Date of Termination, (y) the amount of any compensation previously deferred by the Executive, and (z) Other Benefits, in each case to the extent theretofore unpaid. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. *Non-exclusivity of Rights.* Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor, subject to Section 12(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. *Full Settlement.* The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the full extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest by the Company, provided that the Executive prevails in at least one material issue, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872 (f) (2) (A) of the Internal Revenue Code of 1986, as amended (the "Code").

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9. *Certain Additional Payments by the Company.*

(a) Anything in this Agreement to the contrary notwithstanding and except as set forth below, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 9) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. Notwithstanding the foregoing provisions of this Section 9(a), if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the Payments do not exceed 110% of the greatest amount (the "Reduced Amount") that could be paid to the Executive such that the receipt of Payments would not give rise to any Excise Tax, then no Gross-Up Payment shall be made to the Executive and the Payments, in the aggregate, shall be reduced to the Reduced Amount.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by Deloitte & Touche LLP or such other certified public accounting firm as may be designated by the Executive (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive shall appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 9, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If

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the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

- (i) give the Company any information reasonably requested by the Company relating to such claim,
- (ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,
- (iii) cooperate with the Company in good faith in order effectively to contest such claim, and
- (iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

10. *Confidential Information.* The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may

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otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. *Successors.* (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. *Miscellaneous.* (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

*If to the Executive:*

John Skelton  
1523 Sheridan Walk  
Atlanta, Georgia 30324

*If to the Company:*

5775 Peachtree Dunwoody Road  
Suite C-550

Attention: Company Secretary

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment

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for Good Reason pursuant to Section 5(c)(i)-(v) of this Agreement, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is "at will" and, subject to Section 1 hereof, prior to the Effective Date, the Executive's employment and/or this Agreement may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

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IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ JOHN SKELTON

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John Skelton

BEAZER HOMES USA, INC.

By /s/ [ILLEGIBLE]

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[EMPLOYMENT AGREEMENT](#)

## Subsidiaries of the Company:

Name	Jurisdiction of Incorporation
April Corporation	Colorado
Beazer Allied Companies Holdings, Inc.	Delaware
Beazer Clarksburg, LLC	Maryland
Beazer Homes Corp.	Tennessee
Beazer Homes Holdings Corp.	Delaware
Beazer Homes Sales Arizona, Inc.	Delaware
Beazer Homes Texas Holdings, Inc.	Delaware
Beazer Homes Texas, LP	Texas
Beazer Mortgage Corporation	Delaware
Beazer Realty Corp.	Georgia
Beazer Realty, Inc.	New Jersey
Beazer SPE, LLC	Georgia
Beazer/Squires Realty, Inc.	North Carolina
Homebuilders Title Services of Virginia, Inc.	Virginia
Homebuilders Title Services, Inc.	Delaware
Security Title Insurance Company	Vermont
Texas Lone Star Title, LP	Texas
United Home Insurance Company, A Risk Retention Group	Vermont
<i>Direct Subsidiaries of Beazer Homes Investment Corp.</i>	
Crossmann Communities of North Carolina, Inc.	North Carolina
Crossmann Communities of Ohio, Inc.	Ohio
Crossmann Communities of Tennessee, LLC	Tennessee
Crossmann Communities Partnership	Indiana
Crossmann Investments, Inc.	Indiana
Crossmann Management, Inc.	Indiana
Crossman Mortgage Corp.	Indiana
Cutter Homes, LTD	Kentucky
Deluxe Homes of Lafayette, Inc.	Indiana
Deluxe Homes of Ohio, Inc.	Ohio
Beazer Realty, Inc., fka Merit Realty, Inc.	Indiana
Paragon Title, LLC	Indiana
Pinehurst Builders, LLC	South Carolina
Trinity Homes, LLC	Indiana

**INDEPENDENT AUDITORS' CONSENT**

We consent to the incorporation by reference in Registration Statement No. 333-94843 on Form S-3 and in Registration Statements No. 333-24765, 333-69398, 333-86558 and 333-101142 on Form S-8 of Beazer Homes USA, Inc. of our report dated November 5, 2003 (November 13, 2003 as to Note 17) (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the impact of the adoption of Financial Accounting Standards Board Interpretation No. 46), appearing in this Annual Report on Form 10-K of Beazer Homes USA, Inc. for the year ended September 30, 2003.

/s/ Deloitte & Touche LLP  
Atlanta, Georgia  
December 19, 2003

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[INDEPENDENT AUDITORS' CONSENT](#)

**CERTIFICATION  
PURSUANT TO 17 CFR 240.13a-14  
PROMULGATED UNDER  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ian J. McCarthy, President and Chief Executive Officer of Beazer Homes USA, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Beazer Homes USA, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: December 19, 2003

/s/ IAN J. MCCARTHY

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Ian J. McCarthy  
President and Chief Executive Officer

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[CERTIFICATION PURSUANT TO 17 CFR 240.13a-14 PROMULGATED UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION  
PURSUANT TO 17 CFR 240.13a-14  
PROMULGATED UNDER  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, James O'Leary, Executive Vice President and Chief Financial Officer of Beazer Homes USA, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Beazer Homes USA, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: December 19, 2003

/s/ JAMES O'LEARY

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James O'Leary  
Executive Vice President and Chief Financial Officer

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[CERTIFICATION PURSUANT TO 17 CFR 240.13a-14 PROMULGATED UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Beazer Homes USA, Inc. (the "Company") on Form 10-K for the period ending September 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ian J. McCarthy, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ IAN J. MCCARTHY

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Ian J. McCarthy  
President and Chief Executive Officer  
December 19, 2003

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Beazer Homes USA, Inc. (the "Company") on Form 10-K for the period ending September 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James O'Leary, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ JAMES O'LEARY

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James O'Leary  
Executive Vice President and Chief Financial Officer  
December 19, 2003

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)