EXHIBIT 1.03  
  
  
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 FIRST SUPPLEMENTAL INDENTURE  
  
  
  
 BY AND AMONG  
  
  
 XXXXXXX HOMES, INC.,  
  
  
 XXXXXXX HOLDINGS, INC.  
  
  
 AND  
  
 BANK OF HAWAII,  
 ACTING THROUGH ITS PACIFIC CENTURY TRUST DIVISION,  
 AS TRUSTEE  
  
  
  
 DATED AS OF APRIL 2, 2001  
  
  
  
 SUPPLEMENTING AND AMENDING THE  
 INDENTURE, DATED AS OF JANUARY 15, 1993,  
 BY AND BETWEEN XXXXXXX HOMES AND XXXXXX TRUST COMPANY (AS  
 PREDECESSOR TRUSTEE)  
 PROVIDING FOR  
  
 6.5% CONVERTIBLE SUBORDINATED DEBENTURES DUE 2003  
  
  
  
  
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EXHIBIT A - AMENDED FORM OF DEBENTURE  
  
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 EXHIBIT 1.03  
  
 FIRST SUPPLEMENTAL INDENTURE, dated as of April 2, 2001 (this  
"SUPPLEMENTAL INDENTURE"), by and among XXXXXXX HOMES, INC., a Delaware  
corporation (the "COMPANY"), XXXXXXX HOLDINGS, INC., a Delaware Corporation  
("Xxxxxxx Holdings"), and BANK OF HAWAII, ACTING THROUGH ITS PACIFIC CENTURY  
TRUST DIVISION, as successor trustee (the "TRUSTEE").  
  
  
 WHEREAS, the Company and Xxxxxx Trust Company, Limited, as the  
predecessor to the Trustee, entered into an Indenture, dated as of January 15,  
1993 (the "ORIGINAL INDENTURE"), providing for the issuance by the Company of  
its 6.5% Convertible Subordinated Debentures (the "DEBENTURES"); and  
  
 WHEREAS, as of the date hereof, Debentures in the aggregate principal  
amount of $57,500,000 have been issued and are outstanding; and  
  
 WHEREAS, pursuant the Original Indenture, the Debentures may be  
converted into Common Stock (as defined in the Original Indenture) of the  
Company at the times and under the conditions set forth in the Original  
Indenture; and  
  
 WHEREAS, Section 15.06 of the Original Indenture provides that in the  
event of any merger of the Company with another company as a result of which  
holders of Common Stock of the Company ("COMMON STOCK") shall be entitled to  
receive stock in exchange for such Common Stock, the Company shall execute with  
the Trustee a supplemental indenture providing that each Debenture shall be  
convertible into the kind and amount of shares of stock receivable upon such  
merger by a holder of Common Stock issuable upon conversion of such Debenture  
immediately prior to such merger; and  
  
 WHEREAS, pursuant to an Agreement and Plan of Reorganization, dated as  
of September 12, 2000 (the "PLAN OF REORGANIZATION"), as amended, by and among  
the Company, Apollo Real Estate Investment Fund, L.P., a Delaware limited  
partnership ("APOLLO"), Blackacre WPH, LLC, a Delaware limited liability company  
("BLACKACRE"), Highridge Pacific Housing Investors, L.P., a California limited  
partnership ("HIGHRIDGE"), AP WP Partners, L.P., a Delaware limited partnership  
("APWP"), AP Western GP Corporation, a Delaware corporation ("AP WESTERN"), API  
LHI, Inc., a California corporation ("API"), and Lamco Housing, Inc., a  
California corporation ("LAMCO," and collectively with Apollo, Blackacre,  
Highridge, APWP, AP Western and API, the "WP PARTNERS"), the Company and the WP  
Partners have formed Xxxxxxx Holdings; and  
  
 WHEREAS, further pursuant to the Plan of Reorganization, at the  
Effective Time (as defined in the Plan of Reorganization), a newly formed  
wholly-owned subsidiary of Xxxxxxx Holdings shall merge into the Company and,  
concurrently therewith, each outstanding share of Common Stock shall be  
converted into one share of Class A Common Stock, par value $.001 per share, of  
Xxxxxxx Holdings ("CLASS A COMMON STOCK"); and  
  
 WHEREAS, pursuant to Section 15.06 of the Original Indenture, the  
Company has requested Xxxxxxx Holdings and the Trustee to join with the Company  
in executing this Supplemental Indenture so that, as of the Effective Time, the  
Debentures shall be convertible into Class A Common Stock instead of Common  
Stock; and  
  
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 WHEREAS, Section 11.01 of the Original Indenture provides that the  
Company and the Trustee may enter into a supplemental indenture without the  
consent of any holder of the Debentures to provide for the conversion rights of  
the Debenture holders in accordance with Section 15.06 of the Original Indenture  
and to make other changes which shall not adversely affect the interests of the  
Debenture holders; and  
  
 WHEREAS, except as otherwise provided herein, the Company shall  
continue to be the obligor with respect to all the covenants, duties and  
obligations set forth in the Original Indenture (including, without limitation,  
all payments of principal of, and premium, if any, and interest on, the  
Debentures) after the effective date of this Supplemental Indenture; and  
  
 WHEREAS, the Company, Xxxxxxx Holdings and the Trustee have agreed to  
execute this Supplemental Indenture and have done all things necessary under  
their respective charters and by-laws and the Original Indenture to enter into  
this Supplemental Indenture; and  
  
 NOW, THEREFORE, in consideration of these premises, it is mutually  
covenanted and agreed for the equal and proportionate benefit of all holders of  
the Debentures as follows:  
  
  
  
 ARTICLE I  
  
 DEFINITIONS; INTERPRETATION  
  
 Section 1.1 DEFINITIONS. Capitalized terms that are defined in the  
preamble or the recitals hereto shall have such meanings throughout this  
Supplemental Indenture. Capitalized terms used but not defined in this  
Supplemental Indenture shall have the meanings ascribed to them in the Original  
Indenture. The meanings assigned to all defined terms used in this Supplemental  
Indenture shall be equally applicable to both the singular and plural forms of  
such defined terms. The term "Indenture" as used herein shall mean the Original  
Indenture, as amended and supplemented by this Supplemental Indenture, or as  
otherwise supplemented or amended from time to time by one or more supplemental  
indentures thereto or hereto entered into pursuant to the applicable provisions  
of the Indenture.  
  
 Section 1.2 INTERPRETATION. References in the Original Indenture  
(including references in the Original Indenture as amended or supplemented  
hereby) to "this Indenture" (and indirect references such as "hereunder,"  
"herein" and "hereof") shall be deemed references to the Original Indenture as  
amended and supplemented hereby. All of the covenants, agreements and provisions  
of Supplemental Indenture shall be deemed to be and construed as part of the  
Original Indenture to the same effect as if fully set forth therein and shall be  
fully enforceable in the manner provided in the Original Indenture. Except as  
otherwise expressly provided in this Supplemental Indenture, all of the  
covenants, agreements and provisions of the Original Indenture shall remain in  
full force and effect.  
  
  
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 ARTICLE II  
  
 AMENDMENTS  
  
 Section 2.1 AMENDMENT TO FORM OF DEBENTURE. With reference to Section  
3.3 below (providing that all then outstanding Debentures as of the effective  
date of this Supplemental Agreement shall be deemed conformed to this  
Supplemental Agreement without necessity of reissuance or exchange), the form of  
Debenture set forth in the second "Whereas" clause of the Original Indenture is  
hereby deleted in its entirety and replaced with the form of Debenture set forth  
in EXHIBIT A hereto.  
  
  
 Section 2.2 AMENDMENT TO SECTION 1.01 (DEFINITIONS). Section 1.01 of  
the Original Indenture shall be amended as follows:  
  
 (a) Section 1.01 of the Original Indenture shall be amended by  
inserting therein the following terms and definitions:  
  
 (i) CLASS A COMMON STOCK: The term "Class A Common Stock"  
 shall mean Class A Common Stock of Xxxxxxx Holdings or shares of any  
 class or classes resulting from any reclassification or  
 reclassifications thereof and which have no preference in respect of  
 dividends or of amounts payable in the event of any voluntary or  
 involuntary liquidation, dissolution or winding up of Xxxxxxx Holdings  
 and which are not subject to redemption by Xxxxxxx Holdings; PROVIDED  
 that if at any time there shall be more than one such resulting class,  
 the shares of each such class then so issuable shall be substantially  
 in the proportion which the total number of shares of such class  
 resulting from all such reclassifications bears to the total number of  
 shares of all such classes resulting from all such reclassifications.  
  
 (ii) FIRST SUPPLEMENTAL INDENTURE: The term "First  
 Supplemental Indenture" shall mean the First Supplemental Indenture,  
 dated as of April 2, 2001, by and among the Company, Xxxxxxx Holdings  
 and the Trustee.  
  
 (iii) XXXXXXX HOLDINGS: The term "Xxxxxxx Holdings" shall  
 mean Xxxxxxx Holdings, Inc., a Delaware corporation.  
  
 (b) The definition of the term "Common Stock" shall be  
deleted from Section 1.01 of the Original Indenture.  
  
 (c) The definitions of the terms "Corporate Office of the  
Trustee," "Subsidiary" and "Trustee" shall be amended each to read in its  
entirety as follows:  
  
 (i) CORPORATE TRUST OFFICE OF THE TRUSTEE: The term  
 "Corporate Trust Office of the Trustee," or other similar terms, shall  
 mean the office of the Trustee at which, at any particular time, its  
 corporate trust business shall be principally administered, which  
 office, at the date of the First Supplemental Indenture, is located at  
 000 Xxxxx Xxxx Xxxxxx, Xxxxxxxx, Xxxxxx 00000."  
  
  
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 (ii) SUBSIDIARY: The term "Subsidiary" shall mean a  
 corporation more than 50% of the outstanding voting stock of which is  
 owned, directly or indirectly, by the Company or by one or more other  
 Subsidiaries of the Company; PROVIDED that, where specified as such in  
 this Indenture, the term `Subsidiary of Xxxxxxx Holdings'  
 shall mean a corporation more than 50% of the outstanding voting stock  
 of which is owned, directly or indirectly, by Xxxxxxx Holdings or by  
 one or more other Subsidiaries of Xxxxxxx Holdings. For the purposes of  
 this definition, "voting stock" means stock which ordinarily has voting  
 power for the election of directors, whether at all times or only so  
 long as no senior class of stock has such voting power by reason of any  
 contingency.  
  
 (iii) TRUSTEE: The term "Trustee" shall mean Bank of Hawaii,  
 acting through its Pacific Century Trust division, and its successors  
 and any corporation resulting from or surviving any consolidation or  
 merger to which it or its successors may be a party and any successor  
 trustee at the time serving as successor trustee hereunder.  
  
  
 Section 2.3 GLOBAL AMENDMENT. All instances in the Original Indenture  
to the term "Common Stock" shall be replaced with the term "Class A Common  
Stock."  
  
  
 Section 2.4 AMENDMENT TO SECTION 15.02. Section 15.02 of the Original  
Indenture shall be amended as follows:  
  
 (a) The first sentence of the second paragraph of Section  
15.02 of the Original Indenture shall be amended such that all instances  
therein of the words "the Company" shall be replaced with the words "Xxxxxxx  
Holdings."  
  
 (b) The proviso clause of the (only) sentence of the third  
paragraph of Section 15.02 of the Original Indenture shall be amended such  
that the words "the stock transfer books of the Company" shall be replaced  
with the words "the stock transfer books of Xxxxxxx Holdings."  
  
 Section 2.5 AMENDMENT TO SECTION 15.05. Section 15.05 of the Original  
Indenture shall be amended as follows:  
  
 (a) All instances therein of the words "the Company" shall be  
replaced with the words "Xxxxxxx Holdings."  
  
 (b) All instances therein of the words "Board of Directors"  
or "Board of Directors of the Company" shall be replaced with the words  
"Board of Directors of Xxxxxxx Holdings."  
  
 (c) All instances therein of the word "Subsidiary" shall be  
replaced with the words "Subsidiary of Xxxxxxx Holdings."  
  
 Section 2.6 AMENDMENT TO SECTION 15.08. Section 15.08 of the Original  
Indenture shall be amended such that all instances therein of the words  
"the Company" shall be replaced with "Xxxxxxx Holdings."  
  
  
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 Section 2.7 AMENDMENT TO SECTION 15.09. The third sentence of Section  
15.09 of the Original Indenture shall be amended to read in its entirety as  
follows:  
  
 "Subject to the provisions of Section 9.01, neither the Trustee nor any  
 conversion agent shall be responsible for any failure of Xxxxxxx  
 Holdings, or the Company, as the case may be, to issue, transfer or  
 deliver any shares of Class A Common Stock or stock certificates or  
 other securities or property or cash upon the surrender of any  
 Debenture for the purpose of conversion or to comply with any of the  
 duties, responsibilities or covenants of Xxxxxxx Holdings or the  
 Company contained in this Article."  
  
  
 Section 2.8 AMENDMENT TO SECTION 15.10. Section 15.10 of the Original  
Indenture shall be amended as follows:  
  
 (a) Clauses (a), (b) and (c) of Section 15.10 of the Original  
Indenture shall be amended such that all instances therein of the words "the  
Company" shall be replaced with the words "Xxxxxxx Holdings."  
  
 (b) Clause (d) of Section 15.10 of the Original Indenture  
shall be amended to read in its entirety as follows: "(d) of the voluntary or  
involuntary dissolution, liquidation or winding up of Xxxxxxx Holdings or the  
Company;".  
  
 Section 2.9 AMENDMENT TO SECTION 16.02. Section 16.02 of the Original  
Indenture shall be amended as follows:  
  
 (a) The proviso clause of subsection (d) of Section 16.02 of  
the Original Indenture shall be amended such that the words "the stock  
transfer books of the Company" therein shall be replaced with the words "the  
stock transfer books of Xxxxxxx Holdings."  
  
 (b) Subsection (h) of Section 16.02 of the Original Indenture  
shall be amended such that the words "the Company" therein shall be replaced  
with the words "Xxxxxxx Holdings."  
  
 Section 2.10 AMENDMENT TO SECTION 16.03. Section 16.03 shall be amended  
such that all instances therein of the words "the Company" shall be replaced  
with "Xxxxxxx Holdings."  
  
  
 Section 2.11 AMENDMENT TO SECTION 17.03. The last sentence of Section  
17.03 shall be amended to read in its entirety as follows:  
  
 "Any notice direction, request or demand hereunder to and upon the  
 Trustee shall be deemed to have been sufficiently given or made, for  
 all purposes, if given or made in writing at the Corporate Trust  
 Office of the Trustee, which office is, as the date of the First  
 Supplemental Indenture, located at 000 Xxxxx Xxxx Xxxxxx, Xxxxxxxx,  
 Xxxxxx 00000, Attention: Corporate Trust Department; telephone: (808)  
 538-4489; facsimile: (000) 000-0000."  
  
  
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 ARTICLE III  
  
 MISCELLANEOUS  
  
 Section 3.1 CONFLICT WITH THE TRUST INDENTURE ACT. If any provision of  
this Supplemental Indenture modifies or excludes with any provision of the Trust  
Indenture Act of 1939 (the "TIA") that is required under the TIA to be part of  
and govern the Indenture, such provision of the TIA shall control. If any  
provision hereof modifies or excludes any provision of the TIA that may be so  
modified or excluded under the TIA with respect to the Indenture, such provision  
of the TIA shall be deemed to be so modified or excluded with respect to this  
Supplemental Indenture.  
  
 Section 3.2 DATE AND TIME OF EFFECTIVENESS. This Supplemental Indenture  
shall take effect and become a legally binding instrument at and as of the  
Effective Time (as defined in the Plan of Reorganization).  
  
 Section 3.3 DEBENTURES DEEMED CONFORMED. As of the effective date of  
this Supplemental Indenture, the provision of each Debenture then outstanding  
shall be deemed to be conformed, without necessity for any reissuance or  
exchange of such Debenture or any other action on the part of the holders of the  
Debentures, the Company or the Trustee, so as to reflect this Supplemental  
Indenture.  
  
 Section 3.4 SUCCESSORS. All agreements by the Company, Xxxxxxx Holdings  
and the Trustee in this Supplemental Indenture and in the Original Indenture  
shall bind their respective successors.  
  
 Section 3.5 BENEFITS OF SUPPLEMENTAL INDENTURE. Nothing in this  
Supplemental Indenture, express or implied, shall give any Person, other than  
the parties hereto and their successors hereunder, and the holders of the  
Debentures, any benefit or any legal and equitable right, remedy or claim under  
this Supplemental Indenture or the Original Indenture.  
  
 Section 3.6 SEPARABILITY. In case any provision in this Supplemental  
Indenture, or in the Original Indenture, shall be invalid, illegal or  
unenforceable, the validity, legality and enforceability of the remaining  
provisions shall not be in any way affected or impaired thereby, it being  
intended that all of the provisions hereof shall be enforceable to the fullest  
extent permitted by law.  
  
 Section 3.7 TRUSTEE RESPONSIBILITY. The Trustee assumes no duties,  
responsibilities or liabilities by reason of this Supplemental Indenture other  
than as set forth in the Original Indenture. The Supplemental Indenture is  
executed and accepted by the Trustee subject to all of the terms and conditions  
of its acceptance of the trusts under the Original Indenture, as fully as if  
said terms and conditions were set forth in full herein.  
  
 Section 3.8 HEADINGS. The Article, Section and Exhibit headings of this  
Supplemental Indenture have been inserted for convenience and reference only,  
are not to be considered a part of this Supplemental Indenture and shall in no  
way modify or restrict any of the terms or provisions hereof.  
  
  
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 Section 3.9 COUNTERPARTS. This Supplemental Indenture may be executed  
in counterparts, each of which shall for all purposes be deemed to be an  
original, and all of which shall together constitute but one and the same  
instrument.  
  
 Section 3.10 GOVERNING LAW. This Supplemental Indenture shall be deemed  
to be a contract made under the laws of Delaware, and for all purposes shall be  
construed in accordance with the laws of Delaware.  
  
  
 [Signature Page Follows]  
  
  
  
  
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 IN WITNESS WHEREOF, the parties hereto have caused this Supplemental  
Indenture to be duly executed as of the date first written above.  
  
 XXXXXXX HOMES, INC.  
  
  
  
  
 By: /s/ Xxxxx X. Xxxxxxx  
 ----------------------------------------------  
 Xxxxx X. Xxxxxxx  
 President and Chief Executive  
 Officer  
  
 XXXXXXX HOLDINGS, INC.  
  
  
  
  
 By: /s/ Xxxxxx Xxxxxxxx  
 ----------------------------------------------  
 Xxxxxx Xxxxxxxx  
 Senior Vice President and Chief  
 Financial Officer  
  
  
 BANK OF HAWAII, ACTING THROUGH ITS PACIFIC  
 CENTURY TRUST DIVISION  
  
  
  
  
 By: /s/ Xxxxxxx X. Xxxxxxxx  
 ----------------------------------------------  
 Xxxxxxx X. Xxxxxxxx  
 Assistant Vice President  
  
  
  
  
 By: /s/ Xxxxxx X. Xxx  
 ----------------------------------------------  
 Xxxxxx X. Xxx  
 Vice President  
  
  
  
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 EXHIBIT A  
  
 AMENDED FORM OF DEBENTURE  
  
  
 [FORM OF FACE OF DEBENTURE]  
  
No. $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 XXXXXXX HOMES, INC.  
  
 6.5% Convertible Subordinated Debenture Due 2003  
  
 XXXXXXX HOMES, INC., a corporation duly organized and validly existing  
under the laws of the State of Delaware (herein called the "Company", which term  
includes any successor corporation under the Indenture referred to on the  
reverse hereof), for value received hereby promises to pay to  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or registered assigns, the principal sum of  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars on January 15, 2003 at the office or agency of the  
Company maintained for that purpose in, at the Company's option, Honolulu,  
Hawaii or New York, New York, in such coin or currency of the United States of  
America as at the time of payment shall be legal tender for the payment of  
public and private debts, and to pay interest, semi-annually on January 15 and  
July 15 of each year, commencing July 15, 1993, on said principal sum at said  
office or agency, in like coin or currency, at the rate per annum specified in  
the title of this Debenture, from the January 15 or July 15, as the case may  
be, next preceding the date of this Debenture to which interest has been paid or  
duly provided for, unless the date hereof is a date to which interest has been  
paid or duly provided for, in which case from the date of this Debenture, or  
unless no interest has been paid or duly provided for on the Debentures, in  
which case from January 28, 1993, until payment of said principal sum has been  
made or duly provided for. Notwithstanding the foregoing, if the date hereof is  
after any December 15 or June 15, as the case may be, and before the following  
January 15 or July 15, this Debenture shall bear interest from such January 15  
or July 15; PROVIDED, HOWEVER, that if the Company shall default in the payment  
of interest due on such January 15 or July 15, then this Debenture shall bear  
interest from the next preceding January 15 or July 15 to which interest has  
been paid or duly provided for or, if no interest has been paid or duly provided  
for on the Debentures, from January 28, 1993. The interest so payable on any  
January 15 or July 15 will be paid to the person in whose name this Debenture  
(or one or more Predecessor Debentures) is registered at the close of business  
on the record date, which shall be the January 1 or July 1 whether or not a  
business day) next preceding such January 15 or July 15, provided that any such  
interest not punctually paid or duly provided for shall be payable as provided  
in the Indenture. Interest may, at the option of the Company, be paid by check  
mailed to the registered address of such person.  
  
 Reference is made to the further provisions of this Debenture set forth  
on the reverse hereof including, without limitation, provisions subordinating  
the payment of principal of and premium, if any, and interest on the Debentures  
to the prior payment in full of all Senior Indebtedness as defined in the  
Indenture and provisions giving the holder of this Debenture the right to  
convert this Debenture into Class A Common Stock of Xxxxxxx Holdings, Inc., a  
Delaware corporation ("Class A Common Stock") on the terms and subject to the  
limitations  
  
  
  
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referred to on the reverse hereof and as more fully specified in the  
Indenture. Such further provisions shall for all purposes have the same effect  
as though fully set forth at this place.  
  
 This Debenture shall be deemed to be a contract made under the laws of  
the State of Delaware, and for all purposes shall be construed in accordance  
with and governed by the laws of said State.  
  
 This Debenture shall not be valid or become obligatory for any purpose  
until the certificate of authentication hereon shall have been manually signed  
by the Trustee under the Indenture.  
  
 IN WITNESS WHEREOF, the Company has caused this instrument to be duly  
executed under its corporate seal.  
  
Dated:  
  
 XXXXXXX HOMES, INC.  
  
  
  
 By:  
 -----------------------------------------------  
 Xxxxx X. Xxxxxxx,  
 President and Chief Executive  
 Officer  
  
ATTEST:  
  
  
  
----------------------------------  
Secretary  
  
===============================================================================  
  
 [FORM OF TRUSTEE'S OR AUTHENTICATING AGENT'S CERTIFICATE OF AUTHENTICATION]  
  
  
 TRUSTEE'S CERTIFICATE OF AUTHENTICATION  
  
This is one of the Debentures described in the within-mentioned Indenture.  
  
  
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 BANK OF HAWAII, acting through its Pacific  
 Century Trust division, as Trustee  
  
  
  
 By:  
 -----------------------------------------------  
 Authorized Officer  
  
  
  
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 [FORM OF REVERSE OF DEBENTURE]  
  
 XXXXXXX-HOMES, INC.  
  
 6.5% Convertible Subordinated Debenture Due 2003  
  
 This Debenture is one of a duly authorized issue of Debentures of the  
Company, designated as its 6.5% Convertible Subordinated Debentures Due 2003  
(herein called the "Debentures"), limited to the aggregate principal amount of  
$57,500,000 all issued or to be issued under and pursuant to an Indenture, dated  
as of January 15, 1993, by and between the Company and Xxxxxx Trust Company,  
Limited (the predecessor trustee), as amended and supplemented by a First  
Supplemental Indenture, dated as of April 2, 2001, by and among the Company,  
Xxxxxxx Holdings, Inc. ("Xxxxxxx Holdings") and Bank of Hawaii, acting through  
its Pacific Century Trust division, as successor trustee (the "Trustee") (as so  
amended and supplemented, the "Indenture"), to which Indenture and all  
indentures supplemental thereto reference is hereby made for a description of  
the rights, limitations of rights, obligations, duties and immunities thereunder  
of the Trustee, the Company and the holders of the Debentures (herein sometimes  
called the "Debentureholders").  
  
 In case an Event of Default, as defined in the Indenture, shall have  
occurred and be continuing, the principal of and accrued interest on all  
Debentures may be declared, and upon such declaration shall become, due and  
payable, in the manner, with the effect and subject to the conditions provided  
in the Indenture.  
  
 The Indenture contains provisions permitting the Company and the  
Trustee with the consent of the holders of a majority of the principal amount of  
the Debentures at the time outstanding, evidenced as in the Indenture provided,  
to execute supplemental indentures adding any provisions to or changing in any  
manner or eliminating any of the provisions of the Indenture or of any,  
supplemental indenture or modifying in any manner the rights of the holders of  
the Debentures; PROVIDED, HOWEVER, that no such supplemental indenture shall (i)  
extend the fixed maturity of any Debenture, or reduce the rate or extend the  
time of payment of interest thereon, or reduce the principal amount thereof or  
premium, if any, thereon, or reduce any amount payable on redemption thereof; or  
impair or affect the right of any Debentureholder to institute suit for the  
payment thereof, or make the principal thereof or interest or premium, if any,  
thereon payable in any coin or currency other than that provided in the  
Debentures, or modify the provisions of the Indenture with respect to the  
subordination of the Debentures in a manner adverse to the Debentureholders, or  
impair the right to convert the Debentures into Class A Common Stock of Xxxxxxx  
Holdings ("Class A Common Stock") subject to the terms set forth in the  
Indenture, including Section 15.06, without the consent of the holder of each  
Debenture so affected or (ii) reduce the aforesaid percentage of Debentures, the  
holders of which are required to consent to any such supplemental indenture,  
without the consent of the holders of all Debentures then outstanding. It is  
also provided in the Indenture that, prior to any declaration accelerating the  
maturity of the Debentures, the holders of a majority in aggregate principal  
amount of the Debentures at the time outstanding may on behalf of the holders of  
all of the Debentures waive any past default or Event of Default under the  
Indenture and its consequences except (i) a default in the payment of interest  
or premium, if any, on or the principal of, any of the Debentures, (ii) a  
failure by the Company to convert any Debentures into Class A Common Stock or  
(iii) a default in respect of a covenant or provision hereof which under Article  
Eleven of  
  
  
  
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the Indenture cannot be modified or amended without the consent of the  
holders of all Debentures then outstanding. Any such consent or waiver by the  
holder of this Debenture (unless revoked as provided in the Indenture) shall be  
conclusive and binding upon such holder and upon all future holders and owners  
of this Debenture and any Debentures which may be issued in exchange or  
substitution therefor, irrespective of whether or not any notation thereof is  
made upon this Debenture or such other Debentures.  
  
 The indebtedness evidenced by the Debentures is, to the extent and in  
the manner provided in the Indenture, expressly subordinate and subject in right  
of payment to the prior payment in full of all Senior Indebtedness of the  
Company, as defined in the Indenture, whether outstanding at the date of the  
Indenture or thereafter incurred, and this Debenture is issued subject to the  
provisions of the Indenture with respect to such subordination. Each holder of  
this Debenture, by accepting the same, agrees to and shall be bound by such  
provisions and authorizes the Trustee on his behalf to take such action as may  
be necessary or appropriate to effectuate the subordination so provided and  
appoints the Trustee his attorney in fact for such purpose.  
  
 No reference herein to the Indenture and no provision of this Debenture  
or the Indenture shall alter or impair the obligation of the Company, which is  
absolute and unconditional, to pay the principal of and any premium and interest  
on this Debenture at the place, at the respective times, at the rate and in the  
coin or currency herein prescribed.  
  
 Interest on the Debentures shall be computed on the basis of a year of  
twelve 30-day months.  
  
 The Debentures are issuable in registered form without coupons in  
denominations of $1,000 and any multiple of $1,000. At the office or agency of  
the Company referred to on the face hereof, and in the manner and subject to the  
limitations provided in the Indenture, but without payment of any service  
charge, Debentures may be exchanged for a like aggregate principal amount of  
Debentures or other authorized denominations.  
  
 The Debentures may be redeemed at the option of the Company as a whole,  
or from time to time in part, on any Business Day prior to maturity on or after  
January 15, 1996, upon mailing a notice of such redemption not less than thirty  
nor more than sixty days before the date fixed for redemption to the holders of  
Debentures at their last registered addresses, all as provided in the Indenture,  
at the following optional redemption prices (expressed as percentages of the  
principal amount), together in each case with accrued interest to the date fixed  
for redemption:  
  
 If redeemed during the twelve-month period beginning January 15:  
  
  
  
  
  
YEAR PERCENTAGE YEAR PERCENTAGE  
---- ---------- ---- ----------  
   
  
1996 103.5% 2000 101.5%  
1997 103.0 2001 101.0  
1998 102.5 2002 100.5  
1999 102.0 2003 and thereafter 100.0  
  
  
PROVIDED, that if the date fixed for redemption is a January 15 or July 15, then  
the interest  
  
  
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payable on such date shall be paid to the holder of record on the next preceding  
January 1 or July 1, respectively.  
  
 Subject to the provisions of the Indenture, the holder hereof has the  
right, at his option, at any time on or before the close of business on January  
15, 2003, or, as to all or any portion hereof called for redemption during such  
period, the close of business on the date fixed for redemption (unless the  
Company shall default in payment due upon redemption thereof) to convert the  
principal hereof or any portion of such principal which is $1,000 or a multiple  
thereof, into that number of shares of Class A Common Stock, as said shares  
shall be constituted at the date of conversion, obtained by dividing the  
principal amount of this Debenture or portion thereof to be converted by the  
conversion price of $21.83 or such conversion price as adjusted from time to  
time as provided in the Indenture, upon surrender of this Debenture, together  
with a conversion notice as provided in the Indenture, to the Company at the  
office or agency of the Company maintained for that purpose in, at the option of  
the Company, Honolulu, Hawaii or New York, New York, and, unless the shares  
issuable on conversion are to be issued in the same name as this Debenture, duly  
endorsed by, or accompanied by instruments of transfer in form satisfactory to  
the Company duly executed by, the holder or by his duly authorized attorney. No  
adjustments in respect of interest or dividends will be made upon any  
conversion; PROVIDED, HOWEVER, that if this Debenture shall be surrendered for  
conversion during the period from the close of business on any record date for  
the payment of interest to the opening of business on the following interest  
payment date, this Debenture (unless it or the portion being converted shall  
have been called for redemption on a date in such period) must be accompanied by  
an amount, in funds acceptable to the Company, equal to the interest payable on  
such interest payment date on the principal amount being converted. No factional  
shares will be issued upon any conversion, but an adjustment in cash will be  
made, as provided in the Indenture, in respect of any fraction of a share which  
would otherwise be issuable upon the surrender of any Debenture of Debentures  
for conversion. A holder of Debentures is not entitled any rights of a holder of  
Class A Common Stock until such holder has converted his Debentures to Class A  
Common Stock, and only to the extent such Debentures are deemed to have been  
converted to Class A Common Stock under the Indenture.  
  
 Any Debentures called for redemption, unless surrendered for conversion  
on or before the close of business on the date fixed for redemption, may be  
deemed to be purchased from the holder of such Debentures at an amount equal to  
the applicable redemption price, together with accrued interest to the date  
fixed for redemption, by one or more investment bankers or other purchasers who  
may agree with the Company to purchase such Debentures from the holders thereof  
and convert them into Class A Common Stock and to make payment for such  
Debentures as aforesaid to the Trustee in trust for such holders.  
  
 The Indenture provides that if a Risk Event (as defined therein)  
occurs, each holder of Debentures shall have the right, in accordance with the  
provisions of the Indenture, to require the Company to repurchase all of such  
holder's Debentures, or any portion thereof that is an integral multiple of  
$1,000, for cash at a price equal to 100% of the principal amount of such  
Debentures to be repurchased together with accrued interest to the Repurchase  
Date. The Company may, at its option, in lieu of paying the Repurchase Price in  
cash, cause the Repurchase Price to be paid in Class A Common Stock valued at  
95% of the average of the closing prices of the Class A Common Stock for the  
five trading days ending on the third trading preceding the Xxxxxxxxxx  
  
  
  
 X-0  
  
  
  
Date; provided that payment may not be made in Class A Common Stock unless such  
stock is listed on a national securities exchange or quoted on the NASDAQ  
National Market System at the time of payment.  
  
 Upon due presentment for registration of transfer of this Debenture at  
the office or agency of the Company in, at the option of the Company, Honolulu,  
Hawaii or New York, New York, a new Debenture or Debentures of authorized  
denominations for an equal aggregate principal amount will be issued to the  
transferee in exchange herefor, subject to the limitations provided in the  
Indenture, without charge except for any tax or other governmental charge  
imposed in connection therewith.  
  
 The Company, the Trustee, any paying agent, any conversion agent and  
any Debenture registrar may deem and treat the registered holder hereof as the  
absolute owner of this Debenture (whether or not this Debenture shall be overdue  
and notwithstanding any notation of ownership or other writing hereon made by  
anyone other than the Company or any Debenture registrar), for the purpose of  
receiving payment hereof, or on account hereof, for the conversion hereof and  
for all other purposes, and neither the Company nor the Trustee nor any other  
paying agent nor any other conversion agent nor any Debenture registrar shall be  
affected by any notice to the contrary. All payments made to or upon the order  
of such registered holder shall, to the extent of the sum or sums paid, satisfy  
and discharge liability for monies payable on this Debenture.  
  
 No recourse for the payment of the principal of or any premium or  
interest on this Debenture, or for any claim based hereon or otherwise in  
respect hereof and no recourse under or upon any obligation, covenant or  
agreement of the Company in the Indenture or any indenture supplemental thereto  
or in any Debenture, or because of the creation of any indebtedness represented  
thereby, shall be had against any incorporator, stockholder, officer or  
director, as such, past, present or future, of the Company or of any successor  
corporation, either directly or through the Company or any successor  
corporation, whether by virtue of any constitution, statute or rule of law or by  
the enforcement of any assessment or penalty or otherwise, all such liability  
being, by the acceptance hereof and as part of the consideration for the issue  
hereof, expressly waived and released.  
  
 Terms used in this Debenture and defined in the Indenture are used  
herein as therein defined.  
  
  
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 ABBREVIATIONS  
  
The following abbreviations, when used in the inscription on the face of this  
Debenture, shall be construed as though they were written out in full according  
to applicable laws or regulations:  
  
  
  
  
   
  
TEN COM - as tenants in common UNIF GIFT MIN ACT -  
TEN ENT - as tenants by the entireties \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Custodian  
 (Cust)  
JT TEN - as joint tenants with right of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under  
 survivorship and not as tenants (Minor)  
 in common  
 Uniform Gifts to  
 Minors Act \_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (State)  
  
  
  
 Additional abbreviations may also be used  
 though not in the above list.  
  
  
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 (FORM OF CONVERSION NOTICE)  
  
 CONVERSION NOTICE  
  
To: Xxxxxxx Homes, Inc.  
  
 The undersigned registered owner of this Debenture hereby irrevocably  
exercises the option to convert this Debenture, or the portion hereof (which is  
$1,000 or a multiple thereof) below designated, into shares of Class A Common  
Stock in accordance with the terms of the Indenture referred to in this  
Debenture, and directs that the shares issuable and deliverable upon the  
conversion, together with any check in payment for fractional shares and any  
Debentures representing any unconverted principal amount hereof be issued and  
delivered to the registered holder hereof unless a different name has been  
indicated below. If shares or any portion of this Debenture not converted are to  
be issued in the name of a person other than the undersigned, the undersigned  
will pay all transfer taxes payable with respect thereto. Any amount required to  
be paid by the undersigned on account of interest accompanies this Debenture.  
  
Dated:  
  
  
  
 ---------------------------------  
  
  
 ---------------------------------  
 Signature(s)  
  
Signature(s) must be  
guaranteed by a commercial  
bank or trust company or a  
member firm of a major stock  
exchange if shares of Class A  
Common Stock are to be  
delivered, or Debentures to be  
issued, other than to and in the  
name of the registered holder.  
  
  
  
---------------------------------------------  
Signature Guarantee  
  
  
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Fill in for registration of shares  
if to be delivered, and  
Debentures if to be issued other  
than to and in the name of the  
registered holder:  
  
  
  
---------------------------------------------  
(Name)  
  
  
  
---------------------------------------------  
(Street Address)  
  
  
  
---------------------------------------------  
(City, State and zip code)  
  
  
Please print name and address  
  
 Principal amount to be converted (if less than all):  
  
 $\_\_\_\_,000  
  
  
  
 ---------------------------------------------------  
 Social Security or other Taxpayer Identification  
 Number  
  
  
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 (FORM OF ASSIGNMENT]  
  
  
For value received, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereby sell(s), assign(s) and  
  
transfer(s) unto\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (please insert social security or  
  
other identifying number of assignee) the within Debenture and hereby  
  
irrevocably constitutes and appoints \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ attorney to  
  
transfer the said Debenture on the books of the Company, with full power of  
  
substitution in the premises.  
  
  
Dated:  
  
  
----------------------------------- ---------------------------------------  
Signature(s).  
  
Signature(s) must be  
guaranteed by a commercial  
bank or trust company or a  
member firm of a major stock  
exchange.  
  
  
  
-----------------------------------  
Signature Guarantee  
  
NOTICE: The signature on the conversion notice or the assignment must correspond  
with the name as written upon the face of the Debenture in every particular  
without alteration or enlargement or any change whatever.  
  
  
  
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