

general partner or manager (as applicable) to be true and correct copies thereof duly adopted, approved or otherwise delivered by its general partner, manager or members (to the extent necessary and applicable), each of which is certified to be in full force and effect on the Closing Date, authorizing the execution and delivery by it of this Agreement and any Notes, the Guarantee Agreement and other Loan Documents delivered on the Closing Date to which it is a party and the performance by it of all its obligations thereunder; and (vi) such additional supporting documents and other information with respect to its operations and affairs as the Administrative Agent may reasonably request.

(e) Legal Opinions. The Administrative Agent shall have received a favorable legal opinion of Vorys, Sater, Seymour and Pease LLP, counsel to the Borrower and its Subsidiaries, substantially in the form of Exhibit F. Such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the Administrative Agent may reasonably require.

(f) Representations and Warranties; No Defaults. Certificates signed by a duly authorized officer of the Borrower stating that: (i) the representations and warranties of the Borrower contained in Section 4 hereof are correct and accurate in all material respects on and as of the Closing Date, provided, that, to the extent any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect, such representation shall be true and correct in all respects, and (ii) no event has occurred and is continuing which constitutes an Event of Default or Default hereunder as of the Closing Date, or after giving effect to any extension of credit on the Closing Date.

(g) Compliance Certificate; Borrowing Base Certificate. Delivery of (i) a Compliance Certificate, substantially in the form of Exhibit B, as of March 31, 2013, and (ii) a Borrowing Base Certificate, substantially in the form of Exhibit C, as of March 31, 2013.

(h) Termination of Existing Credit Agreement. Delivery of evidence satisfactory to the Administrative Agent that: (a) the Existing Credit Agreement has been terminated, (b) all outstanding Obligations (as defined in the Existing Credit Agreement) have been

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paid in full and (c) all guarantees and security interests granted in connection with the Existing Credit Agreement have been terminated and released, or arrangements reasonably satisfactory to the Administrative Agent shall have been made for their termination and release substantially contemporaneously with the Closing Date.

(i) Additional Documents. Such other agreements, instruments and documents as the Administrative Agent, its counsel or any Lender may reasonably request.

5.2 Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) Borrowing Request. The Administrative Agent shall have received notice of the Borrower's request for Revolving Loan as provided in Section 2.2, Swingline Loan as provided in Section 2.3 or Application as provided in Section 3.2.

(b) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects (except any representations and warranties which are qualified by materiality, shall be correct and accurate in all respects) on and as of such date as if made on and as of such date, provided if any such representations and warranties are expressly made only as of a prior date, such representations and warranties shall be true as of such prior date.

(c) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date.

(d) Availability. Giving effect to such extension of credit, Borrowing Base Debt shall not be greater than the Borrowing Base; provided that the condition precedent in this Section 5.2(d) shall be deemed to be satisfied if the Borrower shall, substantially concurrently with such extension of credit, take actions as required by Section 2.8 so that Borrowing Base Debt is equal to or less than the Borrowing Base.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.2 have been satisfied.

## SECTION 6. AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount (other than contingent obligations such as indemnities or increased costs) is owing to any Lender or the Administrative Agent hereunder, the Borrower shall and shall cause each Loan Party to:

6.1 Reporting Requirements. Maintain a standard system of accounting established and administered in accordance with GAAP and shall cause to be delivered to the Administrative Agent (for prompt distribution by the Administrative Agent to Lenders):

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ending December 31, 2013), a consolidated balance sheet of the Loan Parties and their respective Subsidiaries as of the end of that fiscal year and the related consolidated statements of operations, stockholders' equity and cash flows for that fiscal year, all with accompanying notes and schedules, prepared in accordance with GAAP consistently applied and audited and reported upon by Deloitte & Touche LLP or another

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firm of independent certified public accountants of similar recognized standing selected by the Borrower and acceptable to the Administrative Agent (such audit report shall be unqualified except for qualifications relating to changes in GAAP and required or approved by the Borrower's independent certified public accountants); the financial statements filed with or furnished to the SEC by the Borrower (and which are available online) shall be deemed to have been provided by the Borrower under this reporting requirement;

(b) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Loan Parties and their respective Subsidiaries as of the end of that quarter, and the related consolidated statement of operations and cash flows of the Loan Parties and their respective Subsidiaries for the period from the beginning of the fiscal year to the end of that quarter, all prepared in accordance with GAAP consistently applied, unaudited but certified to be true and accurate, subject to normal year-end audit adjustments, by an Authorized Financial Officer of the Borrower; the financial statements filed with or furnished to the SEC by the Borrower (and which are available online) shall be deemed to have been provided by the Borrower under this reporting requirement;

(c) with the delivery of the financial statements described in subsections (a) and (b) above, a certificate signed by (i) the Chief Executive Officer, President or Executive Vice President or (ii) an Authorized Financial Officer of the Borrower, to the effect that, having read this Agreement, and based upon an examination which he or she deemed sufficient to enable him or her to make an informed statement, there does not exist any Event of Default or Default, or if any Event of Default or Default has occurred, specifying the facts with respect thereto;

(d) within 90 days after the beginning of each fiscal year of the Borrower (commencing with the fiscal year 2014), a projection, in reasonable detail and in form and substance satisfactory to the Administrative Agent, on a quarterly basis, of the earnings, cash flow, balance sheet and covenant calculations (with assumptions for all of the foregoing) of the Loan Parties and their respective Subsidiaries for that fiscal year;

(e) promptly upon becoming available, copies of all financial statements, reports, notices and proxy statements sent by the Borrower to its stockholders, and of all regular and periodic reports and other material

(including copies of all registration statements and reports under the Securities Act of 1933, as amended, and the Exchange Act) filed by the Borrower with or furnished to any securities exchange or any Governmental Authority or commission, except material filed with or furnished to governmental authorities or commissions relating to the development of Real Property Inventory in the ordinary course of the business of the Loan Parties and which does not relate to or disclose any Material Adverse Effect; the reports and financial statements filed with or furnished to the SEC by the Borrower (and which are available online) shall be deemed to have been provided by the Borrower under these reporting requirements;

(f) as soon as available and in any event within 90 days after the end of the fourth quarter of each fiscal year for each Joint Venture, a statement of earnings, assets, liabilities and net worth, indicating the Borrower's and each Loan Party's pro rata share of such Joint Venture, in the form attached as Schedule 6.1(f);

(g) the following reports: within 45 days after the end of each of the first three quarters, and within 90 days after the end of each fiscal year of the Borrower (commencing with the quarter ending June 30, 2013 and fiscal year ending December 31, 2013), a report which shall include the information and calculations provided for in each of the Borrowing Base Certificate and the Compliance Certificate attached to this Agreement, which shall be in

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reasonable detail and in form and substance satisfactory to the Administrative Agent, with calculations indicating that the Borrower is in compliance, as of the last day of such quarterly or annual period, as the case may be, with the provisions of the financial covenants in Section 7.1 of the Borrower and the Loan Parties and with the provisions of Sections 7.4(f) and (g). The reports furnished pursuant to this subsection (g) shall each be certified to be true and correct by an Authorized Financial Officer of the Borrower;

(h) as soon as possible and in any event within 10 Business Days after the Borrower knows that any Reportable Event has occurred with respect to any Plan, a statement, signed by an Authorized Financial Officer of the Borrower, describing said Reportable Event and the action which the Borrower proposes to take with respect thereto;

(i) as soon as possible and in any event within 10 Business Days after receipt thereof by any of the Loan Parties or any of their respective Subsidiaries, a copy of (i) any notice or claim to the effect that any of the Loan Parties or their respective Subsidiaries is or may be liable to any Person as a result of the release or threatened release by any of the Loan Parties, any of their respective Subsidiaries or any other Person of any Hazardous Substance into the indoor or outdoor environment, and (ii) any notice or claim alleging any violation of any Environmental Law or any federal, state or local health or safety law or regulation by any of the Loan Parties or any of their respective Subsidiaries, which, in either case, could reasonably be expected to have a Material Adverse Effect;

(j) promptly following receipt thereof, copies of (i) any documents described in Section 101(f), 101(k) or 101(l) of ERISA that any Loan Party or any ERISA Affiliate may request with respect to any Multiemployer Plan or Pension Plan; provided, that if the relevant Loan Party or ERISA Affiliate have not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plans or Pension Plans, then, upon reasonable request of the Administrative Agent, such Loan Party or the ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof; and

(k) such supplements to the aforementioned documents and additional information and reports as the Administrative Agent or any Lender may from time to time reasonably require.

6.2 Payment of Obligations, Taxes and Other Potential Liens. Pay all its debts and perform all its obligations promptly and in accordance with the terms governing such debts or other obligations, and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon any Loan Party or upon any of their respective incomes or receipts or upon any of their respective properties before the same shall become in default or past due, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might result in the imposition of a Lien or charge upon such properties or any part thereof; provided, however, that it shall not constitute a violation of the provisions of this Section 6.2 if any Loan Party shall fail to (x) perform any such obligation or to pay any such debt (except for obligations for money borrowed), tax, assessment, governmental charge or levy or claim for labor, materials or supplies which is being contested in good faith, by proper proceedings diligently pursued,

and as to which adequate reserves have been provided in conformity with GAAP, or (y) pay a debt secured by a mortgage, deed of trust or comparable Lien on real estate if such debt is, by its terms, Non-Recourse Indebtedness.

6.3 Preservation of Existence. Except as permitted by Section 7.3, do or cause to be done all things or proceed with due diligence with any actions or courses of action which may be necessary to preserve and keep in full force and effect its existence under the laws of its state of incorporation or formation and all qualifications or licenses in jurisdictions in which

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such qualification or licensing is required for the conduct of its business, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. The Borrower will, and will cause each Subsidiary to, carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted. The primary business of the Loan Parties and their respective Subsidiaries shall at all times be the acquisition, development and sale of real estate assets and ancillary and complementary businesses thereto.

6.4 Maintenance of Properties. Maintain all its properties and assets in good working order and condition and make all necessary repairs, renewals and replacements thereof so that its business carried on in connection therewith may be properly conducted at all times; and maintain or require to be maintained (a) adequate insurance, by financially sound and reputable insurers, on all properties of the Loan Parties which are of a character usually insured by Persons engaged in the same or a similar business in the same general geographic area (including, without limitation, all Real Property Inventory encumbered by mortgages securing mortgage loans made by any Loan Party, to the extent normally required by prudent mortgagees, and all Real Property Inventory which is the subject of an equity investment by any Loan Party, to the extent normally carried by prudent builder-developers) against loss or damage resulting from fire, defects in title or other risks insured against by extended coverage and of the kind customarily insured against by those Persons, (b) adequate public liability insurance against tort claims which may be incurred by any Loan Party, and (c) such other insurance as may be required by law, in each case, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Upon the request of the Administrative Agent, the Borrower will furnish to the Lenders full information as to the insurance carried.

6.5 Access to Premises and Books. At all reasonable times and as often as any Lender may reasonably request, permit authorized representatives and agents (including accountants) designated by that Lender to (a) have access to the premises of the Borrower and each Subsidiary and to their respective corporate books and financial records, and all other records relating to their respective operations and procedures, (b) make copies of or excerpts from those books and records and (c) upon reasonable notice to the Borrower, discuss the respective affairs, finances and operations of the Loan Parties and their respective Subsidiaries with, and to be advised as to the same by, their respective officers and directors.

6.6 Notices. Give prompt written notice to the Administrative Agent (who promptly shall furnish the same to the Lenders) of (a) any proceeding instituted by or against the Borrower or any of the Loan Parties in any federal or state court or before any commission or other regulatory body, federal, state or local or other governmental agency, which, if adversely determined, could reasonably be expected to have a Material Adverse Effect on any Loan Party, (b) any other event which could reasonably be expected to lead to or result in a Material Adverse Effect on any Loan Party or result in an Event of Default, (c) (i) upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event or Foreign Plan Event, a written notice specifying the nature thereof, what action Borrower, any of the Loan Parties or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, upon Administrative Agent's request, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Borrower, any of the Loan Parties or any of their respective ERISA Affiliates with the IRS with respect to each Pension Plan; (2) all notices received by Borrower, any of the Loan Parties or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event or Foreign Plan Event; and three (3) copies of such other documents or governmental reports or

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filings relating to any Plan or Pension Plan as Administrative Agent shall reasonably request, and (d) the occurrence of any Default or Event of Default.

6.7 Addition or Release of Guarantors. Give the Administrative Agent prompt written notice of the formation or acquisition of any Subsidiary. Such Subsidiary shall be required to become and continue to be a Guarantor, unless such Subsidiary is designated as an Unrestricted Subsidiary as permitted by this Agreement. Notwithstanding anything to the contrary, if at any time or from time there occurs a Change in Status of a Guarantor, the Borrower shall deliver notice thereof to the Administrative Agent, including a reasonably detailed description of the Change in Status and a statement of the effective date of the Change in Status. Each Change in Status event shall be effective as of the effective date of such Change in Status, automatically, without any further action by any party to this Agreement, and the Subsidiary that is subject to such Change in Status shall no longer be a Guarantor and shall be released from the Guarantee Agreement. In connection with each Change in Status, the Administrative Agent, on behalf of Lenders, shall promptly following receipt of written notice of Change in Status, execute and deliver to the Borrower a written confirmation of such Change in Status. No Subsidiary which guarantees the Existing Notes (or any other senior notes issued by the Borrower) may be designated as an Unrestricted Subsidiary. A newly formed or acquired Subsidiary which the Borrower does not designate as an Unrestricted Subsidiary and any Unrestricted Subsidiary that the Borrower elects to re-designate as a Restricted Subsidiary will become a Guarantor under this Agreement, and the Borrower shall promptly deliver to the Administrative Agent (which, in the case of such a newly formed or acquired Subsidiary, shall be delivered within forty-five (45) days) (i) an Assumption Agreement, substantially in the form provided for in the Guarantee Agreement, executed by a duly authorized officer of such Subsidiary (which shall provide that the Borrower and such Subsidiary shall make the representations and warranties in Section 4 of this Agreement with respect to such Subsidiary); and (ii) a copy of the certificate or articles of incorporation or other organizational document of such Subsidiary, certified by the Secretary of State or other official of the state or other jurisdiction of its incorporation or formation.

6.8 Compliance with Laws and Other Requirements. Promptly and fully comply with, conform to and obey all present and future laws (including all applicable Environmental Laws), ordinances, rules, regulations, orders, writs, judgments, injunctions, decrees, awards and all other legal requirements applicable to the Loan Parties, their respective Subsidiaries and their respective properties, including, without limitation, Regulation Z of the Board, the Federal Interstate Land Sales Full Disclosure Act, ERISA, the Florida Land Sales Act or any similar statute in any applicable jurisdiction, in each case, the violation of which would have a Material Adverse Effect on any Loan Party.

6.9 Use of Proceeds. Use and cause to be used the proceeds of the Loans and other extensions of credit for working capital and general corporate purposes.

## SECTION 7. NEGATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount (other than contingent obligations such as indemnities and increased costs) is owing to any Lender or the Administrative Agent hereunder:

7.1 Financial Condition Covenants. The Borrower shall not,

(a) Maximum Leverage Ratio. As of the end of each fiscal quarter of the Borrower, permit the Leverage Ratio to exceed sixty percent (60%).

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(b) Minimum Interest Coverage/Minimum Liquidity Test. As of the end of each fiscal quarter of the Borrower, fail to maintain either (i) Liquidity in an amount not less than Consolidated Interest Incurred for the last twelve months then ended (such amount, the "Minimum Liquidity Amount") or (ii) an Interest Coverage Ratio not less than 1.50:1.00 (such ratio, the "Minimum Interest Coverage Ratio").

(c) Minimum Tangible Net Worth Test. As of the end of each fiscal quarter of the Borrower, fail to maintain minimum Consolidated Tangible Net Worth not less than (i) \$235,000,000.00 plus (ii) the sum of (A) 50% of the cumulative Consolidated Net Income, if positive, of the Loan Parties and their respective Subsidiaries (other than Unrestricted Subsidiaries) from and after March 31, 2013 plus (B) 50% of the net proceeds from any equity offerings of the Borrower occurring on or after March 31, 2013, other than such proceeds used to refinance the Borrower's preferred shares.

(d) Owned Land Inventory. As of the end of each fiscal quarter of the Borrower, permit the book value of Unsold Owned Land to exceed 125% of the sum of Consolidated Tangible Net Worth and Subordinated Debt (other than that portion of Subordinated Debt due within one year as a regularly scheduled principal payment).

(e) Housing Inventory. As of the end of each fiscal quarter of the Borrower, permit the number of Unsold Vertical Units to exceed the greater of (i) the number of Housing Unit Closings occurring during the period of twelve months ending on the last day of such fiscal quarter multiplied by 35% or (ii) the number of Housing Unit Closings occurring during the period of six months ending on the last day of such fiscal quarter multiplied by 70%.

7.2 Liens and Encumbrances. The Borrower shall not, nor shall it permit any other Loan Party to, grant or suffer or permit to exist any Liens on any of its rights, properties or assets, other than Permitted Liens.

7.3 Fundamental Changes; Asset Sales; Acquisitions.

(a) The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, do any of the following:

(i) acquire any other Person, except pursuant to a Permitted Acquisition;

(ii) sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or any portion of its assets (whether now owned or hereafter acquired), except (A) the sale or other disposition of assets in the ordinary course of business or (B) other dispositions, sales, or assignments of properties (including a bulk sale of properties held in a geographic region) relating to a restructuring or withdrawal from one or more geographic regions, provided that the fair value of such dispositions, sales or transfers in this clause (B) in any fiscal quarter does not exceed 15% of Consolidated Tangible Net Worth (determined as of the last day of the fiscal quarter for which financial statements are available);

(iii) merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it;

(iv) dissolve, liquidate or wind up its business by operation of law or otherwise; or

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(v) distribute to the stockholders of the Borrower any Capital Stock of any Guarantor;

provided, however, that any Subsidiary or any other Person may merge into or consolidate with or may dissolve and liquidate into a Loan Party and any Subsidiary that is not a Loan Party may merge into or consolidate with or may dissolve and liquidate into another Subsidiary that is not a Loan Party, if (and only if), (1) in the case of a merger or consolidation involving a Loan Party other than the Borrower, the surviving Person is, or upon such merger or consolidation becomes, a

Loan Party, (2) in the case of a merger or consolidation involving the Borrower, the Borrower is the surviving Person, (3) the character of the business of the Borrower and the Subsidiaries on a consolidated basis will not be materially changed by such occurrence, and (4) such occurrence shall not constitute or give rise to (a) an Event of Default or (b) default (beyond all applicable grace and cure periods) in respect of any of the covenants contained in any agreement to which the Borrower or any such Subsidiary is a party or by which its property may be bound if such default would have a Material Adverse Effect.

Nothing contained in this Section 7.3, however, shall restrict any sale of assets among the Loan Parties and their Subsidiaries which is in the ordinary course of business or is otherwise in compliance with all other provisions of this Agreement.

7.4 Investments. The Borrower shall not, nor shall it permit any Loan Party to, make any Investment or otherwise acquire any interest in any Person, except:

- (a) Investments in Cash Equivalents;
- (b) Investments constituting extensions of credit in connection with the sale of land;
- (c) loans and advances to officers and employees of the Borrower or any Guarantor, to other Persons in the ordinary course of business or as permitted by the code of regulations of the Borrower, which in the aggregate do not exceed \$5,000,000 at any time outstanding;
- (d) Investments in any Guarantor;
- (e) Investments in (including, without limitation, repayments, repurchases and redemptions of) (i) the Existing Notes or other senior notes or senior Indebtedness and (ii) Subordinated Debt or Capital Stock; provided that the aggregate amount of Investments in Subordinated Debt (other than repayments required at maturity and regularly scheduled payments) and Capital Stock after the Closing Date shall not exceed the sum of (x) \$75,000,000 and (y) the net proceeds of any issuances of common equity and Subordinated Debt of the Borrower after the Closing Date; provided further that any net proceeds of Subordinated Debt described in this clause (y) may be used only for Investments in then-outstanding Subordinated Debt;
- (f) Investments in Joint Ventures the aggregate cost of which do not at any one time exceed 20% of Consolidated Tangible Net Worth (determined as of the last day of the prior fiscal quarter for which financial statements are available); provided that no such Investment may be made if it causes or results (singly or with other actions or events) in (x) any violation of any other covenant or condition of this Agreement or (y) any other Default or Event of Default. For purposes of determining a Loan Party's Investment in a Joint Venture, such Investment shall be determined in accordance with GAAP (excluding, however, such Loan Party's equity in the undistributed earnings or losses in such Joint Venture), but also shall be deemed to include the amount, as determined in accordance with GAAP, of any loans or advances from any Loan Party to

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such Joint Venture, and any guarantee or contractual commitment, arrangement or other agreement by such Loan Party to provide funds or credit to such Joint Venture;

- (g) Investments in Unrestricted Subsidiaries; provided that the aggregate cost of all Investments in Unrestricted Subsidiaries, when combined with the aggregate cost of all Investments in Joint Ventures, does not at any one time exceed 30% of Consolidated Tangible Net Worth (determined as of the last day of the prior fiscal quarter for which financial statements are available); provided further that no such Investment may be made if it causes or results (singly or with other actions or events) in (x) any violation of any other covenant or condition of this Agreement or (y) any other Default or Event of Default. For purposes of determining a Loan Party's Investment in an Unrestricted Subsidiary, such Investment shall be determined in accordance with GAAP (excluding, however, such Loan Party's equity in the undistributed earnings or losses in such Unrestricted Subsidiary);

(h) Investments permitted by Section 7.3 (including Permitted Acquisitions);

(i) Investments by Financial Service Subsidiaries in mortgages, mortgage-backed securities, mortgage commitments and similar financial instruments related to the origination of mortgages and similar activities in the ordinary course of such Subsidiaries;

(j) Investments in securities of any trade creditor or customer received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditor or customer;

(k) Investments in mortgages, receivables, other securities or ownership interests, loans or advances made in connection with a strategy to acquire land or other homebuilding assets through foreclosure or other exercise of remedies; and

(l) Investments, other than those permitted by subsections (a) through (k) above, in the ordinary course of business and which are directly related to the Borrower's homebuilding business, to the extent not otherwise prohibited by this Agreement and subject to the other provisions of this Agreement (provided that this clause (l) shall not permit Investments in Joint Ventures or Unrestricted Subsidiaries); and

(m) other Investments (not specifically listed in items (a) through (l) above) in an aggregate amount not to exceed \$20,000,000 at any time outstanding

7.5 Secured Indebtedness. The Borrower shall not, nor shall it permit any Loan Party to, create, incur, issue or suffer to exist any Secured Indebtedness exceeding \$20,000,000 in aggregate principal amount at any time outstanding, other than:

(a) Secured Indebtedness outstanding on the Closing Date and set forth on Schedule 7.5, and any refinancing thereof that does not increase the principal amount thereof;

(b) Secured Indebtedness in respect of letters of credit fully secured by a Lien on cash and Cash Equivalents;

(c) purchase money Indebtedness and other Non-Recourse Indebtedness;

(d) Capitalized Lease Obligations;

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(e) bonds issued by CDDs or similar bonds issued by Governmental Authorities to accomplish similar purposes, to the extent such bonds are secured by tax Liens or otherwise; and

(f) Secured Indebtedness incurred pursuant to development agreements or land contracts for the purchase or sale of real property which secure (i) the return of a land deposit from another builder and/or developer, (ii) development obligations, (iii) the deferred purchase price of land or other payments due to the seller pursuant to a contract for the purchase of real property and (iv) other similar obligations in connection with development agreements or land contracts for the purchase or sale of real property.

7.6 No Margin Stock. The Borrower shall not use or permit to be used any of the proceeds of the Loans or other extensions of credit hereunder to purchase or carry any "margin stock" (as defined in Regulation U).

7.7 Burdensome Agreements. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into any Contractual Obligation that limits the ability (i) of any Restricted Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor,



(ii) of any Restricted Subsidiary to guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Restricted Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person to secure its obligations under the Loan Documents to which it is a party; provided, however, that this clause (iii) shall not prohibit the requirement of granting a pari passu Lien in favor of any holder of any public Indebtedness if the Obligations hereunder are required to be secured equally and ratably therewith; provided, further, however, the foregoing shall not apply to (w) restrictions imposed by law or this Agreement, (x) customary restrictions and conditions contained in agreements relating to a sale of a Subsidiary or all or substantially all of its assets pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is sold and such sale is permitted hereunder, (y) customary provisions in leases, partnership agreements, limited liability company organizational governance documents, joint venture agreements, joint development agreements and other similar agreements entered into in the ordinary course of business that restrict the transfer or encumbrance of property under joint development or ownership, leasehold interests or ownership interests in such partnership, limited liability company, joint venture or similar Person and (z) with respect to clause (iii), customary provisions in leases restricting the assignment thereof.

7.8 Prepayment of Indebtedness. If a Default has occurred and is continuing or an acceleration of the indebtedness under this Agreement has occurred, the Borrower shall not voluntarily prepay, or permit any Guarantor voluntarily to prepay, the principal amount, in whole or in part, of any Indebtedness other than (a) Indebtedness owed to each Lender hereunder, (b) Indebtedness which ranks pari passu with the Indebtedness under this Agreement which is or becomes due and owing whether by reason of acceleration or otherwise and (c) Indebtedness which is exchanged for, or converted into, Capital Stock (or securities to acquire Capital Stock) of any Loan Party.

7.9 Pension Plan. The Borrower shall not enter into, maintain or make contributions to, or permit any Subsidiary to enter into, maintain or make contributions to, directly or indirectly, any plan that is subject to Title IV of ERISA, except for defined benefit pension plans of any Person formed or acquired, directly or indirectly, by any Loan Party in a Permitted Acquisition, and in each case with prior notice being given to the Administrative Agent of the adoption or assumption of such defined benefit plan.

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7.10 Transactions with Affiliates. Except for compensation arrangements in the ordinary course of business with the officers, directors and employees of the Borrower and any Subsidiary, the Borrower shall not enter into any transaction (including, without limitation, the purchase or sale of any property or service) with, or make any payment or transfer to, any Affiliate (or permit any Loan Party to do any of the foregoing), except in the ordinary course of business and pursuant to the reasonable requirements of the business of the Borrower or such Loan Party and upon fair and reasonable terms no less favorable to the Borrower or such Loan Party than the Borrower or such Loan Party would obtain in a comparable arms'-length transaction.

7.11 Foreign Assets Control Regulations. The Borrower shall not use or permit the use the proceeds of any Loan or any extension of credit in any manner that will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or the Anti-Terrorism Order or any enabling legislation or executive order relating to any of the same. Without limiting the foregoing, neither the Borrower nor any other Loan Party will permit itself nor any of its Subsidiaries to (a) become a blocked person described in Section 1 of the Anti-Terrorism Order or (b) engage in any dealings or transactions or be otherwise associated with any person who is a blocked person.

## SECTION 8. EVENTS OF DEFAULT; REMEDIES

If any of the following events shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or the Borrower shall fail to pay any interest on any Loan, Reimbursement Obligation, any fees hereunder or any other amount payable hereunder or under any other Loan Document within five (5) Business Days after any such interest, fees or other amounts becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document when made which shall be false or misleading in any material respect when made; or

(c) any Loan Party shall default in the observance or performance of any covenant contained in Sections 6.3, 6.5 or 6.6, or Section 7; or

(d) any Loan Party shall default in the observance or performance of any other covenant contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section 8), and such default shall continue unremedied for a period of thirty (30) days; or

(e) any Loan Party shall (i) default in making any payment of any principal of any Indebtedness (including any Contingent Obligation, but excluding the Loans and Non-Recourse Indebtedness) beyond any applicable period of grace, or (ii) default in making any payment of any interest on any such Indebtedness or Contingent Obligation set forth in clause (i) beyond the period of grace, if any, provided in the instrument or agreement under which such obligation was created, or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or Contingent Obligation set forth in clause (i) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness or Contingent Obligation (or a

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trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness or Contingent Obligation to become due prior to its stated maturity or (in the case of any Contingent Obligation) to become payable; provided, that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (e) shall have occurred and be continuing with respect to Indebtedness or Contingent Obligations the aggregate outstanding principal amount of which is \$15,000,000 or more; provided further, that no default or event of default under any Non-Recourse Indebtedness shall be a Default or Event of Default under this Agreement; or

(f) (i) the Borrower or any other Loan Party shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets; or (ii) there shall be commenced against the Borrower or any other Loan Party any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of 60 days; or (iii) there shall be commenced against the Borrower or any other Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Borrower or any other Loan Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any other Loan Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or (vi) the Borrower or any other Loan Party shall make a general assignment for the benefit of its creditors; or

(g) (i) an ERISA Event or Foreign Plan Event shall have occurred, (ii) a trustee shall be appointed by a United States district court to administer any Pension Plan, (iii) the PBGC shall institute proceedings to terminate any Pension Plan(s), (iv) any Loan Party or any of their respective ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan