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## Section 1: 8-K (FORM 8-K)

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): June 5, 2018**

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**CENTURY COMMUNITIES, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-36491**  
(Commission  
File Number)

**68-0521411**  
(I.R.S. Employer  
Identification Number)

**8390 East Crescent Parkway, Suite 650**  
**Greenwood Village, Colorado**  
(Address of principal executive offices)

**80111**  
(Zip Code)

**Registrant's telephone number, including area code: (303) 770-8300**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933, as amended, or Rule 12b-2 of the Securities Exchange Act of 1934, as amended.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01. Entry Into a Material Definitive Agreement.**

On June 5, 2018, Century Communities, Inc. (the “Company”) entered into an Amended and Restated Credit Agreement (the “Amended and Restated Credit Agreement”) with Texas Capital Bank, National Association, as Administrative Agent and L/C Issuer, and the lenders party thereto. The Amended and Restated Credit Agreement amends and restates the Credit Agreement, dated as of October 21, 2014, by and among the Company, Texas Capital Bank, National Association, as Administrative Agent and L/C Issuer, and the lenders party thereto, as modified and supplemented subsequent to the date thereof.

The Amended and Restated Credit Agreement provides the Company with a revolving line of credit (the “Credit Facility”) of up to \$540 million. Unless terminated earlier, the Credit Facility will mature on April 30, 2022, and the principal amount thereunder, together with all accrued unpaid interest and other amounts owing thereunder, if any, will be payable in full on such date. The Company may request a twelve-month extension of the maturity date, subject to the approval of the lenders and the Administrative Agent.

Under the terms of the Amended and Restated Credit Agreement, the Company is entitled to request an increase in the size of the Credit Facility by an amount not exceeding \$100 million. If the existing lenders elect not to provide the full amount of a requested increase, the Company may invite one or more other lender(s) to become a party to the Amended and Restated Credit Agreement, subject to the approval of the Administrative Agent. The obligations under the Amended and Restated Credit Agreement are guaranteed by certain of the Company’s subsidiaries.

Borrowings under the Amended and Restated Credit Agreement bear interest at a floating rate equal to the adjusted Eurodollar Rate plus an applicable margin between 2.60% and 3.10% per annum, or, in the Administrative Agent’s discretion, a base rate plus an applicable margin between 1.60% and 2.10% per annum. The “applicable margins” described above are determined by a schedule based on the leverage ratio of the Company, as defined in the Amended and Restated Credit Agreement. The Amended and Restated Credit Agreement also provides for fronting fees and letter of credit fees payable to the L/C Issuer and commitment fees payable to the Administrative Agent equal to 0.20% of the unused portion of the Credit Facility.

The Amended and Restated Credit Agreement contains customary affirmative and negative covenants (including limitations on the Company’s ability to grant liens, incur additional debt, pay dividends, redeem its common stock, make certain investments and engage in certain merger, consolidation or asset sale transactions), as well as customary events of default. The Amended and Restated Credit Agreement also requires the Company to maintain: (i) a leverage ratio of not more than 1.50 to 1.0 as of the last day of any fiscal quarter, based upon the ratio of debt to tangible net worth of the Company and its subsidiaries on a consolidated basis, (ii) an interest coverage ratio of not less than 1.50 to 1.0 for any four fiscal quarter period, based upon the ratio of EBITDA to cash interest expense of the Company and its subsidiaries on a consolidated basis, (iii) a consolidated tangible net worth of not less than the sum of \$546 million, plus 50% of the net proceeds of any issuances of equity interests of the Company and the guarantors of the Credit Facility after March 31, 2018, plus 50% of the amount of consolidated net income of the Company and its subsidiaries, as of the last day of any fiscal quarter, (iv) liquidity of not less than \$40 million as of the last day of any fiscal quarter for the Company and its subsidiaries on a consolidated basis, and (v) a risk asset ratio of not more than 1.50 to 1.0 as of the last day of any fiscal quarter, based upon the ratio of the book value of all risk assets owned by the Company and its subsidiaries to the Company’s tangible net worth.

The foregoing summary of the Amended and Restated Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the complete terms of the Amended and Restated Credit Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 8.01. Other Events.**

On June 5, 2018, the Company issued a press release announcing its entry into the Amended and Restated Credit Agreement referred to in Item 1.01 above. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K.

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**Item 9.01. Financial Statements and Exhibits.**

**(d) Exhibits.**

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
10.1	<a href="#"><u>Amended and Restated Credit Agreement, dated as of June 5, 2018, by and among the Company, Texas Capital Bank, National Association, as Administrative Agent and L/C Issuer, and the lenders party thereto.</u></a>
99.1	<a href="#"><u>Press Release, dated June 5, 2018, announcing entry into the Amended and Restated Credit Agreement.</u></a>

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**SIGNATURES**

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

Date: June 8, 2018

**CENTURY COMMUNITIES, INC.**

By: /s/ David Messenger

Name: David Messenger

Title: Chief Financial Officer

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## **Section 2: EX-10.1 (EX-10.1)**

**Exhibit 10.1**

EXECUTION

AMENDED AND RESTATED  
CREDIT AGREEMENT

among

CENTURY COMMUNITIES, INC.,  
as Borrower

THE LENDERS FROM TIME TO TIME PARTY HERETO

and

TEXAS CAPITAL BANK, NATIONAL ASSOCIATION,  
as Administrative Agent and L/C Issuer

TEXAS CAPITAL BANK, NATIONAL ASSOCIATION,  
FIFTH THIRD BANK,  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, and  
U.S. BANK NATIONAL ASSOCIATION,  
as Joint Lead Arrangers and Joint Book Runners

DATED AS OF JUNE 5, 2018

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**AMENDED AND RESTATED CREDIT AGREEMENT**

THIS AMENDED AND RESTATED CREDIT AGREEMENT (this “*Agreement*”), dated as of June 5, 2018, is among CENTURY COMMUNITIES, INC., a Delaware corporation (“*Borrower*”), the lenders from time to time party hereto (collectively, “*Lenders*” and individually, a “*Lender*”), and TEXAS CAPITAL BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent and L/C Issuer.

**RECITALS**

Borrower, Administrative Agent and Existing Lenders, are party to that certain Credit Agreement, dated as of October 21, 2014 (as heretofore amended, the “*Existing Credit Agreement*”).

Borrower, Administrative Agent and Lenders desire to amend and restate the Existing Credit Agreement in its entirety as, and in accordance with and subject to the terms and conditions, set forth herein.

Borrower has requested that Lenders extend credit to Borrower as described in this Agreement. Lenders are willing to make such credit available to Borrower upon and subject to the provisions, terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE 1**

**DEFINITIONS**

Section 1.1 **Definitions.** As used in this Agreement, all exhibits, appendices and schedules hereto and in any note, certificate, report or other Loan Documents made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in this *Article 1* or in the provision, section or recital referred to below:

“*Acceptable Bank*” means Lender or any United States bank having capital, surplus, and undivided profits aggregating at least **\$250,000,000**.

“*Account*” means an account, as defined in the UCC.

“*Acquisition*” means the acquisition by any Person of (a) a majority of the equity interests of another Person, (b) all or substantially all of the assets of another Person or (c) all or substantially all of a business unit or line of business of another Person, in each case (i) whether or not involving a merger or consolidation with such other Person and (ii) whether in one transaction or a series of related transactions.

“*Adjusted Eurodollar Rate*” means, with respect to any Loan for any Interest Period or day, as applicable, an interest rate per annum equal to the Eurodollar Rate for such Interest Period or day multiplied by the Statutory Reserve Rate; *provided, however*, if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“**Administrative Agent**” means Texas Capital Bank, National Association, in its capacity as administrative agent under any of the Loan Documents, until the appointment of a successor administrative agent pursuant to the terms of this Agreement and, thereafter, shall mean such successor administrative agent.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by Administrative Agent.

“**Affiliate**” means, as to any Person, any other Person (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; (b) that directly or indirectly beneficially owns or holds 10% or more of any class of voting stock of such Person; or (c) 10% or more of the voting stock of which is directly or indirectly beneficially owned or held by such Person. The term “**control**” means the possession, directly or indirectly, of the power to direct or cause direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise; *provided, however*, in no event shall any Lender be deemed an Affiliate of Borrower or any of its Subsidiaries or Affiliates.

“**Agent Parties**” means, collectively, Administrative Agent or any of its Related Parties.

“**Agreement**” has the meaning set forth in the introductory paragraph hereto, and includes all schedules, exhibits and appendices attached or otherwise identified therewith.

“**Anti-Corruption Laws**” means all state or federal Laws, rules, and regulations applicable to the Obligated Parties or any of their Affiliates from time to time concerning or relating to bribery or corruption, including the FCPA and the Bank Secrecy Act, and other similar anti-corruption legislation in other jurisdictions.

“**Anti-Terrorism Laws**” has the meaning set forth in *Section 6.20*.

“**Applicable Margin**” means the applicable percentages per annum set forth below, based upon the Leverage Ratio, as set forth in the most recent Compliance Certificate received by Administrative Agent pursuant to *Section 7.1(d)*:

<b>Pricing Level</b>	<b>Leverage Ratio</b>	<b>Base Rate Loans</b>	<b>Eurodollar Rate Loans</b>
<b>1</b>	<b>&lt; 1.00:1</b>	<b>1.60%</b>	<b>2.60%</b>
<b>2</b>	<b>≥ 1.00:1 but &lt; 1.25:1</b>	<b>1.85%</b>	<b>2.85%</b>
<b>3</b>	<b>≥ 1.25:1</b>	<b>2.10%</b>	<b>3.10%</b>

Any increase or decrease in the Applicable Margin resulting from a change in the Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to *Section 7.1(d)*; *provided* that if a Compliance Certificate is not delivered when due in accordance with such Section, then upon the request of the Required Lenders, Pricing Level 3 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered. The Applicable Margin from the Closing Date through the date a Compliance Certificate is delivered pursuant to *Section 7.1(d)* in respect of the first fiscal quarter of Borrower ending after the Closing Date shall be determined based upon Pricing Level 1.

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If, as a result of any restatement of or other adjustment to the financial statements of Borrower or for any other reason, Borrower or the Required Lenders determine that (i) the Leverage Ratio as calculated by Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Leverage Ratio would have resulted in higher pricing for such period, Borrower shall immediately and retroactively be obligated to pay to Administrative Agent for the account of the applicable Lenders or L/C Issuer, as the case may be, promptly on demand by Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, automatically and without further action by Administrative Agent, any Lender or L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of Administrative Agent, any Lender or L/C Issuer, as the case may be, under **Section 2.2(c)(iii), 2.2(h) or 2.8(g)** or under **Article 8**. Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

**"Applicable Percentage"** means in respect of the Credit Facility, with respect to any Lender at any time, the percentage (carried out to the twelfth decimal place) of the Credit Facility represented by such Lender's Commitment at such time; *provided* that if the Commitments have been terminated pursuant to the terms hereof, then the Applicable Percentage of each Lender with respect to the Credit Facility shall be determined based upon the Applicable Percentage of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

**"Applicable Rate"** means (a) in the case of a Base Rate Loan, the Base Rate *plus* the Applicable Margin; and (b) in the case of a Eurodollar Rate Loan, the Adjusted Eurodollar Rate *plus* the Applicable Margin.

**"Approved Fund"** means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**"Approved Sales Contract"** means a bona fide, legally binding, enforceable contract for the sale of a House, between Borrower (or one of its Subsidiaries), as seller, and a third party unrelated to Borrower, as buyer, with respect to which (i) the form of such contract of sale shall be substantially consistent with those customarily used by Borrower or its Subsidiaries, and (ii) a non-refundable earnest money deposit in an amount acceptable to Borrower has been delivered to either an independent escrow agent or to Borrower.

**"Arranger"** means (a) Texas Capital Bank, (b) Fifth Third Bank, (c) Merrill Lynch, Pierce, Fenner & Smith Incorporated, and (d) U.S. Bank National Association, in their respective capacities as joint lead arrangers and joint book runners.

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**“Assignment and Assumption”** means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by **Section 12.8**), and accepted by Administrative Agent, in substantially the form of *Exhibit A* or any other form approved by Administrative Agent.

**“Authorized Party”** has the meaning set forth in **Section 12.11(d)(iii)**.

**“Bail-In Action”** means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

**“Bail-In Legislation”** means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing Law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

**“Bank Product Agreements”** means those certain agreements entered into from time to time between any Obligated Party and a Lender or its Affiliate in connection with any of the Bank Products.

**“Bank Product Obligations”** means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by any Obligated Party to any Lender or its Affiliate pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that an Obligated Party is obligated to reimburse to any Lender or its Affiliate as a result of such Lender or its Affiliate purchasing participations or executing indemnities or reimbursement obligations with respect to the Bank Products provided to any Obligated Party pursuant to the Bank Product Agreements.

**“Bank Product Provider”** means any Person that, at the time it enters into a Bank Product Agreement is a Lender or an Affiliate of a Lender, in its capacity as a party to such Bank Product Agreement.

**“Bank Products”** means any service provided to, facility extended to, or transaction entered into with, any Obligated Party by any Lender or its Affiliate consisting of (a) deposit accounts, (b) cash management services, including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements maintained with any Lender or its Affiliates, or (c) debit cards, stored value cards, and credit cards (including commercial credit cards (including so-called “procurement cards” or “P-cards”)) and debit card and credit card processing services.

**“Base Rate”** means, for any day, a rate of interest per annum equal to the highest of (a) the Prime Rate for such day; (b) the sum of the Federal Funds Rate for such day *plus* one half of one percent (0.5%); and (c) the Adjusted Eurodollar Rate for such day *plus* one percent (1.00%).

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**“Base Rate Borrowing”** means, as to any Borrowing, the Base Rate Loans comprising such Borrowing.

**“Base Rate Loan”** means a Loan bearing interest based on the Base Rate. Base Rate Loans will only be available to Borrower if provided by Administrative Agent in Administrative Agent’s sole discretion.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. Section 1010.230.

**“Board of Governors”** means the Board of Governors of the Federal Reserve System of the United States of America.

**“Bond Indenture”** means collectively, (a) that certain Indenture, dated May 5, 2014, by and among (i) Century Communities, Inc., as issuer, (ii) the guarantors named therein, and (iii) U.S. Bank National Association, as trustee, regarding the issuance of \$200,000,000 of 6.875% Senior Notes Due 2022, and (b) that certain Indenture, dated May 12, 2017, by and among (i) Century Communities, Inc., as issuer, (ii) the guarantors named therein, and (iii) U.S. Bank National Association, as trustee, regarding the issuance of \$400,000,000 of 5.875% Senior Notes Due 2025.

**“Bond Indenture Certificate”** means a certificate executed by a Responsible Officer of Borrower, (a) certifying to Administrative Agent, that a proposed Borrowing or L/C Borrowing will not violate the financial covenants and restrictions set forth in the Bond Indenture, and (b) demonstrating compliance with such financial covenants, by showing the applicable calculations.

**“Borrower”** means the Person identified as such in the introductory paragraph hereto, and its successors and assigns to the extent permitted by *Section 12.8*.

**“Borrower Materials”** has the meaning set forth in *Section 12.11(e)*.

**“Borrower’s Other Debt”** means Borrower’s Debt, including, without limitation Debt arising under the Bond Indenture, but excluding (i) amounts due to the Lenders pursuant to this Agreement, and (ii) Mortgage Repurchase Facility Debt.

**“Borrowing”** means a borrowing consisting of simultaneous Loans made by each of the Lenders pursuant to *Section 2.1*.

**“Borrowing Base”** means, as of the date of determination thereof, the result of (a) the Maximum Credit Amount for all Borrowing Base Property, *minus* (b) the outstanding amount of Borrower’s Other Debt.

**“Borrowing Base Property”** means collectively, any Cash and Equivalents, Entitled Land, LUD, Lots, Model Houses, Pre-Sold Houses and Spec Houses, that (a) appear in the most recent Borrowing Base Report reasonably approved by Administrative Agent, (b) are entirely owned in fee simple absolute by Borrower, or by one of its Subsidiaries that is also a Guarantor, (c) are free of Liens, except Liens described in *clauses (a) through (f) of Section 8.2*, (d) are located within the United States of America, and (e) otherwise comply with the terms and conditions set forth in this Agreement.

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**“Borrowing Base Report”** means, as of any date of preparation, a certificate, substantially the form of *Exhibit B*, or in any other form agreed to in writing by Borrower and Administrative Agent, prepared by and certified by a Responsible Officer of Borrower.

**“Borrowing Request”** means a writing, substantially in the form of *Exhibit D*, properly completed and signed by Borrower, requesting a Borrowing. All Borrowing Requests shall be accompanied by a complete and duly executed Bond Indenture Certificate.

**“Business Day”** means (a) for all purposes, a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by Law to be closed, and (b) for purposes of the calculation of the Eurodollar Rate, a day that satisfies the requirements of *clause (a)* and that is a day on which commercial banks in the City of London, England are open for business and dealing in offshore Dollars. Unless otherwise provided, the term “days” when used herein means calendar days.

**“Capitalized Lease Obligation”** means, with respect to any Person, the amount of Debt under a lease of Property by such Person that would be shown as a liability on a balance sheet of such Person prepared for financial reporting purposes in accordance with GAAP.

**“Cash Collateralize”** means to pledge and deposit with or deliver to Administrative Agent, for the benefit of one or more of L/C Issuer or Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if Administrative Agent and L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to Administrative Agent and L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**“Cash and Equivalents”** means, (a) cash, currency, or a credit balance in a Deposit Account, and (b) Temporary Certificates of Deposit, but only to the extent any of the foregoing are free of liens, encumbrances, negative pledges or any other restrictions.

**“Cash Interest Expense”** means, for any Person for any period, total interest expense in respect of all outstanding Debt actually paid or that is payable by such Person during such period, including, without limitation, all commissions, discounts, and other fees and charges with respect to letters of credit, but excluding interest expense not payable in cash, all as determined in accordance with GAAP.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, implemented, adopted or issued.

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**“Change of Control”** means an event or series of events by which:

(a) any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder), shall have acquired beneficial ownership of a percentage (based on voting power, in the event different classes of stock have different voting power) of the voting stock of Borrower equal to at least fifty percent (50%); or

(b) Both Dale Francescon and Robert J. Francescon shall cease for any reason to be members of the board of directors of Borrower.

**“Closing Date”** means the first date all the conditions precedent in *Section 5.1* are satisfied or waived in accordance with *Section 12.10*.

**“Code”** means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, together with the regulations promulgated thereunder.

**“Commitment”** means, as to each Lender, its obligation to (a) make Loans to Borrower pursuant to *Section 2.1(a)*, and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on *Schedule 2.1* under the caption “Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

**“Commitment Fee Rate”** means a rate per annum equal to two-tenths of one percent (0.20%)

**“Communications”** means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed to Administrative Agent, any Lender or L/C Issuer by means of electronic communications pursuant to *Section 12.11(d)*, including through the Platform.

**“Competing Homebuilder”** means any Person that is itself, or is owned or controlled by a Person that is, listed on the most recent Builder 100 list published by Builder magazine, ranked by revenues or closings (or if such list is no longer published, identified in such other published list or through such other means as reasonably determined by Administrative Agent).

**“Completed Spec House”** means a Spec House for which construction is substantially complete.



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“**Completed Spec House Sublimit**” means a number equal to twenty-five percent (25%) of the number of all Houses owned by Borrower (or its Subsidiaries) at any time.

“**Compliance Certificate**” means a certificate, substantially in the form of *Exhibit C*, or in any other form agreed to by Borrower and Administrative Agent, prepared by and certified by a Responsible Officer of Borrower.

“**Condominium Unit**” means a physical portion of a condominium building (which building may not exceed a height of four stories) that is designated for separate ownership and occupancy as a single-family residence.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Constituent Documents**” means (a) in the case of a corporation, its articles or certificate of incorporation and bylaws; (b) in the case of a general partnership, its partnership agreement; (c) in the case of a limited partnership, its certificate of limited partnership or certificate of formation, as applicable, and partnership agreement; (d) in the case of a trust, its trust agreement; (e) in the case of a joint venture, its joint venture agreement; (f) in the case of a limited liability company, its articles of organization, operating agreement, regulations and/or other organizational and governance documents and agreements; and (g) in the case of any other entity, its organizational and governance documents and agreements.

“**Credit Extension**” means each of (a) a Borrowing and (b) an L/C Credit Extension.

“**Credit Facility**” means the revolving line of credit in the maximum sum of the Credit Facility Amount, governed by this Agreement and the other Loan Documents.

“**Credit Facility Amount**” means Five Hundred Forty Million and No/100 Dollars (\$540,000,000.00); subject to increase, however, pursuant to **Section 2.10**. The Credit Facility Amount is the maximum amount that that may be advanced and outstanding at any one time under the Credit Facility.

“**Debt**” means, of any Person as of any date of determination (without duplication): (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, notes, debentures, or other similar instruments; (c) all obligations of such Person to pay the deferred purchase price of Property or services, except trade accounts payable of such Person arising in the ordinary course of business that are not past due by more than ninety (90) days; (d) all Capitalized Lease Obligations of such Person; (e) all Debt or other obligations of others Guaranteed by such Person; (f) all obligations secured by a Lien existing on Property owned by such Person, whether or not the obligations secured thereby have been assumed by such Person or are non-recourse to the credit of such Person; (g) any other obligation for borrowed money or other financial accommodations which in accordance with GAAP would be shown as a liability on the balance sheet of such Person; (h) any repurchase obligation or liability of a Person with respect to Accounts, chattel paper or notes receivable sold by such Person; (i) any liability under a sale and leaseback transaction that is not a Capitalized Lease Obligation; (j) any obligation under any so called “synthetic leases;” (k) any obligation arising

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with respect to any other transaction that is the functional equivalent of borrowing but which does not constitute a liability on the balance sheets of a Person; (l) all payment and reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers' acceptances, surety or other bonds and similar instruments; (m) all liabilities of such Person in respect of unfunded vested benefits under any Plan; and (n) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interests in such Person or any other Person, valued, in the case of redeemable preferred stock interests, at the greater of its voluntary or involuntary liquidation preference plus all accrued and unpaid dividends.

For all purposes, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person.

**"Debtor Relief Laws"** means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable Law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, assignment for the benefit of creditors, moratorium, arrangement or composition, extension or adjustment of debts, or similar Laws affecting the rights of creditors.

**"Default"** means an Event of Default or the occurrence of an event or condition which with notice or lapse of time or both would become an Event of Default.

**"Default Interest Rate"** means an interest rate equal to (i) the Base Rate *plus* (ii) the Applicable Margin, if any, applicable to a Base Rate Loan *plus* (iii) two percent (2%) per annum; *provided, however*, that with respect to a Eurodollar Rate Loan, the Default Interest Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan *plus* two percent (2%) per annum; *provided, however*, in no event shall the Default Interest Rate exceed the Maximum Rate.

**"Defaulting Lender"** means, subject to **Section 12.22(b)**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified Borrower, Administrative Agent or L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender

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shall cease to be a Defaulting Lender pursuant to this *clause (c)* upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of *clauses (a)* through *(d)* above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to *Section 12.22(b)*) upon delivery of written notice of such determination to Borrower and each Lender.

“*Deposit Account*” means a demand, time, savings, passbook, or like account with an Acceptable Bank.

“*Disposition*” means any sale, lease, sub-lease, transfer, assignment, conveyance, release, loss or other disposition, or entry into any contract the performance of which would result in any of the foregoing, of any interest in Property, or of any interest in a Subsidiary that owns Property, in any transaction or event or series of transactions or events, and “*Dispose*” has the correlative meaning thereto.

“*Dollars*” and “*\$*” mean lawful money of the United States of America.

“*EBITDA*” means, for any Person for any period, an amount equal to (a) Net Income *plus* (b) *the sum of* the following to the extent deducted in the calculation of Net Income: (i) interest expense; (ii) income taxes; (iii) depreciation; (iv) amortization; (v) extraordinary losses determined in accordance with GAAP; and (vi) other non-recurring expenses reducing such Net Income which do not represent a cash item in such period or any future period, *minus* (c) *the sum of* the following to the extent included in the calculation of Net Income: (i) income tax credits; (ii) extraordinary gains determined in accordance with GAAP; (iii) all non-recurring, non-cash items increasing Net Income; and (iv) revenue related to Mortgage Loans Held for Sale.

“*EEA Financial Institution*” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in *clause (a)* of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in *clauses (a)* or *(b)* of this definition and is subject to consolidated supervision with its parent.

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“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Eligible Assignee**” means any Person that meets the requirements to be an assignee under *Section 12.8(b)(iii), (v) and (vi)* (subject to such consents, if any, as may be required under *Section 12.8(b)(iii)*).

“**Entitled Land**” means any Land that has been zoned by the applicable Governmental Authority to permit Houses thereon.

“**Environmental Laws**” means any and all federal, state, and local Laws, regulations, judicial decisions, orders, decrees, plans, rules, permits, licenses, and other governmental restrictions and requirements pertaining to health, safety, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

“**Environmental Liabilities**” means, as to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs, and expenses (including, without limitation, all reasonable fees, disbursements and expenses of counsel, expert and consulting fees and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, including any Environmental Law, permit, order or agreement with any Governmental Authority or other Person, arising from environmental, health or safety conditions or the Release or threatened Release of a Hazardous Material into the environment, resulting from the past, present, or future operations of such Person or its Affiliates.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, together with the regulations promulgated thereunder.

“**ERISA Affiliate**” means any corporation or trade or business which is a member of the same controlled group of corporations (within the meaning of *Section 414(b)* of the Code) as an Obligated Party, is under common control (within the meaning of *Section 414(c)* of the Code) with an Obligated Party, or is otherwise considered a single employer with an Obligated Party pursuant to *Sections 414(m) or (o)* of the Code, for purposes of the provisions relating to *Section 412* of the Code or *Section 303* of ERISA

“**ERISA Event**” means (a) a Reportable Event with respect to a Plan, (b) a withdrawal by any Obligated Party or any ERISA Affiliate from a Plan subject to *Section 4063* of ERISA during a plan year in which it was a substantial employer (as defined in *Section 4001(a)(2)* of ERISA) or a cessation of operations which is treated as such a withdrawal under *Section 4062(e)*

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of ERISA, (c) a complete or partial withdrawal by any Obligated Party or any ERISA Affiliate from a Multiemployer Plan, (d) the filing of a notice of intent to terminate a Plan, the treatment of a Plan or Multiemployer Plan amendment as a termination under *Section 4041* or *4041A* of ERISA, or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan, (e) the occurrence of an event or condition which might reasonably be expected to constitute grounds under *Section 4042* of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, (f) the imposition of any liability to the PBGC under Title IV of ERISA, other than for PBGC premiums due but not delinquent under *Section 4007* of ERISA, upon any Obligated Party or any ERISA Affiliate, (g) the failure of any Obligated Party or ERISA Affiliate to meet any funding obligations with respect to any Plan or Multiemployer Plan, or (h) a Plan becomes subject to the at-risk requirements in *Section 303* of ERISA or *Section 430* of the Code or is in endangered or critical status under *Section 305* of ERISA or *Section 432* of the Code.

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“**Eurodollar Rate**” means:

(a) with respect to each Interest Period, the per annum rate appearing on the ICE Benchmark Administration LIBOR Rates Page (or on any successor or substitute page or service providing quotations of interest rates applicable to Dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by Administrative Agent from time to time) at approximately 11:00 a.m., London time, on the related Eurodollar Rate Determination Date, as the rate for Dollar deposits with a maturity comparable to such Interest Period, and if such rate does not appear on such screen or service, or such screen or service shall cease to be available, then the Eurodollar Rate shall be the offered rate (as determined by Administrative Agent in its sole discretion) on such other screen or service that displays an average interest settlement rate for deposits in Dollars (for delivery on the first day of such Interest Period) for a term equivalent to such Interest Period as of 11:00 a.m. on the relevant Eurodollar Rate Determination Date; and

(b) with respect to any interest calculation with respect to a Base Rate Loan on any date, the per annum rate appearing on the ICE Benchmark Administration LIBOR Rates Page (or on any successor or substitute page or service providing quotations of interest rates applicable to Dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by Administrative Agent from time to time) at approximately 11:00 a.m., London time, on the related Eurodollar Rate Determination Date for a term of one (1) month commencing on the date of calculation, and if such rate does not appear on such screen or service, or such screen or service shall cease to be available, then the Eurodollar Rate shall be the offered rate (as determined by Administrative Agent in its sole discretion) on such other screen or service that displays an average interest settlement rate for deposits in Dollars (for delivery on such date of calculation) for a term of one (1) month as of 11:00 a.m. on the relevant Eurodollar Rate Determination Date.

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**“Eurodollar Rate Borrowing”** means, as to any Borrowing, the Eurodollar Rate Loans comprising such Borrowing.

**“Eurodollar Rate Determination Date”** means the first day of an Interest Period.

**“Eurodollar Rate Loan”** means each Loan bearing interest based on the Adjusted Eurodollar Rate where the Eurodollar Rate is determined pursuant to *clause (a)* of the definition thereof.

**“Event of Default”** has the meaning set forth in *Section 10.1*.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (i) such Lender acquires such interest in such Loan or Commitment (other than pursuant to an assignment request by Borrower under *Section 3.6(b)*) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to *Section 3.4*, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with *Section 3.4(g)* and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“Existing Credit Agreement”** has the meaning set forth in the Recitals of this Agreement.

**“Existing Lenders”** means (i) Fifth Third Bank, (ii) Texas Capital Bank, National Association, (iii) Bank of America, N.A., (iv) Compass Bank, an Alabama Banking Corporation, (v) Flagstar Bank, FSB, (vi) ZB, N.A. dba Vectra Bank Colorado (formerly known as Vectra Bank Colorado, NA), (vii) U.S. Bank National Association, (viii) Citibank, N.A., (ix) JPMorgan Chase Bank, N.A., (x) Bank Midwest, a division of NBH Bank, and (xi) Deutsche Bank AG New York Branch.

**“Extension Fee”** means a non-refundable fee in an amount equal to fifteen-one hundredths of one percent (0.15%) of the aggregate Commitments of all Lenders calculated as the Extension Option Agreement Date, to be paid by Borrower to Administrative Agent for the account of each Lender, on the Extension Option Agreement Date.

**“Extension Option”** means the right of Borrower to request a twelve (12) month extension of the Maturity Date, which request may only be granted upon the unanimous written approval of Administrative Agent and all Lenders, and which approval may be granted or denied at the sole discretion of Administrative Agent and each Lender.

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**“Extension Option Agreement”** means a written agreement, executed by Borrower, Administrative Agent and each Lender, approving Borrower’s request to exercise the Extension Option. The Extension Option Agreement shall contain the Borrower’s certification that (A) no Default exists, and (B) the representations and warranties contained in **Article 6** and the other Loan Documents are true and correct, both before and immediately after giving effect to the extension of the Maturity Date (except to the extent that a representation or warranty specifically refer to an earlier date, in which case they are true and correct as of such earlier date).

**“Extension Option Agreement Date”** means the effective date of the Extension Option Agreement.

**“FASB ASC”** means the Accounting Standards Codification of the Financial Accounting Standards Board.

**“FATCA”** means *Sections 1471 through 1474* of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to *Section 1471(b)(1)* of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

**“FCPA”** means the Foreign Corrupt Practices Act of 1977, as amended.

**“Federal Funds Rate”** means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York, on the Business Day next succeeding such day, *provided* that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.

**“Fee Letter”** means the separate fee letters dated as of (a) August 19, 2014, (b) July 14, 2015, (c) November 10, 2015, (d) August 19, 2016, and (e) April 27, 2018, respectively, between Borrower and Texas Capital Bank, and any other fee letter among Borrower and Administrative Agent, Arranger and/or Texas Capital Bank concerning fees to be paid by Borrower in connection with this Agreement including any amendments, restatements, supplements or modifications thereof. By its execution of this Agreement, each Lender acknowledges and agrees that Administrative Agent, Arranger and/or Texas Capital Bank may elect to treat as confidential and not share with Lenders any Fee Letters executed from time to time in connection with this Agreement.

**“Flood Insurance Regulations”** means (a) the National Flood Insurance Act of 1968, (b) the Flood Disaster Protection Act of 1973, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001 et seq.), (d) the Flood Insurance Reform Act of 2004, and (e) the Biggert-Waters Flood Insurance Reform Act of 2012, in each case as now or hereafter in effect or any successor statute thereto and including any regulations promulgated thereunder.

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**“Foreign Lender”** means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the Laws of a jurisdiction other than that in which Borrower is resident for tax purposes.

**“Fronting Exposure”** means, at any time there is a Defaulting Lender, with respect to L/C Issuer, such Defaulting Lender’s Applicable Percentage of the Outstanding Amount of the L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

**“Fund”** means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**“GAAP”** means generally accepted accounting principles, applied on a consistent basis, as set forth in opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a “consistent basis” when the accounting principles applied in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

**“Governmental Authority”** means the government of the United States of America or any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, tribal body or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), and any group or body charged with setting financial accounting or regulatory capital rules or standards (including without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

**“Guarantee”** by any Person means any obligation or liability, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person as well as any obligation or liability, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation or liability (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to operate Property, to take-or-pay, or to maintain net worth or working capital or other financial statement conditions or otherwise) or (b) entered into for the purpose of indemnifying or assuring in any other manner the obligee of such Debt or other obligation or liability of the payment thereof or to protect the obligee against loss in respect thereof (in whole or in part); *provided* that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The term **“Guarantee”** used as a verb has a corresponding meaning.



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**“Guarantors”** means each Person who from time to time Guarantees all or any part of the Obligations under the Loan Documents, and “Guarantor” means any one of the Guarantors.

**“Guaranty”** means a written guaranty of each Guarantor in favor of Administrative Agent, for the benefit of Lenders, in form and substance reasonably satisfactory to Administrative Agent.

**“Hazardous Material”** means any substance, product, waste, pollutant, material, chemical, contaminant, constituent, or other material which is or becomes listed, regulated, or addressed under any Environmental Law, including, without limitation, asbestos, petroleum, and polychlorinated biphenyls.

**“Hedge Agreement”** means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement.

**“Hedge Fund”** means an unregulated, private investment partnership of accredited investors (as such term is used by the Securities and Exchange Commission).

**“Honor Date”** has the meaning set forth in *Section 2.2(c)(i)*.

**“House”** means a single-family attached or detached residence, or Condominium Unit, to be constructed by Borrower (or one of its Subsidiaries) upon a Lot in accordance with the applicable provisions hereof. Where the context requires, the term “House” shall include the Lot upon which the residence is constructed.

**“Increase Effective Date”** has the meaning set forth in *Section 2.10(d)*.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower or any other Obligated Party under any Loan Document and (b) to the extent not otherwise described in *clause (a)*, Other Taxes.

**“Information”** has the meaning set forth in *Section 12.25*.

**“Intangible Assets”** means the following assets of any Person: (a) goodwill, including any amounts, however designated, that represent the excess of the purchase price paid for assets or stock over the value assigned thereto; (b) patents, trademarks, trade names, and copyrights; (c) deferred expenses; (d) loans and advances to any stockholder, director, officer, or employee of such Person or any Affiliate of such Person; and (e) all other assets which are properly classified as intangible assets.

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**“Intellectual Property”** means all copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses and other types of intellectual property, in whatever form, now owned or hereafter acquired.

**“Interest Period”** means, with respect to any Eurodollar Rate Loan, a period of time beginning on the first Business Day of a calendar month, and ending on the day immediately prior to the first Business Day of the following calendar month.

**“Interest Rate”** means the rate equal to the lesser of (a) the Maximum Rate and (b) the Applicable Rate.

**“Inventory and Sales Status Report”** means a periodic report prepared by Borrower with respect to the Land, Lots and Houses and the completion status of each House under construction by Borrower (whether or not financed under the Credit Facility), properly completed by Borrower and in form satisfactory to Administrative Agent. The Inventory and Sales Status Report shall include a sales and closing report by subdivision in form acceptable to Administrative Agent reflecting (a) net sales of Houses since the last report, (b) as to completed Houses, whether or not they are subject to a sales contract, (c) as to Houses under construction, whether or not they are sold and the closing status of such residences, and (d) such other information as Administrative Agent may reasonably request with respect to the Borrower’s inventory, sales of Houses, closing of said sales and information regarding Borrower’s business operations.

**“IRS”** means the Internal Revenue Service or any entity succeeding to all or any of its functions.

**“ISP”** means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

**“Issuer Documents”** means, with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by L/C Issuer and Borrower (or any Subsidiary) or in favor of L/C Issuer and relating to such Letter of Credit.

**“L/C Advance”** means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

**“L/C Borrowing”** means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed by Borrower on the date when made or refinanced as a Borrowing.

**“L/C Credit Extension”** means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

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“**L/C Issuer**” means Texas Capital Bank in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“**L/C Obligations**” means, as of any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.4**. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**Land**” means unimproved real property or interest therein, together with all right, title, interest, and privileges of the owner thereof in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property, the interests therein and the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real property; and (iv) all appurtenances and all reversions and remainders in or to such real property.

“**Land Under Development**” or “**LUD**” means a parcel of Entitled Land that is in the process of being developed into finished Lots.

“**Laws**” means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**Lender**” and “**Lenders**” have the meanings set forth in the introductory paragraph hereto, and shall include L/C Issuer, and their respective successors and assigns permitted hereunder, as the context may require.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Borrower and Administrative Agent.

“**Letter of Credit**” means any standby letter of credit issued hereunder in connection with the development of Lots or LUD, (a) on behalf of a Person in favor of a Governmental Authority, including, without limitation, any utility, water, or sewer authority, or other similar entity, for the purpose of assuring such Governmental Authority that such Person or an Affiliate of such Person will properly and timely complete work it has agreed to perform for the benefit of such Governmental Authority; (b) in lieu of cash deposits to obtain a license, in place of a utility deposit; or (c) in lieu of other contract performance, to secure performance warranties payable upon breach, and to secure the performance of labor and materials, including, without limitation, construction, bid, and performance bonds.

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**“Letter of Credit Application”** means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by L/C Issuer. All Letter of Credit Applications shall be accompanied by a complete and duly executed Bond Indenture Certificate.

**“Letter of Credit Expiration Date”** means the day that is seven (7) days prior to the Maturity Date for the Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

**“Letter of Credit Sublimit”** means an amount equal to the lesser of (a) \$40,000,000, or (b) the aggregate Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Commitments.

**“Leverage Ratio”** means, as of any date of determination, the ratio of (a) all Debt of Borrower and its Subsidiaries (excluding Mortgage Repurchase Facility Debt), to (b) the Tangible Net Worth of Borrower and its Subsidiaries.

**“Lien”** means, as to any Property of any Person, (a) any lien, mortgage, security interest, tax lien, pledge, charge, hypothecation, collateral assignment, preference, priority, or other encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or title retention agreement), whether arising by contract, operation of law, or otherwise, affecting such Property and (b) the signing or filing of a financing statement which names the Person as debtor or the signing of any security agreement or the signing of any document authorizing a secured party to file any financing statement which names such Person as debtor.

**“Liquidity”** means the aggregate of (i) Cash and Equivalents assets and those assets that are readily convertible to cash (limited to the \$40,000,000 excluded from the Cash and Equivalents element of the Borrowing Base calculation), *plus* (ii) amounts available to be drawn by Borrower under existing lines of credit, including the Credit Facility, all as determined by Administrative Agent in its reasonable discretion.

**“Loan”** means an extension of revolving credit by a Lender to Borrower under *Article 2*.

**“Loan Documents”** means this Agreement, the Guaranty, the Notes, Issuer Documents, and all other promissory notes, letters of credit, guaranties, and other instruments, documents, or agreements executed and delivered pursuant to or in connection with this Agreement; *provided* that the term “Loan Documents” shall not include any Bank Product Agreement.

**“Lot”** means (i) a single platted and subdivided portion of Land, identified by unique lot and block numbers, (ii) upon which a single House (or several Condominium Units) is to be, has been, or is in the process of being, constructed, together with all right, title, interest, and privileges of Borrower in and to (A) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the interest therein; (B) any strips or gores of real property between such real property and abutting

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or adjacent properties; (C) all water and water rights, timber and crops pertaining to such real property; and (D) all appurtenances and all reversions and remainders in or to such real property, and (iii) with all required municipal approvals and utilities (including, without limitation, streets, alleys and sidewalks, potable water, storm and sanitary sewer, electricity, telephone, gas and cable television facilities), fully completed and each connected to or available at the boundaries of such Lot.

“**Material Adverse Event**” means any act, event, condition, or circumstance which could materially and adversely affect (a) the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower or Borrower and its Subsidiaries, taken as a whole; (b) the ability of any Obligated Party to perform its obligations under any Loan Document to which it is a party; or (c) the legality, validity, binding effect or enforceability against any Obligated Party of any Loan Document to which it is a party. A Material Adverse Event does not include national or global economic conditions that are not unique to Borrower.

“**Maturity Date**” means with respect to the Credit Facility, April 30, 2022, or such earlier date on which the Commitment of each Lender terminates as provided in this Agreement; subject to extension pursuant to **Section 2.11**; *provided, however*, that, if such date is not a Business Day, the Maturity Date shall be the next succeeding Business Day.

“**Maximum Credit Amount**” means the maximum amount for each item of Borrowing Base Property, used to determine the Borrowing Base, based on the latest Borrowing Base Report reasonably approved by Administrative Agent. The Maximum Credit Amount for each element of Borrowing Base Property shall be calculated as follows:

(a) **Cash and Equivalents**. The amount equal to one hundred percent (100%) of the actual value of Borrower’s Cash and Equivalents, *minus* \$40,000,000.

(b) **Entitled Land**. The amount equal to fifty percent (50%) of Total Cost of such Entitled Land.

(c) **LUD**. The amount equal to sixty-five percent (65%) of Total Cost of such LUD.

(d) **Lots**. The amount equal to seventy-five percent (75%) of Total Cost of such Lot.

(e) **Model Houses**. The amount equal to eighty-five percent (85%) of the Total Cost of such Model House.

(f) **Pre-Sold Houses**. The amount equal to ninety percent (90%) of the Total Cost of such Pre-Sold House.

(g) **Spec Houses**. The amount equal to ninety percent (90%) of the Total Cost of such Spec House. Eighteen (18) months after any Spec House has been included as Borrowing Base Property, the Maximum Credit Amount for such Spec House shall decrease to amount equal to seventy-five percent (75%) of the Total Cost of such Spec House. Twenty-four (24) months after any Spec House has been included as Borrowing Base Property, the Maximum Credit Amount for such Spec House shall further decrease to amount equal to fifty percent (50%) of the Total Cost of such Spec House.

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**“Maximum Rate”** means, at all times, the maximum rate of interest which may be charged, contracted for, taken, received or reserved by Lenders in accordance with applicable Texas law (or applicable United States federal law to the extent that such law permits Lenders to charge, contract for, receive or reserve a greater amount of interest than under Texas law). The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges in respect of the Loan Documents that constitute interest under applicable Law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate.

**“Minimum Collateral Amount”** means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the time that a Defaulting Lender exists, an amount equal to 125% of the Fronting Exposure of L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of *Section 2.7(a)(i), (a)(ii) or (a)(iii)*, an amount equal to 125% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by Administrative Agent and L/C Issuer in their sole discretion.

**“Model House”** means a House which is to be, has been, or is in the process of being, constructed, and which is not the subject of an Approved Sales Contract, and is intended by Borrower to be furnished and used by Borrower for on-site office and/or marketing purposes.

**“Mortgage Loans Held for Sale”** means mortgage loans to homebuyers, that are originated by Inspire Home Loans Inc., a Delaware corporation (which is a Subsidiary of Borrower), and that are intended to be sold in the secondary market.

**“Mortgage Repurchase Facility Debt”** means the following revolving lines of credit, as such lines of credit may be amended, modified, restated, extended, increased, replaced or refinanced from time to time, which were made available to Inspire Home Loans Inc., a Delaware corporation, to fund homebuyer mortgage loans originated by such corporation: (a) that certain revolving line of credit in the amount of \$40,000,000, from Comerica Bank; and (b) that certain revolving line of credit in the amount of \$45,000,000, from JPMorgan Chase Bank, N.A. Notwithstanding the foregoing, if any of the foregoing lines of credit are ever deemed to be recourse obligations of Borrower or any Guarantor, then such line of credit shall cease to qualify as “Mortgage Repurchase Facility Debt” for purposes of this Agreement.

**“Multiemployer Plan”** means a multiemployer plan defined as such in *Section 3(37)* of ERISA to which contributions are being made or have been made by, or for which there is an obligation to make by or there is any liability, contingent or otherwise, with respect to an Obligated Party or any ERISA Affiliate and which is covered by Title IV of ERISA.

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**“Net Income”** means, for any Person for any period, the net income (or loss) of such Person and its Subsidiaries on a consolidated basis as determined in accordance with GAAP; *provided* that Net Income shall exclude (a) the net income of any Subsidiary of such Person during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Constituent Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that such Person’s equity in any net loss of any such Subsidiary for such period shall be included in determining Net Income, and (b) any income (or loss) for such period of any other Person if such other Person is not a Subsidiary, except that Borrower’s equity in the net income of any such Person for such period shall be included in Net Income up to the aggregate amount of cash actually distributed by such Person during such period to Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to Borrower as described in clause (a) of this proviso).

**“Non-Consenting Lender”** means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or each affected Lender in accordance with the terms of **Section 12.10** and (b) has been approved by the Required Lenders.

**“Non-Defaulting Lender”** means, at any time, each Lender that is not a Defaulting Lender at such time.

**“Note”** means any one of the promissory notes made by Borrower in favor of a Lender evidencing Loans, made by such Lender, substantially in the form of **Exhibit E**, and **“Notes”** means all of such promissory note, collectively.

**“Obligated Party”** means Borrower, each Guarantor or any other Person who is or becomes party to any agreement that obligates such Person to pay or perform, or that Guarantees or secures payment or performance of, the Obligations under the Loan Documents or any part thereof.

**“Obligations”** means all obligations, indebtedness, and liabilities of Borrower, each Guarantor and any other Obligated Party to Administrative Agent, each Lender and any Affiliates of Administrative Agent or any Lender now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, arising under or pursuant to this Agreement, any Bank Product Agreements, the other Loan Documents, and all interest accruing thereon (whether a claim for post-filing or post-petition interest is allowed in any bankruptcy, insolvency, reorganization or similar proceeding) and all attorneys’ fees and other expenses incurred in the enforcement or collection thereof.

**“OFAC”** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

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“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 3.6**).

“**Outstanding Amount**” means (a) with respect to the Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans, occurring on such date, and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts.

“**Participant**” means any Person (other than (a) a natural Person, (b) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, (c) a Defaulting Lender, or (d) Borrower or any of Borrower’s Affiliates or Subsidiaries or any other Obligated Party) to which a participation is sold by any Lender in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it).

“**Participant Register**” means a register in the United States on which each Lender that sells a participation enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents.

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56, signed into law October 26, 2001).

“**Payment Date**” means the fifth (5<sup>th</sup>) day of each and every calendar month during the term of this Agreement and the Maturity Date.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any entity succeeding to all or any of its functions under ERISA.

“**Permitted Acquisitions**” means any Acquisition (other than by means of a hostile takeover, hostile tender offer or other similar hostile transaction) of a business or entity engaged primarily in the business of homebuilding, Land acquisition or Land development, or a business reasonably related thereto, in respect of which the majority of shareholders (or other equity interest holders) of the acquired entity, and the board of directors (or other governing body thereof) of the acquired entity, approve such Acquisition, provided that before and after giving effect to such Acquisition, no Default shall exist.



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**“Permitted Acquisition Liens”** means Liens that both (a) encumber Property of an entity that was acquired by Borrower through a Permitted Acquisition, so long as such Property was owned by such entity prior to the Permitted Acquisition, and (b) existed prior to the Permitted Acquisition. Property that is encumbered by a Permitted Acquisition Lien is not eligible to be included as Borrowing Base Property.

**“Permitted Liens”** means those Liens permitted by *Section 8.2*.

**“Person”** means any natural person, corporation, limited liability company, business trust, association, company, partnership, joint venture, Governmental Authority, or other entity, and shall include such Person’s heirs, administrators, personal representatives, executors, successors and assigns.

**“Plan”** means any employee benefit or other plan, other than a Multiemployer Plan, established or maintained by, or for which there is an obligation to make contributions by or there is any liability, contingent or otherwise with respect to Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA or subject to *Section 412* of the Code.

**“Platform”** means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

**“Pre-Sold House”** means a House which is to be, has been or is in the process of being, constructed, and which is the subject of an Approved Sales Contract.

**“Prime Rate”** means the rate of interest per annum publicly announced from time to time by Texas Capital Bank as its prime rate in effect at its Principal Office; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. Such rate is set by Texas Capital Bank as a general reference rate of interest, taking into account such factors as Texas Capital Bank may deem appropriate; it being understood that many of Texas Capital Bank’s commercial or other loans are priced in relation to such rate, that it is not necessarily the lowest or best rate actually charged to any customer and that Texas Capital Bank may make various commercial or other loans at rates of interest having no relationship to such rate.

**“Principal Office”** means the principal office of Administrative Agent, presently located at the address set forth on *Schedule 12.11*.

**“Profit and Participation Agreement”** means Debt, secured by a deed of trust, mortgage or other Lien against a property or asset, with respect to which the purchaser of such property or asset agrees to pay the seller of such property or asset, a profit participation or other speculative amount, in respect of such property or asset.

**“Prohibited Transaction”** means any transaction set forth in *Section 406* of ERISA or *Section 4975* of the Code.

**“Property”** of a Person means any and all property, whether real, personal, tangible, intangible or mixed, of such Person, or any other assets owned, operated or leased by such Person.

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**“Public Lender”** has the meaning set forth in *Section 12.11(e)*.

**“Real Estate Subsidiary”** means a Subsidiary that owns real estate, or is engaged in the business of homebuilding or other construction, real estate development, real estate management, or real estate brokerage.

**“Recipient”** means Administrative Agent, L/C Issuer, and any Lender, as applicable.

**“Register”** means a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time.

**“Related Indebtedness”** means any and all indebtedness paid or payable by Borrower or any other Obligated Party to Administrative Agent or any Lender pursuant to any Loan Document other than any Note.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, sub agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

**“Release”** means, as to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, disbursement, leaching, or migration of Hazardous Materials into the indoor or outdoor environment or into or out of property owned by such Person, including, without limitation, the movement of Hazardous Materials through or in the air, soil, surface water, ground water, or Property.

**“Remedial Action”** means all actions required to (a) clean up, remove, treat, or otherwise address Hazardous Materials in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

**“Removal Effective Date”** has the meaning set forth in *Section 11.6(b)*.

**“Reportable Event”** means any of the events set forth in *Section 4043* of ERISA.

**“Required Lenders”** means, at any time, Lenders having Total Credit Exposures representing at least 50.1% of the Total Credit Exposures of all Lenders; *provided* that, if one Lender holds at least 50.1% but less than 100% of the Total Credit Exposures at such time, subject to the last sentence of *Section 12.10*, Required Lenders shall be at least two Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

**“Resignation Effective Date”** has the meaning set forth in *Section 11.6(a)*.

**“Responsible Officer”** means the chief executive officer, president, chief financial officer, or treasurer of an Obligated Party. Any document delivered hereunder that is signed by a Responsible Officer of an Obligated Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of Obligated Party.

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**“Revolving Credit Exposure”** means, as to any Lender at any time, the aggregate Outstanding Amount of its Loans and such Lender’s participation in L/C Obligations at such time.

**“RICO”** means the Racketeer Influenced and Corrupt Organization Act of 1970.

**“Risk Asset Ratio”** means, as of any date of determination, the ratio of (a) the book value of all Risk Assets owned by Borrower or its Subsidiaries, as reflected on Borrower’s financial statements, to (b) Borrower’s Tangible Net Worth.

**“Risk Assets”** means Land (regardless of whether such Land is Entitled Land), LUD and Lots.

**“Risk Assets Sublimit”** means a dollar amount equal to one hundred fifty percent (150%) of Borrower’s Tangible Net Worth, at any time.

**“Sanctioned Country”** means, at any time, a country or territory which is itself the subject or target of any Sanctions.

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons, in each case, to the extent dealings are prohibited or restricted with such Person under Sanctions, or (d) any Person otherwise the subject of any Sanctions.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority.

**“SEC”** means the Security and Exchange Commission, or any successor agency.

**“Seller Carryback Financing”** means Debt, secured by a deed of trust, mortgage or other Lien against a property or asset, with respect to which the purchaser of such property or asset agrees to pay the seller of such property or asset, all or a portion of the purchase price for such property or asset.

**“Solvent”** means, with respect to any Person, as of any date of determination, that the fair value of the assets of such Person (at fair valuation) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date, that the present fair saleable value of the assets of such Person will, as of such date,

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be greater than the amount that will be required to pay the probable liability of such Person on its debts as such debts become absolute and matured, and that, as of such date, such Person will be able to pay all liabilities of such Person as such liabilities mature and such Person does not have unreasonably small capital with which to carry on its business. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability discounted to present value at rates believed to be reasonable by such Person acting in good faith.

“**Spec House**” means a House which is to be, has been or is in the process of being, constructed, and which (i) is not the subject of an Approved Sales Contract, (ii) is not a Model House, and (iii) any House which was subject to an Approved Sales Contract, but which Approved Sales Contract has subsequently been terminated, cancelled, voided or breached by the purchaser or which otherwise no longer qualifies as an Approved Sales Contract.

“**Spec House Sublimit**” means a number equal to fifty percent (50%) of the number of all Houses owned by Borrower (or its Subsidiaries), at any time; *provided*, however, the Spec House Sublimit shall seasonally increase to sixty percent (60%) from February 1 to May 31 of each calendar year.

“**Statutory Reserve Rate**” means a fraction (expressed as a decimal), the numerator of which is the number one (1) and the denominator of which is the number one (1) minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors to which Administrative Agent is subject with respect to the Eurodollar Rate, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D of the Board of Governors). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Borrower.

“**Tangible Net Worth**” means, for any Person as of any date, the difference between (a) the total assets of such Person, determined in conformity with GAAP, excluding Intangible Assets, and excluding Mortgage Loans Held for Sale, minus (b) the Debt of such Person, determined in conformity with GAAP, excluding Mortgage Repurchase Facility Debt.

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“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Temporary Certificates of Deposit**” means certificates of deposit that (a) are issued by, and held at, an Acceptable Bank and (b) mature within sixty (60) days from the date of issuance thereof.

“**Texas Capital Bank**” means Texas Capital Bank, National Association, a national banking association, and its successors and assigns.

“**Total Cost**” means, with respect to any Entitled Land, LUD, Lot, Model House, Pre-Sold House or Spec House which is Borrowing Base Property, the aggregate amount of the following costs actually incurred by Borrower at the time of measurement: (i) the acquisition costs of the applicable portion of the Borrowing Base Property (including the purchase price and all reasonable, necessary and customary closing costs for the acquisition of such portion of the Borrowing Base Property), (ii) the amount of development or construction hard costs actually incurred in the development or construction of such portion of the Borrowing Base Property, and (iii) the amount of soft costs (but not overhead, marketing or sales expenses) directly attributable to the development or construction of such portion of the Borrowing Base Property, all as submitted by Borrower and approved by Administrative Agent, in its reasonable discretion. In the event of a casualty or condemnation affecting any portion of the Borrowing Base Property, duplicative costs to repair and remediate the effects of the casualty or condemnation shall not be used to calculate the Total Cost. Notwithstanding the foregoing, in no event shall the Total Cost of any item of the Borrowing Base Property exceed the book value of such item, as determined in accordance with GAAP, and as reflected on Borrower’s financial statements.

“**Total Credit Exposure**” means, as to any Lender at any time, the unused Commitments and Revolving Credit Exposure of such Lender at such time.

“**Triggering Event**” means a Permitted Acquisition by Borrower of an entity with total tangible assets in excess of \$150,000,000.

“**Type**” means, with respect to a Loan, refers to whether such Loan is a Base Rate Loan or a Eurodollar Rate Loan, and, with respect to a Borrowing, refers to whether such Borrowing is a Base Rate Borrowing or a Eurodollar Rate Borrowing.

“**UCC**” means Chapters 1 through 11 of the Texas Business and Commerce Code.

“**UCP**” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“**ICC**”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“**Unfunded Pension Liability**” means the excess, if any, of (a) the funding target as defined under *Section 430(d)* of the Code without regard to the special at-risk rules of *Section 430(i)* of the Code, over (b) the value of plan assets as defined under *Section 430(g)(3)(A)* of the Code determined as of the last day of each plan year, without regard to the averaging which may be allowed under *Section 430(g)(3)(B)* of the Code and reduced for any prefunding balance or funding standard carryover balance as defined and provided for in *Section 430(f)* of the Code.

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“**Unreimbursed Amount**” has the meaning set forth in **Section 2.2(c)(i)**.

“**U.S. Person**” means any Person that is a “*United States Person*” as defined in *Section 7701(a)(30)* of the Code.

“**U.S. Tax Compliance Certificate**” has the meaning specified in **Section 3.4(g)(ii)(B)(3)**.

“**Withholding Agent**” means each of Borrower and Administrative Agent.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

#### Section 1.2 Accounting Matters.

(a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements described in **Section 6.2**, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Debt of Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth herein, and either Borrower or the Required Lenders shall so request, Administrative Agent, Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided that*, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) Borrower shall provide to Administrative Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**Section 1.3 ERISA Matters.** If, after the date hereof, there shall occur, with respect to ERISA, the adoption of any applicable Law, rule, or regulation, or any change therein, or any change in the interpretation or administration thereof by the PBGC or any other Governmental Authority, then either Borrower or Required Lenders may request a modification to this Agreement solely to preserve the original intent of this Agreement with respect to the provisions hereof applicable to ERISA, and the parties to this Agreement shall negotiate in good faith to complete such modification.

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Section 1.4 **Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.5 **Other Definitional Provisions.** All definitions contained in this Agreement are equally applicable to the singular and plural forms of the terms defined. The words “hereof”, “herein”, and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear. Terms used herein that are defined in the UCC, unless otherwise defined herein, shall have the meanings specified in the UCC. Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time. Words denoting gender shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be constructed as cumulative; the word “*or*” is not exclusive; the word “*including*” (in its various forms) means “*including, without limitation*”; in the computation of periods of time, the word “*from*” means “*from and including*” and the words “*to*” and “*until*” mean “*to but excluding*”; and all references to money refer to the legal currency of the United States of America.

Section 1.6 **Interpretative Provision.** For purposes of *Section 10.1*, a breach of a financial covenant contained in *Article 9* shall be deemed to have occurred as of any date of determination thereof by Borrower, the Required Lenders or as of the last date of any specified measurement period, regardless of when the financial statements or the Compliance Certificate reflecting such breach are delivered to Administrative Agent.

Section 1.7 **Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to central time (daylight or standard, as applicable).

Section 1.8 **Other Loan Documents.** The other Loan Documents contain representations, warranties, covenants, defaults and other provisions that are in addition to and not limited by, or a limitation of, similar provisions of this Agreement. Such provisions in such other Loan Documents may be different or more expansive than similar provisions of this Agreement and neither such differences nor such more expansive provisions shall be construed as a conflict.

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## ARTICLE 2

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### Section 2.1 The Loans.

(a) **Borrowings.** Subject to the terms and conditions of this Agreement, each Lender severally agrees to make one or more Loans to Borrower from time to time from the Closing Date until the Maturity Date for the Credit Facility in an aggregate principal amount for such Lender at any time outstanding up to but not exceeding the amount of such Lender's Commitment, *provided* that the Revolving Credit Exposure of all Lenders shall not exceed the least of (i) the aggregate amount of the Commitments of the Lenders, (ii) the Borrowing Base, and (iii) the Credit Facility Amount. Subject to the foregoing limitations, and the other terms and provisions of this Agreement, Borrower may borrow, repay, and reborrow Loans hereunder.

(b) **Borrowing Procedure.** Each Borrowing shall be made upon Borrower's irrevocable notice to Administrative Agent, which may be given by telephone. Each such notice must be received by Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the requested date of any Borrowing. Each telephonic notice by Borrower pursuant to this *Section 2.1(b)* must be confirmed promptly by delivery to Administrative Agent of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of Borrower. Each Borrowing of a Eurodollar Rate Borrowing shall be in a principal amount of at least \$1,000,000. Except as provided in *Section 2.2(c)*, each Borrowing of or conversion to a Base Rate Borrowing shall be in a principal amount of at least \$500,000. Each Borrowing Request (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount the Borrowings to be borrowed, and (iii) the Type of Borrowings to be borrowed.

(c) **Funding.** Following receipt of a Borrowing Request, Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Borrowing. Each Lender shall make the amount of its Loan available to Administrative Agent in immediately available funds at Administrative Agent's Principal Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Request. Upon satisfaction of the applicable conditions set forth in *Section 5.2* (and, if such Borrowing is the initial Credit Extension, *Section 5.1*), Administrative Agent shall make all funds so received available to Borrower in like funds as received by Administrative Agent either by (i) crediting the account of Borrower on the books of Texas Capital Bank with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) Administrative Agent by Borrower; *provided, however*, that if, on the date the Borrowing Request with respect to such Borrowing is given by Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, *first*, shall be applied to the payment in full of any such L/C Borrowings, and *second*, shall be made available to Borrower as provided above.



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(d) **Continuations and Conversions.** The Applicable Rate shall be based upon the Eurodollar Rate, except as otherwise expressly provided herein. Base Rate Loans will not be available to Borrower, unless Administrative Agent elects to make them available in Administrative Agent's sole discretion, or unless otherwise required by *Sections 3.2* or *3.3*. If Borrower fails to specify a Type of Loan in a Borrowing Request, then the applicable Loan shall be made as a Eurodollar Rate Loan, unless otherwise required by *Sections 3.2* or *3.3*. A Eurodollar Rate Loan may not be converted to a Base Rate Loan, unless Administrative Agent elects to permit such conversion in Administrative Agent's sole discretion, or unless otherwise required by *Sections 3.2* or *3.3*.

(e) **Notifications.** Administrative Agent shall promptly notify Borrower and Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Borrowings upon determination of such interest rate. At any time that Base Rate Loans are outstanding, Administrative Agent shall notify Borrower and Lenders of any change in Texas Capital Bank's prime rate used in determining the Base Rate promptly following the public announcement of such change.

## Section 2.2 Letters of Credit.

### (a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) L/C Issuer agrees, in reliance upon the agreements of Lenders set forth in this *Section 2.2*, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of Borrower or its Subsidiaries that are Guarantors, and to amend or extend Letters of Credit previously issued by it, in accordance with *subsection (b)* below, and (2) to honor drawings under the Letters of Credit; and (B) Lenders severally agree to participate in Letters of Credit issued for the account of Borrower or its Subsidiaries that are Guarantors and any drawings thereunder; *provided* that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Revolving Credit Exposure of all Lenders shall not exceed the lesser of the aggregate amount of the Commitments of the Lenders and the Borrowing Base, (y) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

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(ii) L/C Issuer shall not issue any Letter of Credit, or permit the renewal of any Letter of Credit, if:

(A) the initial expiry date of the requested Letter of Credit would occur more than twenty-four (24) months after the date of issuance, unless Required Lenders have approved such expiry date; or

(B) the Letter of Credit would automatically renew for a period in excess of twelve (12) months, unless Required Lenders have approved such Letter of Credit; or

(C) the Letter of Credit would automatically renew without providing L/C Issuer with an opportunity to prevent each and every renewal; or

(D) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all Lenders have approved such expiry date.

(iii) L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain L/C Issuer from issuing the Letter of Credit, or any Law applicable to L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over L/C Issuer shall prohibit, or request that L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by Administrative Agent and L/C Issuer, the Letter of Credit is in an initial stated amount less than \$25,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars;

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(E) any Lender is at that time a Defaulting Lender, unless L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to L/C Issuer (in its sole discretion) with Borrower or such Lender to eliminate L/C Issuer's actual or potential Fronting Exposure (after giving effect to **Section 12.22(a)(iv)**) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) L/C Issuer shall not amend any Letter of Credit if L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) L/C Issuer shall act on behalf of Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in **Article 11** with respect to any acts taken or omissions suffered by L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in **Article 11** included L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to L/C Issuer.

(vii) Once a Letter of Credit has been issued, Lenders shall be deemed to have authorized (but may not require) L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than the earlier of (i) twelve (12) months from the date of such renewal, or (ii) the Letter of Credit Expiration Date.

**(b) Procedures for Issuance and Amendment of Letters of Credit.**

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of Borrower delivered to L/C Issuer (with a copy to Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by L/C Issuer, by personal delivery or by any other means acceptable to L/C Issuer. Such Letter of Credit Application must be received by L/C Issuer and Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as Administrative Agent and L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the

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case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as L/C Issuer may require. Additionally, Borrower shall furnish to L/C Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as L/C Issuer or Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, L/C Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such Letter of Credit Application from Borrower and, if not, L/C Issuer will provide Administrative Agent with a copy thereof. Unless L/C Issuer has received written notice from any Lender, Administrative Agent or any Obligated Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in *Article 5* shall not then be satisfied, then, subject to the terms and conditions hereof, L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, L/C Issuer will also deliver to Borrower and Administrative Agent a true and complete copy of such Letter of Credit or amendment.

**(c) Drawings and Reimbursements; Funding of Participations.**

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, L/C Issuer shall notify Borrower and Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by L/C Issuer under a Letter of Credit (each such date, an "*Honor Date*"), Borrower shall reimburse L/C Issuer through Administrative Agent in an

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amount equal to the amount of such drawing. If Borrower fails to so reimburse L/C Issuer by such time, Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “*Unreimbursed Amount*”), and the amount of such Lender’s Applicable Percentage thereof. In such event, Borrower shall be deemed to have requested a Borrowing to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, subject to the amount of the unutilized portion of the Commitments and the conditions set forth in *Section 5.2* (other than the delivery of a Borrowing Request). Any notice given by L/C Issuer or Administrative Agent pursuant to this *Section 2.2(c)(i)* may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to *Section 2.2(c)(i)* make funds available (and Administrative Agent may apply Cash Collateral provided for this purpose) for the account of L/C Issuer at Administrative Agent’s Principal Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by Administrative Agent, whereupon, subject to the provisions of *Section 2.2(c)(iii)*, each Lender that so makes funds available shall be deemed to have made a Loan (or, if the conditions set forth in *Section 5.2* are not satisfied, an L/C Borrowing as further described in clause (iii) below) to Borrower in such amount. Administrative Agent shall remit the funds so received to L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing because the conditions set forth in *Section 5.2* cannot be satisfied or for any other reason, Borrower shall be deemed to have incurred from L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Interest Rate. In such event, each Lender’s payment to Administrative Agent for the account of L/C Issuer pursuant to *Section 2.2(c)(ii)* shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this *Section 2.2*.

(iv) Until each Lender funds its Loan or L/C Advance pursuant to this *Section 2.2(c)* to reimburse L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of L/C Issuer.

(v) Each Lender’s obligation to make Loans or L/C Advances to reimburse L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this *Section 2.2(c)*, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against L/C Issuer, Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that

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each Lender's obligation to make Loans (but not its obligation to fund its pro rata share of L/C Advances) pursuant to this **Section 2.2(c)** is subject to the conditions set forth in **Section 5.2** (other than delivery by Borrower of a Borrowing Request). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrower to reimburse L/C Issuer for the amount of any payment made by L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to Administrative Agent for the account of L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.2(c)** by the time specified in **Section 2.2(c)(ii)**, then, without limiting the other provisions of this Agreement, L/C Issuer shall be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of L/C Issuer submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

**(d) Repayment of Participations.**

(i) At any time after L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with **Section 2.2(c)**, if Administrative Agent receives for the account of L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of L/C Issuer pursuant to **Section 2.2(c)(i)** is required to be returned under any of the circumstances described in **Section 12.24** (including pursuant to any settlement entered into by L/C Issuer in its discretion), each Lender shall pay to Administrative Agent for the account of L/C Issuer its Applicable Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Lenders under this **clause** shall survive the payment in full of the Obligations and the termination of this Agreement.

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(e) **Obligations Absolute.** The obligation of Borrower to reimburse L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) waiver by L/C Issuer of any requirement that exists for L/C Issuer's protection and not the protection of Borrower or any waiver by L/C Issuer which does not in fact materially prejudice Borrower;
- (v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
- (vi) any payment made by L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;
- (vii) any payment by L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or
- (viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or any Subsidiary.

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Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of Required Lenders; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of L/C Issuer shall be liable or responsible for any of the matters described in *clauses (i) through (viii) of Section 2.2(e)*; *provided, however*, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against L/C Issuer, and L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by L/C Issuer's willful misconduct or gross negligence or L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) **Applicability of ISP; Limitation of Liability.** Unless otherwise expressly agreed by L/C Issuer and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, L/C Issuer shall not be responsible to Borrower for, and L/C Issuer's rights and remedies against Borrower shall not be impaired by, any action or inaction of L/C Issuer required or



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permitted under any Law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade—International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit or other Issuer Document chooses such Law or practice.

(h) **Fronting Fee and Documentary and Processing Charges.** Borrower shall pay directly to L/C Issuer for the account of each Lender in accordance, subject to *Section 12.22*, with its Applicable Percentage, an annual, non-refundable, fronting fee with respect to each Letter of Credit, in an amount equal to two-tenths of one percent (0.20%) of the face amount of the Letter of Credit. Such fronting fee shall be due and payable upon the issuance or renewal of such Letter of Credit. In addition, Borrower shall pay directly to L/C Issuer for its own account, any amounts set forth in the Fee Letter, the customary issuance, presentation and amendment fees, and other standard costs and charges, of L/C Issuer relating to letters of credit as from time to time in effect. Such fees, costs and charges are due and payable on demand and are nonrefundable.

(i) **Conflict with Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(j) **Letters of Credit Issued for Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Borrower shall be obligated to reimburse L/C Issuer hereunder for any and all drawings under such Letter of Credit. Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrower, and that Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

### Section 2.3 **Borrowing Base and Sublimits.**

(a) **Borrowing Limitation.** In addition to any and all limitations and conditions contained herein, Borrower shall not be entitled to a Borrowing under the Credit Facility which would cause the aggregate outstanding principal balance of all Borrowings, together with accrued but unpaid interest thereon, together with the outstanding amount of all L/C Obligations, to exceed the lesser of (i) the Borrowing Base, or (ii) the Credit Facility Amount.

(b) **Qualified Borrowing Base Property.** Cash and Equivalents, Entitled Land, LUD, Lots, Model Houses, Pre-Sold Houses and Spec Houses for which all of the following conditions have been satisfied shall qualify as Borrowing Base Property, subject to Administrative Agent's absolute approval rights: (i) the proposed Borrowing Base Property must comply with the terms and conditions set forth in this Agreement, (ii) if requested by Administrative Agent, Borrower has delivered to Administrative Agent documents reasonably necessary to determine whether the proposed Borrowing Base Property complies with the terms and conditions set forth in this Agreement, and (iii) Borrower has included such Borrowing Base Property in the most recently submitted Borrowing Base Report which has been approved by Administrative Agent.

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(c) **Credit Facility Term.** All outstanding Obligations with respect to the Credit Facility shall be due and payable on the Maturity Date. After the Maturity Date, Borrower shall have no right to either (i) submit any further Borrowing Requests, or (ii) request that any new Borrowing Base Property be added to the Borrowing Base, and Administrative Agent shall have no obligation to honor any such requests.

(d) **Borrowing Base Reports.** Borrower shall deliver to Administrative Agent a Borrowing Base Report (i) when required pursuant to *Section 7.1*, and (ii) concurrently with any Borrowing Request or Letter of Credit Application. The delivery to Administrative Agent of a Borrowing Base Report shall be a certification by Borrower that the facts represented therein are true, correct and complete as of the date of such Borrowing Base Report.

(e) **Total Cost Documentation.** Upon Administrative Agent's request, in connection with any Borrowing Base Report, Borrower shall furnish to Administrative Agent evidence of the Total Cost for each parcel of Entitled Land, LUD, Lot, Model House, Pre-Sold House and Spec House, in form and substance acceptable to Administrative Agent.

(f) **Borrowing Base Report Approval.** Administrative Agent shall have the right to review and approve or disapprove (and to make appropriate adjustments as contemplated in this Agreement for approval) each Borrowing Base Report; provided, however, until such Borrowing Base Report is approved or adjusted by Administrative Agent, the most recent Borrowing Base Report submitted by Borrower and approved or adjusted, from time to time as herein contemplated, by Administrative Agent shall be in effect. The funding of a Borrowing based upon a Borrowing Base Report submitted to Administrative Agent shall not be deemed to be an unconditional approval thereof. If Administrative Agent reasonably believes that any current or prior Borrowing Base Report is incomplete or inaccurate in any respect which causes the Credit Facility to be funded in excess of what is specified in this Agreement, then the Borrowing Base shall be limited to such amount as Administrative Agent reasonably determines to be applicable in accordance with the provisions of this Agreement until such time as the Borrowing Base Report is reasonably determined by Administrative Agent to be true, correct and complete.

(g) **Removal of Borrowing Base Property from Borrowing Base.** If Administrative Agent reasonably determines that any portion of the Borrowing Base Property, although previously included in the Borrowing Base, is or becomes the subject of a condition which violates any of the provisions hereof, or is materially impaired by casualty or condemnation, then Administrative Agent may remove such portion of the Borrowing Base Property from the Borrowing Base and such portion shall have a Maximum Credit Amount of zero dollars (\$0). If the condition is thereafter cured, the removed portion of the Borrowing Base Property may be thereafter included in the Borrowing Base, however, the date the portion of the Borrowing Base Property was initially included in the Borrowing Base shall be used in calculation of the adjustments to the Borrowing Base for the determination of the Maximum Credit Amount as specified herein.

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(h) **Spec House Sublimit.** Notwithstanding anything to the contrary contained herein, the number of Spec Houses included as Borrowing Base Property, at any one time, shall not exceed the Spec House Sublimit.

(i) **Completed Spec House Sublimit.** Notwithstanding anything to the contrary contained herein, the number of Completed Spec Houses included as Borrowing Base Property, at any one time, shall not exceed the Completed Spec House Sublimit.

(j) **Risk Assets Sublimit.** Notwithstanding anything to the contrary contained herein, the aggregate amount of all of the Lenders' Revolving Credit Exposure with respect to Risk Assets, at any one time, shall not exceed the Risk Assets Sublimit. The amount of Credit Facility proceeds used, requested by Borrower or otherwise committed with respect to this Risk Assets Sublimit shall reduce on a *pro tanto* basis the amount of proceeds otherwise available under this Credit Facility.

#### Section 2.4 Fees.

(a) **Fees.** Borrower agrees to pay to Administrative Agent and Arranger, for the account of Administrative Agent, Arranger and each Lender, as applicable, fees, in the amounts and on the dates set forth in the Fee Letter.

(b) **Commitment Fees.** Borrower agrees to pay to Administrative Agent for the account of each Lender in accordance, subject to **Section 12.22**, with its Applicable Percentage a commitment fee on the daily average unused amount of the Commitment of such Lender for the period from and including the date of this Agreement to and including the Maturity Date for the Credit Facility (including at any time during which one or more of the conditions in **Article 5** is not met), at a rate equal to the Commitment Fee Rate. For the purpose of calculating the commitment fee hereunder, the Commitment of each Lender shall be deemed utilized by the amount of all outstanding Loans and L/C Obligations, owing to such Lender whether directly or by participation. Accrued commitment fees shall be payable quarterly in arrears on the first day of each April, July, October, and January during the term of this Agreement and on the Maturity Date for the Credit Facility.

#### Section 2.5 Payments Generally; Administrative Agent's Clawback.

(a) **General.** All payments of principal, interest, and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Administrative Agent for the account of Administrative Agent or L/C Issuer or the pro rata accounts of the applicable Lenders, as applicable, at the Principal Office in Dollars and immediately available funds, without setoff, deduction, or counterclaim, and free and clear of all taxes at the time and in the manner provided herein. Payments by check or draft shall not constitute payment in immediately available funds until the required

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amount is actually received by Administrative Agent in full. Payments in immediately available funds received by Administrative Agent in the place designated for payment on a Business Day prior to 12:00 noon at such place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Administrative Agent on a day other than a Business Day or after 12:00 noon on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest on the Notes shall become due and payable on a day other than a Business Day, then such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment. Administrative Agent is hereby authorized upon notice to Borrower to charge the account of Borrower maintained with Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder.

**(b) Funding by Lenders; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from a Lender, that such Lender will not make available to Administrative Agent such Lender's share of a Borrowing, Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Agreement and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by Borrower, the interest rate applicable to the applicable Borrowing. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

**(c) Payments by Borrower; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of L/C Issuer or the applicable Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to L/C Issuer or the applicable Lenders the amount due. In such event, if Borrower has not in fact made such payment, then L/C Issuer or each applicable Lender, as applicable, severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to L/C Issuer or such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

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## Section 2.6 Evidence of Debt.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business; *provided* that such Lender or Administrative Agent may, in addition, request that such Loans be evidenced by the Notes. The Credit Extensions made by L/C Issuer shall be evidenced by one or more accounts or records maintained by L/C Issuer and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent, L/C Issuer, and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made to Borrower and, with respect to Letters of Credit issued for the account of a Subsidiary, such Subsidiary and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by L/C Issuer, or any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

(b) In addition to the accounts and records referred to in *subsection (a)* above, each Lender and Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

## Section 2.7 Cash Collateral.

(a) **Certain Credit Support Events.** If (i) L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) Borrower shall be required to provide Cash Collateral pursuant to **Section 10.2**, or (iv) there shall exist a Defaulting Lender, Borrower shall immediately (in the case of *clause (iii)* above) or within one (1) Business Day (in all other cases) following any request by Administrative Agent or L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to *clause (iv)* above, after giving effect to **Section 12.22(a)(iv)** and any Cash Collateral provided by the Defaulting Lender).

(b) **Grant of Security Interest.** Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of Administrative Agent, L/C Issuer and Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral, and in all proceeds of the foregoing, all as security for the obligations to which

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such Cash Collateral may be applied pursuant to **Section 2.7(c)**. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent or L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at Texas Capital Bank. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 2.7** or **Sections 2.2, 10.2** or **12.22** in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with **Section 12.8(b)(vii)**) or (ii) the determination by Administrative Agent and L/C Issuer that there exists excess Cash Collateral; *provided, however*, the Person providing Cash Collateral and L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

#### Section 2.8 Interest; Payment Terms.

(a) **Loans – Payment of Principal and Interest; Revolving Nature.** The unpaid principal amount of each Borrowing of the Loans shall, subject to the following sentence and **Section 2.8(g)**, bear interest at the applicable Interest Rate. If at any time such rate of interest would exceed the Maximum Rate but for the provisions thereof limiting interest to the Maximum Rate, then any subsequent reduction shall not reduce the rate of interest on the Loans below the Maximum Rate until the aggregate amount of interest accrued on the Loans equals the aggregate amount of interest which would have accrued on the Loans if the interest rate had not been limited by the Maximum Rate. All accrued but unpaid interest on the principal balance of the Loans shall be payable on each Payment Date and on the Maturity Date for the Credit Facility, *provided* that interest accruing at the Default Interest Rate pursuant to **Section 2.8(g)** shall be payable on demand. The then Outstanding Amount of the Loans and all accrued but unpaid interest thereon shall be due and payable on the Maturity Date for the Credit Facility. The unpaid principal balance of the Loans at any time shall be the total amount advanced hereunder by Lenders less the amount of principal payments made thereon by or for Borrower, which balance may be endorsed on the Notes from time to time by Lenders or otherwise noted in Lenders' and/or Administrative Agent's records, which notations shall be, absent manifest error, conclusive evidence of the amounts owing hereunder from time to time.

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(b) **Rate Determination.** The Interest Rate shall be adjusted as of the first Business Day of each Interest Period, and Eurodollar Rate shall be used to determine the Interest Rate for that Interest Period. The Interest Rate for the first Interest Period (or fraction thereof) of this Credit Facility shall be determined on the Closing Date, and the Interest Rate shall remain fixed throughout the remainder of such Interest Period (or fraction thereof) until the first Business Day of the following Interest Period (subject to the provisions of *Section 12.19* of this Agreement). The Interest Rate for subsequent Interest Periods shall be re-determined, and adjusted if necessary, on each subsequent Eurodollar Rate Determination Date, and the Interest Rate shall remain fixed throughout the applicable Interest Period until the first Business Day of the following Interest Period (subject to the provisions of *Section 12.19* of this Agreement). The determination by Administrative Agent of the Interest Rate shall, in the absence of manifest error, be conclusive and binding in all respects.

(c) **Application.** Except as expressly provided herein to the contrary, all payments on the Obligations under the Loan Documents shall be applied in the following order of priority: (i) the payment or reimbursement of any expenses, costs or obligations (other than the Outstanding Amount thereof and interest thereon) for which Borrower shall be obligated or Administrative Agent, L/C Issuer, or any Lender shall be entitled pursuant to the provisions of this Agreement, the Notes or the other Loan Documents; (ii) the payment of accrued but unpaid interest thereon; and (iii) the payment of all or any portion of the principal balance thereof then outstanding hereunder as directed by Borrower. If an Event of Default exists under this Agreement, the Notes or under any of the other Loan Documents, any such payment shall be applied as provided in *Section 10.3* below.

(d) **Computation Period.** Interest on the Loans and all other amounts payable by Borrower hereunder on a per annum basis shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a usurious rate, in which case interest shall be calculated on the basis of a 365-day year or 366-day year, as the case may be. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to the close of business on the Business Day received. Each determination by Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(e) **Unconditional Payment.** Borrower is and shall be obligated to pay all principal, interest and any and all other amounts which become payable under any of the Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction whatsoever and without any reduction for counterclaim or setoff whatsoever. If at any time any payment received by Administrative Agent hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law,

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then the obligation to make such payment shall survive any cancellation or satisfaction of the Obligations under the Loan Documents and shall not be discharged or satisfied with any prior payment thereof or cancellation of such Obligations, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

(f) **Partial or Incomplete Payments.** Subject to *Section 10.3*, if at any time insufficient funds are received by and available to Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest, fees and other amounts then due hereunder, such funds shall be applied (i) first, to pay interest, fees and other amounts then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and other amounts then due to such parties, and (ii) second, to pay principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal or L/C Borrowings, as applicable, then due to such parties. Remittances in payment of any part of the Obligations under the Loan Documents other than in the required amount in immediately available funds at the place where such Obligations are payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Administrative Agent in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Administrative Agent of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

(g) **Default Interest Rate.** For so long as any Event of Default exists, regardless of whether or not there has been an acceleration of the Loans, and at all times after the maturity of the Loans (whether by acceleration or otherwise), and in addition to all other rights and remedies of Administrative Agent or Lenders hereunder, (i) interest shall accrue on the Outstanding Amount of the Loans at the Default Interest Rate, (ii) interest shall accrue on any past due amount (other than the Outstanding Amount of the Loans) at the Default Interest Rate and (iii) upon the request of the Required Lenders, interest shall accrue on the principal amount of all other outstanding Obligations at the Default Interest Rate, and such accrued interest shall be immediately due and payable. Borrower acknowledges that it would be extremely difficult or impracticable to determine Administrative Agent's or Lenders' actual damages resulting from any late payment or Event of Default, and such accrued interest are reasonable estimates of those damages and do not constitute a penalty.

#### Section 2.9 Prepayments.

(a) **Voluntary Prepayments.** Subject to the conditions set forth below, Borrower shall have the right, at any time and from time to time upon at least three (3) Business Days prior written notice to Administrative Agent, to prepay the principal of the Loans, in full or in part. If there is a prepayment of all or any portion of the principal of the Loans on or before the Maturity Date for such Loans, whether voluntary or because of acceleration or otherwise, such prepayment shall also include (x) any and all accrued but unpaid interest on the amount of principal being so prepaid through and including the date of prepayment, plus any other sums which have become due to Lenders under the other Loan Documents on or before the date of prepayment, but which have not been fully paid.



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(b) **Mandatory Prepayment of Credit Facility.** If at any time the Revolving Credit Exposure of the Lenders exceeds the Borrowing Base then in effect, then Borrower shall immediately prepay the entire amount of such excess to Administrative Agent, for the ratable account of Lenders, and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided, however*, that Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this **Section 2.9(b)** unless after the prepayment in full of the Loans, the Revolving Credit Exposure of the Lenders exceeds the Borrowing Base then in effect. Each prepayment required by this **Section 2.9(b)** shall be applied, first, to any Base Rate Borrowings then outstanding, and, second, to any Eurodollar Rate Borrowings then outstanding, and if more than one Eurodollar Rate Borrowing is then outstanding, to such Eurodollar Rate Borrowing in such order as Borrower may direct, or if Borrower fails to so direct, as Administrative Agent shall elect.

#### Section 2.10 Uncommitted Increase in Commitments.

(a) **Request for Increase.** Provided there exists no Default, upon notice to Administrative Agent (which shall promptly notify the Lenders), Borrower may from time to time, request an increase in the Credit Facility Amount and the aggregate Commitments by an amount (for all such requests) not exceeding \$100,000,000; *provided* that (i) any such request for an increase shall be in a minimum amount of \$20,000,000, and (ii) Borrower may make a maximum of three such requests. To achieve the full amount of a requested increase, and subject to the approval of Administrative Agent and L/C Issuer (which approvals shall not be unreasonably withheld), Borrower may (i) request that one or more Lenders increase their Commitment, (ii) invite all Lenders to increase their respective Commitment, and/or (iii) invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to Administrative Agent and its counsel.

(b) **Notification by Administrative Agent; Additional Lenders.** In the event the Borrower invites all Lenders to increase their respective Commitment, then at the time of sending such notice, Borrower (in consultation with Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders). Each Lender shall notify Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment. Administrative Agent shall notify Borrower and each Lender of the Lenders' responses to each request made hereunder.

(c) **Effective Date and Allocations.** If the Commitments are increased in accordance with this Section, Administrative Agent and Borrower shall determine the effective date (the "**Increase Effective Date**") and the final allocation of such increase. Administrative Agent shall promptly notify Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

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(d) **Conditions to Effectiveness of Increase.** As a condition precedent to such increase, Borrower shall deliver to Administrative Agent a certificate of Borrower dated as of the Increase Effective Date, signed by a Responsible Officer of Borrower, in form and substance satisfactory to Administrative Agent (x) certifying and attaching the resolutions adopted by Borrower approving or consenting to such increase, and (y) certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in **Article 6** and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.10**, the representations and warranties contained in **subsections (a)** and **(b)** of **Section 7.1** shall be deemed to refer to the most recent statements furnished pursuant to **subsections (a)** and **(b)**, respectively, of **Section 7.1**, (B) the proposed increase will not violate the terms and conditions of the Bond Indenture, and (C) no Default exists. Additionally, Borrower shall pay to Administrative Agent (i) a non-refundable fee in an amount equal to one-half of one percent (0.50%) of the amount of the increase, for the account of each Lender that increases its Commitment, and (ii) any amounts set forth in the Fee Letter. Furthermore, Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to **Section 3.5**) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(e) **Conflicting Provisions.** This Section shall supersede any provisions in **Section 12.23** or **12.10** to the contrary.

#### Section 2.11 Uncommitted Extension Option.

(a) **Request for Extension of Maturity Date.** Provided there exists no Default, upon notice to Administrative Agent (which shall promptly notify the Lenders), Borrower may request to exercise the Extension Option; *provided* that (i) any such request for an extension must be delivered to Administrative Agent at least sixty (60), but not more than one hundred twenty (120) days, prior to the initial Maturity Date, (ii) the extension request may only be granted by the unanimous written approval of Administrative Agent and all Lenders, as evidenced by an Extension Option Agreement, (iii) Administrative Agent and each Lender may grant or withhold their approval in their sole discretion, and (iv), if Administrative Agent and each Lender approve Borrower's request, then Borrower must pay the Extension Fee to Administrative Agent on the Extension Option Agreement Date. At the time of sending such notice, Borrower (in consultation with Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) **Lender Elections to Extension.** Each Lender shall notify Administrative Agent within such time period whether or not it agrees to approve the Extension Option. Any Lender not responding within such time period shall be deemed to have declined to approve the Extension Option.

(c) **Notification by Administrative Agent.** Administrative Agent shall notify Borrower and each Lender of the Lenders' responses to each request made hereunder.

(d) **Conditions to Effectiveness of Extension.** As a condition precedent to such extension, (i) Borrower, Administrative Agent and each Lender shall execute an Extension Option Agreement, (ii) Borrower shall pay the Extension Fee to Administrative Agent, and (iii) Borrower shall deliver to Administrative Agent a certificate of Borrower, dated as of the Extension Option Agreement Date, signed by a Responsible Officer of Borrower, certifying and attaching the resolutions adopted by Borrower approving or consenting to such extension, and (y) in the case of Borrower, certifying that, before and after giving effect to such extension, (A) the representations and warranties contained in **Article 6** and the other Loan Documents are true and correct on and as of the Extension Option Agreement Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.11**, the representations and warranties contained in **subsections (a) and (b) of Section 7.1** shall be deemed to refer to the most recent statements furnished pursuant to **subsections (a) and (b)**, respectively, of **Section 7.1**, and (B) no Default exists.

(e) **Conflicting Provisions.** This Section shall supersede any provisions in **Section 12.10** to the contrary.

### ARTICLE 3

#### TAXES, YIELD PROTECTION AND INDEMNITY

##### Section 3.1 Increased Costs.

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in Adjusted Eurodollar Rate);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in **clauses (b) through (d)** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

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and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit) or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital or Liquidity Requirements.** If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by such Lender or the Letters of Credit issued by L/C Issuer, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in *Sections 3.1(a)* or *(b)* and delivered to Borrower, shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to this *Section 3.1* shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that Borrower shall not be required to compensate a Lender pursuant to this *Section 3.1* for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) - month period referred to above shall be extended to include the period of retroactive effect thereof).

**Section 3.2 Illegality.** If any Lender determines that any Law or regulation has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice

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thereof by such Lender to Borrower through Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted

### Section 3.3 **Inability to Determine Rates.**

(a) Subject to *clause (b)* below, if (i) Administrative Agent or the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (B) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Borrowing, or (C) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loans, or (ii) by reason of any Change in Law any Lender would become subject to restrictions on the amount of a category of liabilities or assets which it may hold and notifies Administrative Agent of same, Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, (x) the obligation of Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Base Rate Borrowing in the amount specified therein

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(b) If at any time Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in *clause (a)(i)(A)* or *clause (a)(i)(B)* have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in *clause (a)(i)(A)* or *clause (a)(i)(B)* have not arisen but the ICE Benchmark Administration or its successor or a Governmental Authority having jurisdiction over Administrative Agent has made a public statement identifying a specific date after which the Eurodollar Rate shall no longer be used for determining interest rates for loans, then Administrative Agent may, to the extent practicable (in consultation with Borrower and as determined by Administrative Agent in its reasonable discretion to be generally in accordance with similar situations in other transactions in which it is serving as administrative agent and otherwise consistent with market practice), establish a comparable replacement interest rate, and Borrower and Administrative Agent shall enter into an amendment to this Agreement to reflect such replacement interest rate or such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in *Section 12.10*, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment.

#### Section 3.4 Taxes.

(a) **Defined Terms.** For purposes of this Section, the term “applicable Law” includes FATCA.

(b) **Payment Free of Taxes.** Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this *Section 3.4*) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) **Payment of Other Taxes by Borrower.** Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

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(d) **Indemnification by Borrower.** Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 3.4**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) **Indemnification by Lenders.** Each Lender shall severally indemnify Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 12.8** relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to such Lender from any other source against any amount due to Administrative Agent under this **Section 3.4(e)**.

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this **Section 3.4**, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(g) **Status of Lenders.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of

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such documentation (other than such documentation set forth in *Section 3.4(g)(ii)(A)*, *(ii)(B)* and *(ii)(D)* below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under *Section 881(c)* of the Code, (x) a certificate substantially in the form of *Exhibit F-1* to the effect that such Foreign Lender is not a "bank" within the meaning of *Section 881(c)(3)(A)* of the Code, a "10 percent shareholder" of Borrower within the meaning of *Section 881(c)(3)(B)* of the Code, or a "controlled foreign corporation" described in *Section 881(c)(3)(C)* of the Code (a "*U.S. Tax Compliance Certificate*") and (y) executed copies of IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable); or



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(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable), a U.S. Tax Compliance Certificate substantially in the form of *Exhibit I-2* or *Exhibit I-3*, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of *Exhibit I-4* on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in *Section 1471(b)* or *1472(b)* of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable Law (including as prescribed by *Section 1471(b)(3)(C)(i)* of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this *clause (D)*, "*FATCA*" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

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(h) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 3.4** (including by the payment of additional amounts pursuant to this **Section 3.4**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 3.4** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 3.4(h)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 3.4(h)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 3.4(h)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 3.4(h)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) **Survival.** Each party's obligations under this **Section 3.4** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**Section 3.5 Compensation for Losses.** Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by Borrower (for a reason other than the failure of such Lender to lend a Eurodollar Rate Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to **Section 3.6(b)**;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

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For purposes of calculating amounts payable by Borrower to the Lenders under this **Section 3.5**, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at Adjusted Eurodollar Rate by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

**Section 3.6 Mitigation of Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 3.1**, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.4**, then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.1** or **Section 3.4**, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 3.1**, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.4** and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with **Section 3.6(a)**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 12.8**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 3.1** or **Section 3.4**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that*:

(i) Borrower shall have paid to Administrative Agent the assignment fee (if any) specified in **Section 12.8**;

(ii) such Lender shall have received payment of an amount equal to the Outstanding Amount of its Loans, and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 3.5**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

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(iii) in the case of any such assignment resulting from a claim for compensation under *Section 3.1* or payments required to be made pursuant to *Section 3.4*, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

Section 3.7 **Survival**. All of Borrower's obligations under this *Article 3* shall survive termination of the Commitments, repayment of all other Obligations hereunder, and resignation of Administrative Agent.

#### ARTICLE 4

[INTENTIONALLY DELETED.]

#### ARTICLE 5

#### CONDITIONS PRECEDENT

Section 5.1 **Initial Extension of Credit**. The obligation of Lenders to make the initial Credit Extension hereunder is subject to the condition precedent that Administrative Agent shall have received all of the following, each dated (unless otherwise indicated or otherwise specified by Administrative Agent) the Closing Date, in form and substance satisfactory to Administrative Agent:

(a) **Credit Agreement**. Executed counterparts of this Agreement, sufficient in number for distribution to Administrative Agent, each Lender and Borrower;

(b) **Resolutions**. Resolutions of the Board of Directors (or other governing body) of Borrower and each other Obligated Party certified by the Secretary or an Assistant Secretary (or a Responsible Officer or other custodian of records) of such Person which authorize the execution, delivery, and performance by such Person of this Agreement and the other Loan Documents to which such Person is or is to be a party;

(c) **Incumbency Certificate**. A certificate of incumbency certified by a Responsible Officer of each Obligated Party certifying the names of the individuals or other Persons authorized to sign this Agreement and each of the other Loan Documents to which Borrower and each other Obligated Party is or is to be a party (including the certificates contemplated herein) on behalf of such Person together with specimen signatures of such individual Persons;

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(d) **Constituent Documents.** The Constituent Documents and all amendments thereto for Borrower and each other Obligated Party that is not a natural person, with the formation documents of Borrower included in the Constituent Documents being certified as of a date acceptable to Administrative Agent by the appropriate government officials of the state of incorporation or organization of Borrower, and all such Constituent Documents being accompanied by certificates that such copies are complete and correct, given by an authorized representative acceptable to Administrative Agent;

(e) **Governmental Certificates.** Certificates of the appropriate government officials of the state of incorporation or organization of Borrower and each other Obligated Party as to the existence and good standing of Borrower and each other Obligated Party, each dated within thirty (30) days prior to the date of the initial Credit Extension;

(f) **Notes.** The Notes executed by Borrower in favor of each Lender requesting Notes;

(g) **Guaranty.** The Guaranty executed by each Guarantor;

(h) **Insurance Matters.** Copies of insurance certificates describing all insurance policies required by *Section 7.5*;

(i) **Borrowing Base Report.** A Borrowing Base Report, dated as of March 31, 2018;

(j) **Compliance Certificate.** A Compliance Certificate, demonstrating Borrower's financial condition as of March 31, 2018;

(k) **Opinions of Counsel.** Favorable opinions of Fox Rothschild LLP and Winstead PC, legal counsel to Borrower and Guarantors, as to such matters as Administrative Agent may reasonably request;

(l) **Attorneys' Fees and Expenses.** Evidence that the costs and expenses (including reasonable attorneys' fees) referred to in *Section 12.1*, to the extent invoiced, shall have been paid in full by Borrower;

(m) **KYC Information.** Borrower and each of the other Obligated Parties shall have provided to Administrative Agent and the Lenders the documentation, Beneficial Ownership Certifications, and other information requested by Administrative Agent, or any Lender through Administrative Agent, as they deem necessary in order to comply with requirements of any anti-money laundering Laws, including, without limitation, the Patriot Act and any applicable "know your customer" rules and regulations; and

(n) **Closing Fees.** Evidence that any other fees due on or before the Closing Date have been paid.

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For purposes of determining compliance with the conditions set forth in this *Section 5.1*, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or be satisfied with, each document or other matter required thereunder to be consented to or approved by or be acceptable or satisfactory to a Lender unless Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 5.2 **All Extensions of Credit**. The obligation of Lenders to make any Credit Extension hereunder (including the initial Credit Extension) is subject to the following additional conditions precedent:

- (a) **Request for Credit Extension**. Administrative Agent shall have received in accordance with this Agreement, as the case may be, a Borrowing Request or Letter of Credit Application, as applicable, pursuant to Administrative Agent's requirements and executed by a Responsible Officer of Borrower;
- (b) **No Default**. No Default shall have occurred and be continuing, or would result from or after giving effect to such Credit Extension;
- (c) **No Material Adverse Event**. No Material Adverse Event shall have occurred and no circumstance shall exist that could be a Material Adverse Event;
- (d) **Representations and Warranties**. All of the representations and warranties contained in *Article 6* and in the other Loan Documents shall be true and correct on and as of the date of such Borrowing with the same force and effect as if such representations and warranties had been made on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this *Section 5.2*, the representations and warranties contained in *Section 6.2* shall be deemed to refer to the most recent statements furnished pursuant to *Section 7.1(a)* and *(b)*, respectively;
- (e) **Additional Documentation**. Administrative Agent shall have received such additional approvals, opinions, or documents as Administrative Agent or its legal counsel may reasonably request; and
- (f) **Availability under Credit Facility**. With respect to any request for a Credit Extension under the Commitments, after giving effect to the Credit Extension so requested, the total Revolving Credit Exposure of the Lenders shall not exceed the lesser of (i) the Borrowing Base in effect as of the date of such Credit Extension and (ii) the aggregate Commitments of the Lenders in effect as of the date of such Credit Extension.

Each Credit Extension hereunder shall be deemed to be a representation and warranty by Borrower that the conditions specified in this *Section 5.2* have been satisfied on and as of the date of the applicable Credit Extension.

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## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES

To induce Administrative Agent and Lenders to enter into this Agreement, and to make Credit Extensions hereunder, Borrower represents and warrants to Administrative Agent and Lenders that:

Section 6.1 **Entity Existence.** Each of Borrower and its Subsidiaries (a) is duly incorporated or organized, as the case may be, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation or organization; (b) has all requisite power and authority to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business in all jurisdictions in which the nature of its business makes such qualification necessary and where failure to so qualify could result in a Material Adverse Event. Each of Borrower and the other Obligated Parties has the power and authority to execute, deliver, and perform its obligations under this Agreement and the other Loan Documents to which it is or may become a party.

Section 6.2 **Financial Statements; Etc.** Borrower has delivered to Administrative Agent audited financial statements of Borrower and its Subsidiaries as at and for the fiscal year ended December 31, 2017, and unaudited financial statements of Borrower and its Subsidiaries as at and for the three (3)-month period ended March 31, 2018. Such financial statements are true and correct in all material respects, have been prepared in accordance with GAAP, and fairly and accurately present, on a consolidated basis, the financial condition of Borrower and its Subsidiaries as of the respective dates indicated therein and the results of operations for the respective periods indicated therein. Neither Borrower nor any of its Subsidiaries has any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments except as referred to or reflected in such financial statements. No Material Adverse Event has occurred since the effective date of the financial statements referred to in this *Section 6.2*. All projections delivered by Borrower to Administrative Agent and Lenders have been prepared in good faith, with care and diligence and using assumptions that are reasonable under the circumstances at the time such projections were prepared and delivered to Administrative Agent and Lenders and all such assumptions are disclosed in the projections. Other than the Debt listed on *Schedule 8.1* and Debt otherwise permitted by *Section 8.1*, Borrower and each Subsidiary have no Debt.

Section 6.3 **Action; No Breach.** The execution, delivery, and performance by each of Borrower and each other Obligated Party of this Agreement and the other Loan Documents to which such Person is or may become a party and compliance with the terms and provisions hereof and thereof have been duly authorized by all requisite action on the part of such Person and do not and will not (a) violate or conflict with, or result in a breach of, or require any consent under (i) the Constituent Documents of such Person, (ii) any applicable Law, rule, or regulation or any order, writ, injunction, or decree of any Governmental Authority or arbitrator, or (iii) any agreement or instrument to which such Person is a party or by which it or any of its Properties is bound or subject which could result in a Material Adverse Event, or (b) constitute a default under any such agreement or instrument which could result in a Material Adverse Event, or result in the creation or imposition of any Lien upon any of the revenues or assets of such Person.

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Section 6.4 **Operation of Business.** Each of Borrower and its Subsidiaries possesses all licenses, permits, consents, authorizations, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, necessary to conduct its respective businesses substantially as now conducted and as presently proposed to be conducted, and neither Borrower nor any of its Subsidiaries is in violation of any valid rights of others with respect to any of the foregoing which could result in a Material Adverse Event.

Section 6.5 **Litigation and Judgments.** Except as specifically disclosed in *Schedule 6.5* as of the date hereof, there is no action, suit, investigation, or proceeding before or by any Governmental Authority or arbitrator pending, or to the knowledge of Borrower, threatened against or affecting Borrower, any of its Subsidiaries, or any other Obligated Party that could, if adversely determined, result in a Material Adverse Event. There are no outstanding judgments against Borrower, any of its Subsidiaries, or any other Obligated Party.

Section 6.6 **Rights in Properties; Liens.**

(a) Each of Borrower and its Subsidiaries has good and indefeasible title to or valid leasehold interests in its respective Properties, including the Properties reflected in the financial statements described in *Section 6.2*, and none of the Properties of Borrower or any of its Subsidiaries is subject to any Lien, except Permitted Liens.

(b) *Schedule 6.6(b)* sets forth a complete and accurate list of all real property owned by Borrower and each of its Subsidiaries as of April 30, 2018. Borrower and each of its Subsidiaries has good, indefeasible and insurable fee simple title to the real property owned by Borrower or such Subsidiary that is Borrowing Base Property, free and clear of all Liens, except Liens described in *clauses (a)* through *(f)* of the definition of Permitted Liens.

Section 6.7 **Enforceability.** This Agreement constitutes, and the other Loan Documents to which Borrower or any other Obligated Party is a party, when delivered, shall constitute legal, valid, and binding obligations of such Person, enforceable against such Person in accordance with their respective terms, except as limited by Debtor Relief Laws.

Section 6.8 **Approvals.** No authorization, approval, or consent of, and no filing or registration with, any Governmental Authority or third party is or will be necessary for the execution, delivery, or performance by Borrower or any other Obligated Party of this Agreement and the other Loan Documents to which such Person is or may become a party or the validity or enforceability thereof.

Section 6.9 **Taxes.** Each of Borrower and its Subsidiaries has filed all tax returns (federal, state, and local) required to be filed, including all income, franchise, employment, Property, and sales tax returns, and has paid all of their respective liabilities for taxes, assessments, governmental charges, and other levies that are due and payable, other than taxes the payment of which is being contested in good faith and by appropriate proceedings and reserves for the payment of which are being maintained in accordance with GAAP. Borrower knows of no pending investigation of Borrower or any of its Subsidiaries by any taxing authority or of any pending but unassessed tax liability of Borrower or any of its Subsidiaries. Neither Borrower nor any Subsidiary thereof is party to any tax sharing agreement.



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**Section 6.10 Use of Proceeds; Margin Securities.** The proceeds of the Borrowings shall be used by Borrower for the construction of Houses, for the acquisition and development of Land, Entitled Land, LUD and Lots for the eventual construction of Houses thereon, and for working capital in the ordinary course of business. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U, or X of the Board of Governors), and no part of the proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loan will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person, or in any other manner that will result in any violation by any Person (including any Lender, any Arranger or Administrative Agent) of any Anti-Terrorism Laws, Anti-Corruption Laws or any Sanctions.

**Section 6.11 ERISA.** Each Plan that is intended to qualify under *Section 401(a)* of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. No application for a funding waiver or an extension of any amortization period pursuant to *Section 412* of the Code has been made with respect to any Plan. There are no pending or, to the knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no Prohibited Transaction or violation of the fiduciary responsibility rules with respect to any Plan. No ERISA Event has occurred or is reasonably expected to occur. No Plan has any Unfunded Pension Liability. No Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA. No Obligated Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under *Section 4007* of ERISA). No Obligated Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under *Section 4219* of ERISA, would result in such liability) under *Section 4201* or *4243* of ERISA with respect to a Multiemployer Plan. No Obligated Party or ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *4212(c)* of ERISA.

**Section 6.12 Disclosure.** No statement, information, report, representation, or warranty made by Borrower or any other Obligated Party in this Agreement or in any other Loan Document or furnished to Administrative Agent or any Lender in connection with this Agreement or any of the transactions contemplated hereby contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to Borrower which is a Material Adverse Event, or which might in the future be a Material Adverse Event that has not been disclosed in writing to Administrative Agent and each Lender.

**Section 6.13 Subsidiaries.** Borrower has no Real Estate Subsidiaries other than those listed on *Schedule 6.13* (and, if subsequent to the Closing Date, such additional Real Estate Subsidiaries as have been formed or in compliance with *Section 7.13*) and *Schedule 6.13* sets forth the jurisdiction of incorporation or organization of each such Real Estate Subsidiary and the percentage of Borrower's ownership interest in such Real Estate Subsidiary. All of the

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outstanding capital stock or other equity interests of each Real Estate Subsidiary described on **Schedule 6.13** has been validly issued, is fully paid, and is nonassessable. There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock or similar options granted to employees or directors and directors' qualifying shares) of any nature relating to any equity interests of Borrower or any Real Estate Subsidiary, except as disclosed on **Schedule 6.13**.

Section 6.14 **Agreements**. Neither Borrower nor any of its Subsidiaries is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate or other organizational restriction, in each case which could result in a Material Adverse Event, except for the Bond Indenture. Neither Borrower nor any of its Subsidiaries is in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in the Bond Indenture, or any other agreement or instrument material to its business to which it is a party which could result in a Material Adverse Event. Borrower's execution of, and performance of its obligations under, this Agreement, will not result in a breach of the Bond Indenture.

Section 6.15 **Compliance with Laws**. Neither Borrower nor any of its Subsidiaries is in violation in any material respect of any law, rule, regulation, order, or decree of any Governmental Authority or arbitrator.

Section 6.16 **Inventory**. All inventory of Borrower and its Subsidiaries has been and will hereafter be produced in compliance, in all material respects, with all applicable Laws, rules, regulations, and governmental standards, including, without limitation, the minimum wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. §§ 201-219).

Section 6.17 **Regulated Entities**. Neither Borrower nor any of its Subsidiaries is (a) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under any other federal or state statute, rule or regulation limiting its ability to incur Debt, pledge its assets or perform its obligations under the Loan Documents. No Obligated Party is an EEA Financial Institution.

**Section 6.18 Environmental Matters.**

(a) Each of Borrower and its Subsidiaries, and all of its respective Properties, assets, and operations are in compliance with all Environmental Laws, in all material respects. Borrower is not aware of, nor has Borrower received notice of, any past, present, or future conditions, events, activities, practices, or incidents which may interfere with or prevent the compliance or continued compliance of Borrower and its Subsidiaries with all Environmental Laws;

(b) Each of Borrower and its Subsidiaries has obtained all permits, licenses, and authorizations that are required under applicable Environmental Laws, and all such permits are in good standing and Borrower and its Subsidiaries are in compliance with all of the terms and conditions of such permits;

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(c) No Hazardous Materials exist on, about, or within or have been used, generated, stored, transported, disposed of on, or Released from any of the Properties or assets of Borrower or any of its Subsidiaries (except for the use or storage of materials ordinarily used in the homebuilding business, in customary quantities, done in compliance with all applicable Environmental Laws). The use which Borrower and its Subsidiaries make and intend to make of their respective Properties and assets will not result in the use, generation, storage, transportation, accumulation, disposal, or Release of any Hazardous Material on, in, or from any of their Properties or assets (except for the use or storage of materials ordinarily used in the homebuilding business, in customary quantities, done in compliance with all applicable Environmental Laws);

(d) Neither Borrower nor any of its Subsidiaries nor any of their respective currently or previously owned or leased Properties or operations is subject to any outstanding or threatened order from or agreement with any Governmental Authority or other Person or subject to any judicial or docketed administrative proceeding with respect to (i) failure to comply with Environmental Laws, (ii) Remedial Action, or (iii) any Environmental Liabilities arising from a Release or threatened Release;

(e) There are no conditions or circumstances associated with the currently or previously owned or leased Properties or operations of Borrower or any of its Subsidiaries that could reasonably be expected to give rise to any Environmental Liabilities;

(f) Neither Borrower nor any of its Subsidiaries is a treatment, storage, or disposal facility requiring a permit under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., regulations thereunder or any comparable provision of state law. Borrower and its Subsidiaries are in compliance with all applicable financial responsibility requirements of all Environmental Laws;

(g) Neither Borrower nor any of its Subsidiaries has filed or failed to file any notice required under applicable Environmental Law reporting a Release; and

(h) No Lien arising under any Environmental Law has attached to any property or revenues of Borrower or any of its Subsidiaries.

**Section 6.19 Anti-Corruption Laws; Sanctions; Etc.**

(a) No Obligated Party, Subsidiary, Affiliate of any Obligated Party, any director, officer, or to the knowledge of Borrower, employee, agent, or Affiliate of an Obligated Party or any of its Subsidiaries is a Sanctioned Person.

(b) The Obligated Parties, their Subsidiaries and, to the knowledge of Borrower, their respective directors, officers, employees and agents, are in compliance with all applicable Sanctions and with the FCPA and any other applicable Anti-Corruption Law, in all material respects. Borrower and its Subsidiaries have instituted and maintain policies and procedures designed to promote and achieve continued compliance with applicable Sanctions, the FCPA and any other applicable Anti-Corruption Laws.

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Section 6.20 **Patriot Act.** The Obligated Parties, each of their Subsidiaries, and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended), and all other enabling legislation or executive order relating thereto, (b) the Patriot Act, and (c) all other federal or state Laws relating to “know your customer” (collectively, the “*Anti-Terrorism Laws*”).

Section 6.21 **Insurance.** The properties of Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Borrower or the applicable Subsidiary operates.

Section 6.22 **Solvency.** Each of Borrower and each Obligated Party is Solvent and have not entered into any transaction with the intent to hinder, delay or defraud a creditor.

Section 6.23 **Businesses.** The Borrower is presently engaged directly or through its Subsidiaries in the business of the development of Lots and the construction and sale of Houses.

Section 6.24 **Labor Matters.** There are no labor controversies pending, or to the best knowledge of Borrower, threatened against Borrower or any of its Subsidiaries which could result in a Material Adverse Event.

Section 6.25 **Material Agreements.** *Schedule 6.25* sets forth a complete and correct list of all agreements in effect or to be in effect on the Closing Date and on the date of each update thereof required hereunder, to the extent that a default, breach, termination or other impairment thereof could reasonably be expected to cause a Material Adverse Event.

Section 6.26 **Intellectual Property.** Borrower and Guarantors own, or are licensed to use, all Intellectual Property necessary to conduct their business as currently conducted.

Section 6.27 **Hedge Agreements.** Neither Borrower nor any Guarantor is a party to a Hedge Agreement

Section 6.28 **Beneficial Ownership Certification.** As of the Closing Date, the information in the Beneficial Ownership Certification provided by Borrower is true and correct in all respects.

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## ARTICLE 7

### AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Letter of Credit shall remain outstanding or any Lender has any Commitment hereunder:

Section 7.1 **Reporting Requirements.** Borrower will furnish to Administrative Agent (with copies for each Lender):

(a) **Borrower Annual Financial Statements.** As soon as available, and in any event within ninety (90) days after the last day of each fiscal year of Borrower, beginning with the fiscal year ending December 31, 2018, a copy of the annual audit report of Borrower and its Subsidiaries for such fiscal year containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as of the end of such fiscal year and for the twelve (12)-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and audited and certified by independent certified public accountants of recognized standing reasonably acceptable to Administrative Agent, to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope;

(b) **Borrower Quarterly Financial Statements.** As soon as available, and in any event within forty-five (45) days after the last day of each of the first three fiscal quarters of each fiscal year of Borrower (beginning with the fiscal quarter ending June 30, 2018), a copy of an unaudited financial report of Borrower and its Subsidiaries as of the end of such fiscal quarter and for the portion of the fiscal year then ended, containing, on a consolidated and consolidating basis, balance sheets and statements of income, retained earnings, and cash flow, in each case setting forth in comparative form the figures for the corresponding period of the preceding fiscal year, all in reasonable detail certified by a Responsible Officer of Borrower to have been prepared in accordance with GAAP and to fairly and accurately present (subject to year-end audit adjustments) the financial condition and results of operations of Borrower and its Subsidiaries, on a consolidated and consolidating basis, as of the dates and for the periods indicated therein;

(c) **Borrowing Base Report.** As soon as available, and in any event within thirty (30) days after the last day of each calendar month, a Borrowing Base Report;

(d) **Compliance Certificate.** As soon as available, and in any event within forty-five (45) days after the last day of each of the first three fiscal quarters of each fiscal year of Borrower (beginning with the fiscal quarter ending June 30, 2018), and again within ninety (90) days after the last day of each fiscal year of Borrower, a Compliance Certificate (i) stating that to the best of the knowledge of the Responsible Officer executing same, no Default has occurred and is continuing, or if a Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto, (ii) showing in reasonable detail the calculations demonstrating compliance with the covenants set forth in *Article 9* and (iii) containing such other certifications set forth therein. For any financial statements delivered electronically by a Responsible Officer in satisfaction of the reporting requirements set forth in clause (a) or (b) preceding that are not accompanied by the required Compliance Certificate, that Responsible Officer shall nevertheless be deemed to have certified the factual matters described in this clause (d) with respect to such financial statements; however, such deemed certificate shall not excuse or be construed as a waiver of Borrower's obligation to deliver the required Compliance Certificate;

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(e) **Projections.** As soon as available, but in any event no more than sixty (60) days after the beginning of each fiscal year of Borrower, forecasts prepared by management of Borrower, in form reasonably satisfactory to Administrative Agent, of consolidated balance sheets and statements of income or operations and cash flows of Borrower and its Subsidiaries on a quarterly basis for such fiscal year;

(f) **Management Letters.** Promptly upon receipt thereof, a copy of any management letter or written report submitted to Borrower or any of its Subsidiaries by independent certified public accountants with respect to the business, condition (financial or otherwise), operations, prospects, or Properties of Borrower or any of its Subsidiaries;

(g) **Notice of Litigation.** Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any Governmental Authority or arbitrator affecting Borrower or any of its Subsidiaries which, if determined adversely to Borrower or such Subsidiary, could be a Material Adverse Event;

(h) **Notice of Default.** As soon as possible and in any event within five days after the occurrence of any Default, a written notice setting forth the details of such Default and the action that Borrower has taken and proposes to take with respect thereto;

(i) **ERISA Reports.** Promptly after the filing or receipt thereof, copies of all reports, including annual reports, and notices which any Borrower or ERISA Affiliate files with or receives from the PBGC, the IRS, or the U.S. Department of Labor under ERISA; as soon as possible and in any event within five days after Borrower or any ERISA Affiliate knows or has reason to know that any ERISA Event or Prohibited Transaction has occurred with respect to any Plan, a certificate of the chief financial officer of Borrower setting forth the details as to such ERISA Event or Prohibited Transaction and the action that Borrower proposes to take with respect thereto; annually, copies of the notice described in *Section 101(f)* of ERISA that Borrower or ERISA Affiliate receives with respect to a Plan or Multiemployer Plan;

(j) **Reports to Other Creditors.** Promptly after Administrative Agent's request therefor, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to Administrative Agent pursuant to any other clause of this *Section 7.1*;

(k) **Notice of Material Adverse Event.** As soon as possible and in any event within five (5) Business Days after the occurrence thereof, written notice of any event or circumstance that could result in a Material Adverse Event;

(l) **Inventory and Sales Status Report.** As soon as available, and in any event forty-five (45) days after the last day of each fiscal quarter of each fiscal year of Borrower, an Inventory and Sales Status Report, in such form and detail as Administrative Agent shall reasonably require, certified by the chief financial officer of Borrower;

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(m) **SEC Investigations.** Promptly after receipt thereof by Borrower or any of its Subsidiaries, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of Borrower or any of its Subsidiaries;

(n) **Notice of Certain Changes.** Promptly, (i) notice of any material change in the business conducted by Borrower or any of its Subsidiaries, (ii) notice of any material change in the information provided in the Beneficial Ownership Certification of Borrower, and (iii) copies of any amendment, restatement, supplement or other modification to any of the Constituent Documents of Borrower or any of its Subsidiaries; and

(o) **Know Your Customer Information.** Promptly, such other information concerning Borrower, any of its Subsidiaries, or any other Obligated Party as Administrative Agent, or any Lender through Administrative Agent, may from time to time reasonably request in order for it to (i) comply with any applicable federal or state Laws or regulations (including, but not limited to, information about the ownership and management of Borrower or any other Obligated Party), (ii) confirm compliance by Borrower or any other Obligated Party with all Anti-Terrorism Laws, and (iii) confirm that neither Borrower nor any other Obligated Party (nor any Person owning any interest of any nature whatsoever in Borrower or any other Obligated Party) is a Sanctioned Person, including, without limitation, updated Beneficial Ownership Certifications.

(p) **General Information.** Promptly, such other information concerning Borrower, any of its Subsidiaries, or any other Obligated Party as Administrative Agent, or any Lender through Administrative Agent, may from time to time reasonably request.

All representations and warranties set forth in the Loan Documents with respect to any financial information concerning Borrower or any Guarantor shall apply to all financial information delivered to Administrative Agent by Borrower, such Guarantor, or any Person purporting to be a Responsible Officer of Borrower or such Guarantor or other representative of Borrower or such Guarantor regardless of the method of such transmission to Administrative Agent or whether or not signed by Borrower, such Guarantor, or such Responsible Officer or other representative, as applicable.

Section 7.2 **Maintenance of Existence; Conduct of Business.** Borrower shall, and shall cause each of its Subsidiaries to, preserve and maintain its existence and all of its leases, privileges, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business, except to the extent a failure to so preserve and maintain could not result in a Material Adverse Event. Borrower shall, and shall cause each of its Subsidiaries to, conduct its business in an orderly and efficient manner in accordance with good business practices.

Section 7.3 **Maintenance of Properties.** Borrower shall, and shall cause each of its Subsidiaries to, maintain, keep, and preserve all of its Properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition.

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**Section 7.4 Taxes and Claims.** Borrower shall, and shall cause each of its Subsidiaries to, pay or discharge at or before maturity or before becoming delinquent (a) all taxes, levies, assessments, and governmental charges imposed on it or its income or profits or any of its Property, and (b) all lawful claims for labor, material, and supplies, which, if unpaid, might become a Lien upon any of its Property; *provided, however*, that neither Borrower nor any of its Subsidiaries shall be required to pay or discharge any tax, levy, assessment, or governmental charge which is being contested in good faith by appropriate proceedings diligently pursued, and for which adequate reserves in accordance with GAAP have been established.

**Section 7.5 Insurance.**

(a) Borrower shall, and shall cause each of its Subsidiaries to, maintain insurance with financially sound and reputable insurance companies in such amounts and covering such risks as is usually carried by corporations engaged in similar businesses and owning similar Properties in the same general areas in which Borrower and its Subsidiaries operate, *provided* that in any event Borrower will maintain and cause each of its Subsidiaries to maintain workmen's compensation insurance, property insurance, comprehensive general liability insurance, reasonably satisfactory to Administrative Agent.

(b) If at any time any House included in the Borrowing Base Property is or has become located in an area designated as a "flood hazard area" under applicable Flood Insurance Regulations, Borrower shall, and shall cause each of its Subsidiaries to, (i) provide Administrative Agent with a description of such House, including the address and legal description thereof and such other information as may be requested by Administrative Agent to obtain a flood determination or otherwise satisfy its obligations under applicable Flood Insurance Regulations, (ii) obtain flood insurance in such amounts as required by applicable Flood Insurance Regulations and (iii) provide evidence in form and substance satisfactory to Administrative Agent of such flood insurance to Administrative Agent.

**Section 7.6 Inspection Rights.** At any reasonable time and from time to time, upon reasonable prior written notice, Borrower shall, and shall cause each of its Subsidiaries to, (a) permit representatives of Administrative Agent or any Lender to examine, inspect, review, evaluate and make physical verifications and appraisals of the Borrowing Base Property in any manner and through any medium that Administrative Agent or such Lender considers advisable, (b) to examine, copy, and make extracts from its books and records, (c) to visit and inspect its Properties, and (d) to discuss its business, operations, and financial condition with its officers, employees, and independent certified public accountants, in each instance, at Borrower's expense.

**Section 7.7 Keeping Books and Records.** Borrower shall, and shall cause each of its Subsidiaries to, maintain proper books of record and account in which full, true, and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to its business and activities.



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Section 7.8 **Compliance with Laws.** Borrower shall, and shall cause each of its Subsidiaries to, comply in all material respects with all applicable Laws (including, without limitation, all Anti-Terrorism Laws, Anti-Corruption Laws and applicable Sanctions) and decrees of any Governmental Authority or arbitrator.

Section 7.9 **Compliance with Agreements.** Borrower shall, and shall cause each of its Subsidiaries to, comply in all material respects with all agreements, contracts, and instruments binding on it or affecting its Properties or business, except to the extent a failure to so comply could not result in a Material Adverse Event.

Section 7.10 **Further Assurances.** Borrower shall, and shall cause each of its Subsidiaries and each other Obligated Party to, execute and deliver such further agreements and instruments and take such further action as may be reasonably requested by Administrative Agent or any Lender to carry out the provisions and purposes of this Agreement and the other Loan Documents.

Section 7.11 **ERISA.** Borrower shall, and shall cause each of its Subsidiaries to, comply with all minimum funding requirements, and all other material requirements, of ERISA, if applicable, so as not to give rise to any liability thereunder.

Section 7.12 **Depository Relationship.** Borrower shall maintain deposit accounts at Texas Capital Bank.

Section 7.13 **Additional Guarantors.** Borrower shall notify Administrative Agent at the time that any Person becomes a Real Estate Subsidiary, and within ten (10) Business Days after such Person becomes a Real Estate Subsidiary, cause such Person to (a) become a Guarantor by executing and delivering to Administrative Agent a Guaranty, and (b) deliver to Administrative Agent such other documents and instruments as Administrative Agent may require, including appropriate favorable opinions of counsel to such Person in form, content and scope reasonably satisfactory to Administrative Agent.

Section 7.14 **Lien Claims.** If a Lien claim or affidavit from a contractor or supplier is recorded or is served upon Borrower which affects the Borrowing Base Property, Borrower shall, on or before forty-five (45) days after such recording or service, take one of the following courses of action: (a) pay and discharge the same; (b) effect the release thereof by recording and delivering to Administrative Agent a surety bond that complies with the applicable Laws of the State where the affected Borrowing Base Property is located, and that is in form, amount and issued by a surety acceptable to Administrative Agent, in its sole and absolute discretion; (c) provide Administrative Agent with other assurance which Administrative Agent deems, in its sole discretion, to be satisfactory for the payment of such Lien claim or affidavit and for the full and continuous protection of Administrative Agent from the effect of such Lien claim or affidavit; or (d) contest such claim, with diligence, in good faith and as required by applicable Laws, in a manner which will have the effect of releasing or bonding such claim. In the case of a Lien contest pursuant to *clause (d)* above, the Maximum Credit Amount of the Borrowing Base Property affected by such claim may be reduced by an amount equal to one hundred fifty percent (150%) of the amount of such claim.

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Section 7.15 **Construction Responsibilities.** Borrower shall construct or cause the construction of the Houses, LUD and Lots in a workmanlike manner. The construction of the Houses, LUD and Lots shall be in compliance with all applicable Governmental Requirements. Borrower shall be solely responsible for all aspects of Borrower's business in connection with the construction of Houses, LUD and Lots, including, without limitation, for the quality and suitability of the plans and specifications and their compliance with all Governmental Requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers and consultants, and the accuracy of all Borrowing Base Reports, Borrowing Requests and the proper application of all Borrowings. Administrative Agent is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Houses, LUD or Lots, or any other matter referred to above.

Section 7.16 **Sanctions; Anti-Corruption Laws.** Borrower will maintain in effect policies and procedures designed to promote compliance by Borrower, its Subsidiaries, and their respective directors, officers, employees, and agents with applicable Sanctions and with the FCPA and any other applicable Anti-Corruption Laws.

## ARTICLE 8

### NEGATIVE COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Letter of Credit outstanding or any Lender has any Commitment hereunder:

Section 8.1 **Debt.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, incur, create, assume, or permit to exist any Debt, except:

- (a) The Obligations under the Loan Documents and Obligations existing or arising under Bank Product Agreements;
- (b) The Bond Indenture;
- (c) Existing Debt described on *Schedule 8.1*;
- (d) Purchase money Debt on personal property, and Capitalized Lease Obligations not to exceed \$100,000 in the aggregate at any time outstanding;
- (e) Profit and Participation Agreements;
- (f) Seller Carryback Financing in an amount not in excess of \$30,000,000, in the aggregate; and
- (g) Other Debt, to the extent such Debt would not result in a breach of any of the financial covenants set forth in *Article 9*.

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Section 8.2 **Limitation on Liens.** Borrower shall not, and shall not permit any of its Subsidiaries to, incur, create, assume, or permit to exist any Lien upon any of its Property, assets, or revenues, whether now owned or hereafter acquired, except:

(a) Liens in favor of Lenders or Administrative Agent for the benefit of Lenders;

(b) Encumbrances consisting of minor easements, zoning restrictions, or other restrictions on the use of real property that do not (individually or in the aggregate) materially affect the value of the assets encumbered thereby or materially impair the ability of Borrower or its Subsidiaries to use such assets in their respective businesses, and none of which is violated in any material respect by existing or proposed structures or land use;

(c) Liens for taxes, assessments, or other governmental charges which are not delinquent or which are being contested in good faith and for which adequate reserves in accordance with GAAP have been established;

(d) Liens of mechanics, materialmen, warehousemen, carriers, or other similar statutory Liens securing obligations that are not yet due and are incurred in the ordinary course of business, or are being dealt with by Borrower in accordance with **Section 7.14**;

(e) Liens resulting from good faith deposits to secure payments of workmen's compensation or other social security programs (other than Liens imposed by ERISA) or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, contracts (other than for payment of Debt), or leases made in the ordinary course of business;

(f) Purchase money Liens on specific personal property (not real property) to secure Debt used to acquire such personal property, and Liens securing Capitalized Lease Obligations with respect to specific leased property;

(g) Liens securing Profit and Participation Agreements;

(h) Liens securing Seller Carryback Financing in an amount not in excess of \$30,000,000, in the aggregate;

(i) Permitted Acquisition Liens; and

(j) Liens securing other Debt in an amount not in excess of \$15,000,000, in the aggregate.

Section 8.3 **Mergers, Etc.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become a party to a merger or consolidation, or purchase or otherwise acquire all or substantially all of the assets of any Person or any shares or other evidence of beneficial ownership of any Person, or wind-up, dissolve, or liquidate, except that (i) any Subsidiary may merge or consolidate with Borrower so long as Borrower is the surviving entity (ii) any Subsidiary may merge or consolidate with another Subsidiary so long as if a Subsidiary that is a Guarantor is involved in such merger or consolidation, such Guarantor is the surviving entity, and (iii) Permitted Acquisitions will be allowed.

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Section 8.4 **Restricted Payments.** Borrower shall not, directly or indirectly, declare or pay any dividends or make any other payment or distribution (in cash, Property, or obligations) on account of its equity interests, or redeem, purchase, retire, call, or otherwise acquire any of its equity interests, or permit any of its Subsidiaries to purchase or otherwise acquire any equity interest of Borrower or another Subsidiary of Borrower, or set apart any money for a sinking or other analogous fund for any dividend or other distribution on its equity interests or for any redemption, purchase, retirement, or other acquisition of any of its equity interests, or incur any obligation (contingent or otherwise) to do any of the foregoing, to the extent such transaction would result in a breach of any of the financial covenants set forth in **Article 9**.

Section 8.5 **Loans and Investments.** Borrower shall not make, and shall not permit any of its Subsidiaries to, directly or indirectly, make, hold or maintain, any advance, loan, extension of credit, or capital contribution to or investment in, or purchase any stock, bonds, notes, debentures, or other securities of, any Person, except:

- (a) Existing investments described on **Schedule 8.5**;
- (b) Readily marketable direct obligations of the United States of America or any agency thereof with maturities of one (1) year or less from the date of acquisition;
- (c) Fully insured certificates of deposit with maturities of one (1) year or less from the date of acquisition issued by either (i) any commercial bank operating in the United States of America having capital and surplus in excess of \$50,000,000.00 or (ii) any Lender;
- (d) Commercial paper of a domestic issuer if at the time of purchase such paper is rated in one (1) of the two (2) highest rating categories of Standard and Poor's Corporation or Moody's Investors Service;
- (e) Permitted Acquisitions;
- (f) Investments in Subsidiaries that are Guarantors;
- (g) Advances or extensions of credit in the form of accounts receivable incurred in the ordinary course of business and upon terms common in the industry for such accounts receivable which are not more than sixty (60) days past due;
- (h) Advances to employees for the payment of expenses in the ordinary course of business; and
- (i) Investments in Subsidiaries that are engaged primarily in the residential mortgage lending business or the residential title insurance business; *provided* that the amount of such investment made pursuant to this **clause (i)**, together with all other investments then outstanding and made under this **clause (i)** does not exceed 20.0% of Borrower's consolidated Tangible Net Worth determined at the time of such investment (with each investment being valued as of the date made, without regard to subsequent changes in value).

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Section 8.6 **Limitation on Issuance of Equity.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, issue, sell, assign, or otherwise dispose of (a) any of its stock or other equity interests, (b) any securities exchangeable for or convertible into or carrying any rights to acquire any of its stock or other equity interests, or (c) any option, warrant, or other right to acquire any of its stock or other equity interests, to the extent such transaction would result in a breach of any of the financial covenants set forth in **Article 9**.

Section 8.7 **Transactions With Affiliates.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any transaction, including, without limitation, the purchase, sale, or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of Borrower or such Subsidiary, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's or such Subsidiary's business, pursuant to a transaction which is otherwise expressly permitted under this Agreement, and upon fair and reasonable terms no less favorable to Borrower or such Subsidiary than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower or such Subsidiary.

Section 8.8 **Disposition of Assets.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make any Disposition, except (a) Dispositions of Houses, Land, Entitled Land, LUD or Lots in the ordinary course of business, or (b) Dispositions, for fair value, of worn-out and obsolete equipment not necessary or useful to the conduct of business, (c) Dispositions of golf courses, or (d) Dispositions of Houses, Land, Entitled Land, LUD or Lots to another Subsidiary.

Section 8.9 **Sale and Leaseback.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any arrangement with any Person pursuant to which it leases from such Person real or personal property that has been or is to be sold or transferred, directly or indirectly, by it to such Person, except for the sale and leaseback of Model Houses in the ordinary course of business.

Section 8.10 **Prepayment of Debt.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make any optional or voluntary payment, prepayment, repurchase or redemption of any Debt, except the Obligations under the Loan Documents. Notwithstanding the foregoing, such payment of Debt may be permitted so long as (a) no Default or Event of Default exists, (b) such payment does not, or is not reasonably expected to, result in a Material Adverse Event, and (c) the Obligations are simultaneously paid in a percentage that is equal to the percentage of the other Debt that is being paid.

Section 8.11 **Nature of Business.** Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (a) the businesses of homebuilding, Land acquisition or Land development, or a business reasonably related thereto, or (b) the businesses of residential mortgage lending or residential title insurance. Borrower shall not, and shall not permit any of its Subsidiaries to, make any material change in its credit collection policies if such change would materially impair the collectability of any Account, nor will it rescind, cancel or modify any Account except in the ordinary course of business.

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Section 8.12 **Environmental Protection.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (a) use (or permit any tenant to use) any of their respective Properties or assets for the handling, processing, storage, transportation, or disposal of any Hazardous Material, (b) generate any Hazardous Material, (c) conduct any activity that is likely to cause a Release or threatened Release of any Hazardous Material, or (d) otherwise conduct any activity or use any of their respective Properties or assets in any manner that is likely to violate any Environmental Law or create any Environmental Liabilities for which Borrower or any of its Subsidiaries would be responsible. Notwithstanding the foregoing, Borrower and its Subsidiaries may use and store Hazardous Materials in the ordinary course of Borrower's homebuilding business, in customary quantities, in compliance with all applicable Environmental Laws.

Section 8.13 **Accounting.** Borrower shall not, and shall not permit any of its Subsidiaries to, change its fiscal year or make any change (a) in accounting treatment or reporting practices, except as required by GAAP and disclosed to Administrative Agent and Lenders, or (b) in tax reporting treatment, except as required by law and disclosed to Administrative Agent and Lenders.

Section 8.14 **Burdensome Agreements.** Borrower shall not, and shall not permit any of its Subsidiaries or any Obligated Party to, enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any Loan Document, which (a) except for the Bond Indenture, directly or indirectly prohibits Borrower, any of its Subsidiaries, or any Obligated Party from creating or incurring a Lien on any of its Property, revenues, or assets, whether now owned or hereafter acquired, (b) directly or indirectly prohibits any of its Subsidiaries, or any Obligated Party to make any payments, directly or indirectly, to Borrower by way of dividends, distributions, advances, repayments of loans, repayments of expenses, accruals, or otherwise or (c) in any way would be contravened by such Person's performance of its obligations hereunder or under the other Loan Documents.

Section 8.15 **Subsidiaries.** Borrower shall not, directly or indirectly, form or acquire any Real Estate Subsidiary unless Borrower complies with the requirements of *Section 7.13*.

Section 8.16 **Amendments of Constituent Documents.** Borrower shall not, and shall not permit any of its Subsidiaries to, amend or restate any of their respective Constituent Documents in any material respect.

Section 8.17 **Anti-Corruption Laws; Sanctions; Anti-Terrorism Laws.** Each Obligated Party will not, directly or indirectly, use the proceeds of the Loans or Letters of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of the FCPA or any other applicable Anti-Corruption Law, or (ii) (A) to fund, finance or facilitate any activities or business of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (B) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit, whether as Administrative Agent, Arranger, Lender, underwriter, advisor, investor, or otherwise).

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## ARTICLE 9

### FINANCIAL COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Letter of Credit shall remain outstanding or any Lender has any Commitment hereunder:

Section 9.1 **Leverage Ratio.** Borrower shall not permit, as of the last day of any fiscal quarter, the Leverage Ratio to be greater than 1.50 to 1.0. Notwithstanding the foregoing, the maximum permitted Leverage Ratio is subject to automatic adjustment as follows:

- (a) Following the occurrence of a Triggering Event, Borrower shall not permit, as of the last day of any fiscal quarter, the Leverage Ratio to be greater than 1.75 to 1.0;
- (b) Following the commencement of the fourth full fiscal quarter after the Triggering Event, Borrower shall not permit, as of the last day of any fiscal quarter, the Leverage Ratio to be greater than 1.60 to 1.0;
- (c) Following the commencement of the sixth full fiscal quarter after the Triggering Event, Borrower shall not permit, as of the last day of any fiscal quarter, the Leverage Ratio to be greater than 1.50 to 1.0; and
- (d) A Triggering Event occurred on August 4, 2017, temporarily increasing the maximum permitted Leverage Ratio to 1.75 to 1.0.

Section 9.2 **Interest Coverage Ratio.** Borrower shall not permit, for any four fiscal quarter period, the ratio of (a) EBITDA, to (b) Cash Interest Expense, in each case for Borrower and its Subsidiaries, on a consolidated basis, for such four fiscal quarter period, to be less than 1.50 to 1.0.

Section 9.3 **Tangible Net Worth.** Borrower shall not permit, as of the last day of any fiscal quarter, Tangible Net Worth for Borrower and its Subsidiaries, on a consolidated basis, to be less than the sum of (a) \$546,000,000, *plus* (b) 50% of the net proceeds of any issuances of stock or other equity interests of any Obligated Party (other than to another Obligated Party) after March 31, 2018, *plus* (c) 50% of the amount of quarterly net income of Borrower and its subsidiaries, on a consolidated basis (but without deduction for any net loss), after March 31, 2018.

Section 9.4 **Liquidity.** Borrower shall not permit, as of the last day of any fiscal quarter, Liquidity for Borrower and its Subsidiaries, on a consolidated basis, to be less than \$40,000,000.

1.0. Section 9.5 **Risk Asset Ratio**. Borrower shall not permit, as of the last day of any fiscal quarter, the Risk Asset Ratio to be greater than 1.50 to

## ARTICLE 10

### DEFAULT

Section 10.1 **Events of Default**. Each of the following shall be deemed an “*Event of Default*”:

- (a) Borrower shall fail to pay (i) the principal amount of any Borrowing when due or declared due; (ii) the interest on the principal amount of any Borrowing when due, and such failure continues for five (5) days; or (iii) any other Obligations under the Loan Documents within ten (10) days after Administrative Agent notifies Borrower that such Obligation is due;
- (b) Borrower shall fail to provide to Administrative Agent and Lenders timely any notice of Default as required by *Section 7.1(h)* of this Agreement or Borrower shall breach any provision of *Sections 7.2, 7.5, 7.6, 7.13* or *Article 8* of this Agreement;
- (c) Any representation or warranty made or deemed made by Borrower or any other Obligated Party (or any of their respective officers) in any Loan Document or in any certificate, report, notice, or financial statement furnished at any time in connection with this Agreement shall be false, misleading, or erroneous in any material respect (without duplication of any materiality qualifier contained therein) when made or deemed to have been made;
- (d) Borrower, any of its Subsidiaries, or any other Obligated Party shall fail to perform, observe, or comply with any covenant, agreement, or term contained in this Agreement or any other Loan Document (other than as covered by *Sections 10.1(a), (b)* and *(r)*), and such failure continues for more than thirty (30) days following the date such failure first began;
- (e) Borrower, any of its Subsidiaries, or any other Obligated Party shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or a substantial part of its Property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;



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(f) An involuntary proceeding shall be commenced against Borrower, any of its Subsidiaries, or any other Obligated Party seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its Property, and such involuntary proceeding shall remain undismissed and unstayed for a period of sixty (60) days;

(g) Borrower, any of its Subsidiaries, or any other Obligated Party shall be in default under the Bond Indenture, after the expiration of any applicable grace period;

(h) Borrower, any of its Subsidiaries, or any other Obligated Party shall fail to pay when due, after the expiration of any applicable grace period, any principal of or interest on any Debt (other than the Obligations under the Loan Documents) in the amount of \$500,000 or more, or the maturity of any such Debt shall have been accelerated, or any such Debt shall have been required to be prepaid, repurchased, defeased or redeemed prior to the stated maturity thereof or any cash collateral in respect thereof to be demanded, or any event shall have occurred that permits (or, with the giving of notice or lapse of time or both, would permit) any holder or holders of such Debt or any Person acting on behalf of such holder or holders to accelerate the maturity thereof or require any such prepayment, repurchase, defeasance or redemption or any cash collateral in respect thereof to be demanded;

(i) This Agreement or any other Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by Borrower, any of its Subsidiaries, any other Obligated Party or any of their respective equity holders, or Borrower or any other Obligated Party shall deny that it has any further liability or obligation under any of the Loan Documents;

(j) Any of the following events shall occur or exist with respect to Borrower or any ERISA Affiliate: (i) any ERISA Event occurs with respect to a Plan or Multiemployer Plan, or (ii) any Prohibited Transaction involving any Plan; and in each case above, such event or condition, together with all other events or conditions, if any, have subjected or could in the reasonable opinion of Administrative Agent subject Borrower or any ERISA Affiliate to any tax, penalty, or other liability to a Plan, a Multiemployer Plan, the PBGC, the IRS, the U. S. Department of Labor, or otherwise (or any combination thereof) which in the aggregate exceed or could reasonably be expected to result in a Material Adverse Event;

(k) A Change of Control shall occur;

(l) Borrower, any of its Subsidiaries, or any other Obligated Party, or any of their Properties, revenues, or assets, shall become subject to an order of forfeiture, seizure, or divestiture (whether under RICO or otherwise) and the same shall not have been discharged within 30 days from the date of entry thereof;

(m) Borrower, any of its Subsidiaries, or any other Obligated Party shall fail to discharge within a period of forty-five (45) days after the commencement thereof any attachment, sequestration, or similar proceeding or proceedings involving an aggregate amount in excess of \$500,000 against any of its assets or Properties;

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(n) A final judgment or judgments for the payment of money in excess of \$500,000 in the aggregate shall be rendered by a court or courts against Borrower, any of its Subsidiaries, or any other Obligated Party and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within forty-five (45) days from the date of entry thereof and Borrower, such Subsidiary, or such Obligated Party shall not, within such period of forty-five (45) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal;

(o) Borrower without the prior written consent of Administrative Agent, creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any mortgage, pledge, Lien (statutory, constitutional or contractual), security interest, exception, encumbrance or charge, or conditional sale or other title retention agreement, with respect to the Borrowing Base Property, except Liens described in *clauses (a) through (f)* of the definition of Permitted Liens; provided, however, that if such further encumbrance is a mechanic's lien, then the provisions of **Section 7.14** shall control;

(p) The holder of any Lien or security interest on all or any portion of the Borrowing Base Property (without hereby implying Administrative Agent's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder;

(q) Required Lenders determine that a Material Adverse Event has occurred or a circumstance exists that could result in a Material Adverse Event; or

(r) Borrower shall breach any provision of **Article 9** of this Agreement, and such breach remains uncured for more than fifteen (15) days.

**Section 10.2 Remedies Upon Default.** If any Event of Default shall occur and be continuing, then Administrative Agent may, with the consent of Required Lenders, or shall, at the direction of Required Lenders, without notice do any or all of the following: (a) terminate the Commitments of Lenders (except for funding obligations of outstanding Letters of Credit), (b) terminate the obligations of L/C Issuer to make L/C Credit Extensions, (c) require that Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto), or (d) declare the Obligations under the Loan Documents or any part thereof to be immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower; *provided, however*, that upon the occurrence of an Event of Default under **Section 10.1(e)** or **(f)**, the Commitments of Lenders shall automatically terminate (except for funding obligations of outstanding Letters of Credit), the obligations of L/C Issuer to make L/C Credit Extensions shall automatically terminate, the obligation of Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, and the Obligations under the Loan Documents shall become immediately due and payable, in each case without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by

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Borrower. In addition to the foregoing, if any Event of Default shall occur and be continuing, Administrative Agent may, with the consent of Required Lenders, or shall, at the direction of Required Lenders, exercise all rights and remedies available to it, Lenders and L/C Issuer in law or in equity, under the Loan Documents, or otherwise.

Section 10.3 **Application of Funds.** After the exercise of remedies provided for in *Section 10.2* (or if an Event of Default exists and the written notice thereof, if any, to Borrower from Administrative Agent expressly provides that this *Section 10.3* shall thereafter apply to any amounts received on account of the Obligations or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent) payable to Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest) payable to Lenders and L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and L/C Issuer) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this *clause Second* payable to them;

*Third*, to payment of that portion of the Obligations constituting accrued and unpaid and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among Lenders and L/C Issuer in proportion to the respective amounts described in this *clause Third* payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and constituting unpaid Bank Product Obligations, ratably among Lenders and Bank Product Providers in proportion to the respective amounts described in this *clause Fourth* held by them;

*Fifth*, to Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrower pursuant to *Sections 2.2* and *2.7*;

*Sixth*, to payment of that remaining portion of the Obligations, ratably among the Lenders and Bank Product Providers in proportion to the respective amounts described in this *clause Sixth* held by them; and

*Last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by law.

Notwithstanding the foregoing, Bank Product Obligations shall be excluded from the application described above if Administrative Agent has not received written notice thereof, together with supporting documentation as Administrative Agent may request from the applicable Bank Product Provider, *provided* that no such notice shall be required for any Bank Product Agreement for which Administrative Agent or any Affiliate of Administrative Agent is

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the applicable Bank Product Provider. Each Bank Product Provider that is not a party to this Agreement that has given notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent pursuant to the terms of *Article 11* hereof for itself and its Affiliates as if a “Lender” party hereto.

Section 10.4 **Performance by Administrative Agent.** If Borrower shall fail to perform any covenant or agreement contained in any of the Loan Documents, then Administrative Agent may perform or attempt to perform such covenant or agreement on behalf of Borrower. In such event, Borrower shall, at the request of Administrative Agent, promptly pay to Administrative Agent any amount expended by Administrative Agent in connection with such performance or attempted performance, together with interest thereon at the Default Interest Rate from and including the date of such expenditure to but excluding the date such expenditure is paid in full. Notwithstanding the foregoing, it is expressly agreed that Administrative Agent shall not have any liability or responsibility for the performance of any covenant, agreement, or other obligation of Borrower under this Agreement or any other Loan Document.

Section 10.5 **Setoff.** Notwithstanding anything to the contrary in this Agreement, the Guaranty or the other Loan Documents, Administrative Agent, L/C Issuer, the Lenders and the Participants hereby waive any contractual, statutory or common law right to set off and apply against the Obligations under the Loan Documents, any deposits of Borrower or any Guarantor, held by Administrative Agent, L/C Issuer, the Lenders or the Participants. The foregoing waiver does not alter or affect any setoff rights of Administrative Agent, L/C Issuer, the Lenders or the Participants with regard to obligations, indebtedness or liabilities of Borrower or any Guarantor, arising outside of the Loan Documents.

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## ARTICLE 11

### AGENCY

Section 11.1 **Appointment and Authority.** Each of the Lenders and L/C Issuer hereby irrevocably appoints Texas Capital Bank to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this *Article 11* are solely for the benefit of Administrative Agent, Lenders and L/C Issuer, and neither Borrower nor any other Obligated Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Administrative Agent shall administer the Credit Facility in the same manner as it administers similar extensions of credit held for its own account.

Section 11.2 **Rights as a Lender.** The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to Lenders.

### Section 11.3 Exculpatory Provisions.

(a) Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Administrative Agent is required to exercise as directed in writing by Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that Administrative Agent shall not be required to take any action that, in its opinion or upon the advice of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

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(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity; and

(iv) shall be fully justified in failing or refusing to take any action hereunder or under any other Loan Document unless it shall first be indemnified to its satisfaction by Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

(b) Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 10.2** and **11.9**), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. **SUCH LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER THE LIABILITY ARISES FROM THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ADMINISTRATIVE AGENT.** Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to Administrative Agent in writing by Borrower, a Lender or L/C Issuer, or Administrative Agent otherwise receives manifest written evidence of such Default.

(c) Neither Administrative Agent nor any Related Party thereof shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in **Article 5** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

**Section 11.4 Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to

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have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Credit Extension, that by its terms must be fulfilled to the satisfaction of a Lender or L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Credit Extension. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.5 **Delegation of Duties.** Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by Administrative Agent. Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this **Article 11** shall apply to any such sub agent and to the Related Parties of Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

Section 11.6 **Resignation or Removal of Administrative Agent.**

(a) Administrative Agent may at any time give notice of its resignation to Lenders, L/C Issuer and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right, with the consent of Borrower (so long as no Event of Default has occurred and is continuing), which consent shall not be unreasonably withheld, delayed or conditioned, to appoint a successor. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of Borrower, Lenders and L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. After the Resignation Effective Date, the provisions of this **Article 11** relating to or indemnifying or releasing Administrative Agent shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to *clause (d)* of the definition thereof, Required Lenders may, to the extent permitted by applicable Law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and, with the consent of Borrower, appoint a successor. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

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(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, and (ii) except for any indemnity, fee or expense payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender or L/C Issuer, as applicable, directly, until such time, if any, as Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this **Article 11**, **Section 12.1**, and **Section 12.2** shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by Texas Capital Bank as Administrative Agent pursuant to this **Section** shall also constitute its resignation as L/C Issuer, unless the notice thereof otherwise provides. If Texas Capital Bank resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require Lenders to make Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.2(c)**. Upon the appointment by Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (b) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Texas Capital Bank to effectively assume the obligations of Texas Capital Bank with respect to such Letters of Credit.



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**Section 11.7 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and L/C Issuer expressly acknowledges that neither Administrative Agent nor any other Lender nor any Related Party thereto has made any representation or warranty to such Person and that no act by Administrative Agent or any other Lender hereafter taken, including any review of the affairs of Borrower, shall be deemed to constitute any representation or warranty by Administrative Agent or any Lender to any other Lender. Each Lender and L/C Issuer acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and L/C Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), or creditworthiness of Borrower or the value of the Borrowing Base Property or other Properties of Borrower or any other Person which may come into the possession of Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

**Section 11.8 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Obligated Party, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations under the Loan Documents that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, L/C Issuer, and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, L/C Issuer, and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, L/C Issuer, and Administrative Agent under **Section 12.1** or **Section 12.2**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and L/C Issuer, as applicable, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Section 12.1** or **Section 12.2**.

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**Section 11.9 Guaranty Matters.**

(a) Lenders irrevocably authorize Administrative Agent, at its option and in its discretion to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents. Upon request by Administrative Agent at any time, Required Lenders will confirm in writing Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this **Section 11.9**.

(b) Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Borrowing Base Property, the existence, priority or perfection of any Lien thereon, or any certificate prepared by any Obligated Party in connection therewith, nor shall Administrative Agent be responsible or liable to Lenders for any failure to monitor or maintain any portion of the Borrowing Base Property.

**Section 11.10 Bank Product Agreements.** No Bank Product Provider who obtains the benefits of **Section 10.3** or any Guaranty by virtue of the provisions hereof or of any Guaranty shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this **Article 11** to the contrary, Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations unless Administrative Agent has received written notice of such Bank Product Obligations, together with such supporting documentation as Administrative Agent may request, from the applicable Bank Product Provider. Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations arising under Bank Product Agreements upon termination of all Commitments and payment in full of all Obligations under the Loan Documents (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made).

**ARTICLE 12**

**MISCELLANEOUS**

**Section 12.1 Expenses.**

(a) Borrower hereby agrees to pay on demand: (i) all costs and expenses of Administrative Agent, L/C Issuer and their Related Parties in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents and any and all amendments, modifications, renewals, extensions, supplements, waivers, consents and ratifications thereof and thereto, including, without limitation, the reasonable fees and expenses of legal counsel, advisors, consultants, and auditors for Administrative Agent, L/C Issuer and their Related Parties; (ii) all costs and expenses of Administrative Agent, L/C Issuer and each Lender in

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connection with any Default and the enforcement of this Agreement or any other Loan Document, including, without limitation, court costs and fees and expenses of legal counsel, advisors, consultants, and auditors for Administrative Agent, L/C Issuer and each Lender; (iii) all costs and expenses incurred by L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; (iv) all transfer, stamp, documentary, or other similar taxes, assessments, or charges levied by any Governmental Authority in respect of this Agreement or any of the other Loan Documents; (v) all costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any Lien contemplated by this Agreement or any other Loan Document; and (vi) all other costs and expenses incurred by Administrative Agent, L/C Issuer and any Lender in connection with the enforcement or protection of its rights under this Agreement or any other Loan Document, any workout or restructuring (including the negotiations thereof), any litigation, dispute, suit, proceeding or action, the enforcement of its rights and remedies, and the protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges (including Administrative Agent's and such Lender's and L/C Issuer's internal charges) incurred in connection with evaluating, observing, collecting, examining, auditing, appraising, selling, liquidating, or otherwise disposing of the Borrowing Base Property or other assets of Borrower. Borrower shall be responsible for all expenses described in this *clause (a)* whether or not any Credit Extension is ever made. Any amount to be paid under this *Section 12.1* shall be a demand obligation owing by Borrower and if not paid within thirty (30) days of demand shall bear interest, to the extent not prohibited by and not in violation of applicable Law, from the date of expenditure until paid at a rate per annum equal to the Default Interest Rate. The obligations of Borrower under this *Section 12.1* shall survive payment of the Notes and other obligations hereunder and the assignment of any right hereunder.

(b) To the extent that Borrower for any reason fails to indefeasibly pay any amount required under *Section 12.1(a)* or *Section 12.2* to be paid by it to Administrative Agent or L/C Issuer (or any sub-agent thereof) or any Related Party of Administrative Agent or L/C Issuer (or any sub-agent thereof), each Lender severally agrees to pay to Administrative Agent or L/C Issuer (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent or L/C Issuer (or any such sub-agent) or against any Related Party of Administrative Agent or L/C Issuer (or any sub-agent thereof) acting for Administrative Agent or L/C Issuer (or any such sub-agent) in connection with such capacity. EACH LENDER ACKNOWLEDGES THAT SUCH PAYMENTS MAY BE IN RESPECT OF LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY, COMPARATIVE, CONCURRENT OR ORDINARY NEGLIGENCE OF THE PERSON (OR THE REPRESENTATIVES OF THE PERSON) TO WHOM SUCH PAYMENTS ARE TO BE MADE.

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Section 12.2 **INDEMNIFICATION**. BORROWER SHALL INDEMNIFY ADMINISTRATIVE AGENT, L/C ISSUER, EACH LENDER AND EACH RELATED PARTY THEREOF FROM, AND HOLD EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO (A) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS, (B) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS, (C) ANY BREACH BY BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE LOAN DOCUMENTS, (D) THE PRESENCE, RELEASE, THREATENED RELEASE, DISPOSAL, REMOVAL, OR CLEANUP OF ANY HAZARDOUS MATERIAL LOCATED ON, ABOUT, WITHIN, OR AFFECTING ANY OF THE PROPERTIES OR ASSETS OF BORROWER OR ANY OF ITS SUBSIDIARIES OR ANY OTHER OBLIGATED PARTY, (E) ANY LOAN OR LETTER OF CREDIT OR USE OR PROPOSED USE OF THE PROCEEDS THEREFROM (INCLUDING ANY REFUSAL BY THE L/C ISSUER TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT) OR (F) ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, RELATING TO ANY OF THE FOREGOING. WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, **IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH PERSON TO BE INDEMNIFIED UNDER THIS SECTION SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY, COMPARATIVE, CONCURRENT OR ORDINARY NEGLIGENCE OF SUCH PERSON (OR THE REPRESENTATIVES OF SUCH PERSON)**. Any amount to be paid under this *Section 12.2* shall be a demand obligation owing by Borrower and if not paid within ten (10) days of demand shall bear interest, to the extent not prohibited by and not in violation of applicable Law, from the date of expenditure until paid at a rate per annum equal to the Default Interest Rate. The obligations of Borrower under this *Section 12.2* shall survive payment of the Notes and other obligations hereunder and the assignment of any right hereunder. No indemnified party referred to above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

Section 12.3 **Limitation of Liability**. None of Administrative Agent, L/C Issuer, or any Lender, or any Affiliate, officer, director, employee, attorney, or agent of any of the foregoing, shall have any liability with respect to, and Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by Borrower or any other Obligated Party in

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connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Borrower hereby waives, releases, and agrees not to sue Administrative Agent, L/C Issuer, or any Lender, or any Affiliates, officers, directors, employees, attorneys, or agents of any of the foregoing for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

**Section 12.4 No Duty.** All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Administrative Agent, any Lender or L/C Issuer shall have the right to act exclusively in the interest of Administrative Agent or such Lender or L/C Issuer and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to Borrower or any of Borrower's equity holders, Affiliates, officers, employees, attorneys, agents, or any other Person.

**Section 12.5 Lenders Not Fiduciary.** The relationship between Borrower and Administrative Agent, Arranger and each Lender and L/C Issuer is solely that of debtor and creditor, and none of Administrative Agent, Arranger, any Lender or L/C Issuer has any fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Administrative Agent, Arranger and each Lender, and L/C Issuer to be other than that of debtor and creditor.

**Section 12.6 Equitable Relief.** Borrower recognizes that in the event Borrower fails to pay, perform, observe, or discharge any or all of the Obligations, any remedy at law may prove to be inadequate relief to Administrative Agent or Lenders or L/C Issuer. Borrower therefore agrees that Administrative Agent, any Lender or L/C Issuer, if Administrative Agent or such Lender or L/C Issuer so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

**Section 12.7 No Waiver; Cumulative Remedies.** No failure on the part of Administrative Agent, any Lender or L/C Issuer to exercise and no delay in exercising, and no course of dealing with respect to, any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The rights and remedies provided for in this Agreement and the other Loan Documents are cumulative and not exclusive of any rights and remedies provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Obligated Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with **Section 10.2** for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, or (b) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf

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during the pendency of a proceeding relative to any Obligated Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to Administrative Agent pursuant to **Section 10.2** and (ii) in addition to the matters set forth in clause (b) of the preceding proviso and subject to **Section 12.23**, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### Section 12.8 Successors and Assigns.

(a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or transfer any of its rights, duties, or obligations under this Agreement or the other Loan Documents without the prior written consent of Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of **Section 12.8(b)**, (ii) by way of participation in accordance with the provisions of **Section 12.8(d)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 12.8(e)** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 12.8(d)** and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.** (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment(s) and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in **Section 12.8(b)(i)(B)** in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and (B) in any case not described in **Section 12.8(b)(i)(A)**, the aggregate amount of the Commitment(s) (which for this purpose includes Loans outstanding hereunder) or, if the applicable Commitment is not then in effect, the Outstanding Amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of the Credit Facility, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

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(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment(s) assigned, except that this *clause (ii)* shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate facilities, if any, on a non-pro rata basis.

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by *Section 12.8(b)(i)(B)* and, in addition: (A) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof; (B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment or Loans if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender, and (C) the consent of L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Credit Facility.

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided* that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) Borrower, or any of Borrower's Affiliates or Subsidiaries or any other Obligated Party, (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing persons described in this *clause (B)*, or (C) a Competing Homebuilder.

(vi) **No Assignment to Natural Persons.** No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to such assignment shall make such additional

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payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by such Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to: (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **Section 12.8(c)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 12.1** and **Section 12.2** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided* that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **subsection** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 12.8(d)**. Upon the consummation of any assignment pursuant to this **Section 12.8(b)**, if requested by the transferor or transferee Lender, the transferor Lender, Administrative Agent and Borrower shall make appropriate arrangements so that replacement Notes are issued to such transferor Lender (if applicable) and new Notes or, as appropriate, replacement Notes, are issued to the assignee.

(c) **Register.** Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices in Dallas, Texas a copy of each Assignment and Assumption delivered to it and a Register. The entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.



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(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to a Participant in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Borrower, Administrative Agent, and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 12.1(b)** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in **Section 12.10** which requires the consent of all Lenders and affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.1, 3.5 and 3.4** (subject to the requirements and limitations therein, including the requirements under **Section 3.4(g)** (it being understood that the documentation required under **Section 3.4(g)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of **Section 3.6** as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under **Sections 3.1 or 3.4**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of **Section 3.6** with respect to any Participant. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a Participant Register; *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Dissemination of Information.** Borrower and each other Obligated Party authorizes Administrative Agent and each Lender to disclose to any actual or prospective purchaser, assignee or other recipient of a Lender's Commitment, any and all information in Administrative Agent's or such Lender's possession concerning Borrower, the other Obligated Parties and their respective Affiliates, subject to the terms and conditions of **Section 12.25**.

**Section 12.9 Survival.** All representations and warranties made in this Agreement or any other Loan Document or in any document, statement, or certificate furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and no investigation by Administrative Agent or any Lender or any closing shall affect the representations and warranties or the right of Administrative Agent or any Lender to rely upon them. Without prejudice to the survival of any other obligation of Borrower hereunder, the obligations of Borrower under **Sections 12.1** and **12.2** shall survive repayment of the Obligations and termination of the Commitments.

**Section 12.10 Amendment.** The provisions of this Agreement and the other Loan Documents to which Borrower is a party (other than the Issuer Documents) may be amended or waived only by an instrument in writing signed by Required Lenders (or by Administrative Agent with the consent of Required Lenders) and Borrower and acknowledged by Administrative Agent; *provided, however*, that no such amendment or waiver shall:

(a) waive any condition set forth in **Section 5.1**, without the written consent of each Lender;

(b) extend or increase any Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 10.2**) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayment) of principal, interest, fees or other amounts due to Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of Required Lenders shall be necessary to adjust the Default Interest Rate or to waive any obligation of Borrower to pay interest at such rate;

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(e) change any provision of this **Section 12.10** or the definition of “*Required Lenders*” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(f) change **Section 10.3** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender; or

(g) release any Guaranty without the written consent of each Lender;

and, *provided further*, that that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document; (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (iv) Borrower and Administrative Agent may amend this Agreement or any other Loan Document without the consent of Lenders (unless the Required Lenders object in writing within five (5) Business Days of notice by Administrative Agent of such amendment) in order to (A) correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document or (B) make administrative or operational changes not adverse to any Lender, or (C) add a Guarantor or otherwise enhance the rights and benefits of the Lenders; and (v) Borrower and Administrative Agent may, without the input or consent of the Lenders, effect amendments to this Agreement and the other Loan Documents as may be necessary in the opinion of Administrative Agent to effect the provisions of **Section 2.10**.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment(s) of any Defaulting Lender may not be increased or extended without the consent of such Lender; and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

#### Section 12.11 Notices.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **Section 12.11(b)**), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as set forth on **Schedule 12.11**. Notices sent by hand

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or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications, to the extent provided in **Section 12.11(b)** shall be effective as provided in **Section 12.11(b)**.

(b) **Electronic Communications.** Notices and other communications to Lenders and hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to **Article 2** if such Lender has notified Administrative Agent that it is incapable of receiving notices under **Article 2** by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing *clause (i)*, of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both *clauses (i)* and *(ii)* above, if such facsimile, email or other electronic communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **Change of Address, etc.** Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto, **Schedule 12.11** shall be deemed to be amended by each such change, and Administrative Agent is authorized, in its discretion, from time to time to reflect each such change in an amended **Schedule 12.11** provided by Administrative Agent to each party hereto.

(d) **Platform.**

(i) Borrower agrees that Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders or L/C Issuer by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation,

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any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Agent Parties have any liability to Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower's or Administrative Agent's transmission of communications through the Platform.

(iii) Borrower and each other Obligated Party (by its, his or her execution of a Loan Document) hereby authorizes Administrative Agent, each Lender and their respective counsel and agents and Related Parties (each an "**Authorized Party**") to communicate and transfer documents and other information (including confidential information) concerning this transaction or Borrower or any other Obligated Party and the business affairs of Borrower and such other Obligated Parties via the internet or other electronic communication method. In no event shall any Authorized Party have any liability to Borrower or any other Obligated Party, any Lender or any other Person or entity for damages of any kind (whether in tort, contract or otherwise) arising out of any such communications or transmissions, except to the extent that such damages are determined by a court of competent jurisdiction in a final and nonappealable judgment to have directly resulted from the gross negligence or willful misconduct of such Authorized Party; *provided, however*, that in no event shall any Authorized Party have any liability for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(e) **Public Information. Each Obligated Party** hereby acknowledges that certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to any Obligated Party or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such securities. Each Obligated Party hereby agrees that it will use commercially reasonable efforts to identify that portion of the materials and information provided by or on behalf of any Obligated Party hereunder and under the other Loan Documents (collectively, "**Borrower Materials**") that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," each Obligated Party shall be deemed to have authorized Administrative Agent and the other Lenders to treat such Borrower Materials as not containing any material non-public information with respect to any Obligated Party or its securities for purposes of U.S. federal and state securities Laws (provided, however, that to the extent that such Borrower Materials constitute Information, they shall be subject to **Section 12.25**); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (iv) Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". Each

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Public Lender will designate one or more representatives that shall be permitted to receive information that is not designated as being available for Public Lenders, in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and under applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to any Obligated Party or its Subsidiaries and its securities for the purposes of United State federal or state securities Laws.

**Section 12.12 Governing Law; Venue; Service of Process.**

(a) **Governing Law.** This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of Texas (without reference to applicable rules of conflicts of Laws).

(b) **Jurisdiction.** Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against Administrative Agent, any Lender, L/C Issuer or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of Texas sitting in Dallas County, and of the United States District Court of the Northern District of Texas, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such Texas State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Agreement or in any other Loan Document shall affect any right that Administrative Agent, any Lender or L/C Issuer may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against Borrower or its properties in the courts of any jurisdiction.

(c) **Waiver of Venue.** Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in *paragraph (b)* of this *Section*. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) **Service of Process.** Each party hereto irrevocably consents to service of process by the mailing thereof, in the manner provided for the mailing of notices in *Section 12.11*. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

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Section 12.13 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Except as provided in **Section 5.1**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 12.14 **Severability**. Any provision of this Agreement or any other Loan Document held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal. Furthermore, in lieu of such invalid or unenforceable provision there shall be added as a part of this Agreement or the other Loan Documents a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

Section 12.15 **Headings**. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

Section 12.16 **Construction**. Borrower, Administrative Agent and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower, Administrative Agent and each Lender.

Section 12.17 **Independence of Covenants**. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or such condition exists.

Section 12.18 **WAIVER OF JURY TRIAL**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.18.

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Section 12.19 **Additional Interest Provision.** It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and each Lender at all times to comply strictly with the applicable Law governing the maximum rate or amount of interest payable on the indebtedness evidenced by any Note, any Loan Document, and the Related Indebtedness (or applicable United States federal law to the extent that it permits any Lender to contract for, charge, take, reserve or receive a greater amount of interest than under applicable Law). If the applicable Law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to any Note, any of the other Loan Documents or any other communication or writing by or between Borrower and any Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (b) contracted for, charged, taken, reserved or received by reason of Administrative Agent's or any Lender's exercise of the option to accelerate the maturity of any Note and/or the Related Indebtedness, or (c) Borrower will have paid or Administrative Agent or any Lender will have received by reason of any voluntary prepayment by Borrower of any Note and/or the Related Indebtedness, then it is Borrower's, Administrative Agent's and Lenders' express intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Rate theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of any Note and/or the Related Indebtedness (or, if any Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of any Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; *provided, however*, if any Note or Related Indebtedness has been paid in full before the end of the stated term thereof, then Borrower, Administrative Agent and each Lender agree that Administrative Agent or any Lender, as applicable, shall, with reasonable promptness after Administrative Agent or such Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower and/or credit such excess interest against such Note and/or any Related Indebtedness then owing by Borrower to Administrative Agent or such Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Administrative Agent or such Lender, Borrower will provide written notice to Administrative Agent or any Lender, advising Administrative Agent or such Lender in reasonable detail of the nature and amount of the violation, and Administrative Agent or such Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note to which the alleged violation relates and/or the Related Indebtedness then owing by Borrower to Administrative Agent or such Lender. All sums contracted for, charged, taken, reserved or received by Administrative Agent or any Lender for the use, forbearance or detention of any debt evidenced by any Note and/or the Related Indebtedness shall, to the extent permitted by applicable Law, be amortized or spread, using the actuarial method, throughout the stated term of such Note



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and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of any Note and/or the Related Indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to such Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Notes and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Administrative Agent or any Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

**Section 12.20 Ceiling Election.** To the extent that any Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Rate payable on any Note and/or any other portion of the Obligations under the Loan Documents, such Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303. To the extent United States federal Law permits any Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas Law, such Lender will rely on United States federal Law instead of such Chapter 303 for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable Law now or hereafter in effect, any Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Rate under such Chapter 303 or under other applicable Law by giving notice, if required, to Borrower as provided by applicable Law now or hereafter in effect.

**Section 12.21 USA Patriot Act Notice.** Administrative Agent and each Lender hereby notifies Borrower and each other Obligated Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower and each other Obligated Party, which information includes the name and address of Borrower and each other Obligated Party and other information that will allow Administrative Agent and such Lender to identify Borrower and each other Obligated Party in accordance with the Patriot Act. In addition, Borrower and each other Obligated Party agrees to (a) ensure that no Person who owns a controlling interest in or otherwise controls Borrower or any other Obligated Party or any Subsidiary of Borrower or any other Obligated Party is or shall be a Sanctioned Person, (b) not to use or permit the use of proceeds of the Obligations to violate any Anti-Corruption Laws, Anti-Terrorism Laws or any applicable Sanctions, and (c) comply, or cause its Subsidiaries to comply, with the applicable Laws.

**Section 12.22 Defaulting Lenders.**

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of "*Required Lenders*" and in **Section 12.10**.

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article 10** or otherwise) or received by Administrative Agent from a Defaulting

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Lender shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; second, with respect to a Defaulting Lender that is a Lender, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to L/C Issuer hereunder; third, with respect to a Defaulting Lender that is a Lender, to Cash Collateralize L/C Issuer's Fronting Exposure, if any, with respect to such Defaulting Lender in accordance with **Section 2.7**; fourth, with respect to a Defaulting Lender that is a Lender, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; fifth, with respect to a Defaulting Lender that is a Lender, if so determined by Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize L/C Issuer's future Fronting Exposure, if any, with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 2.7**; sixth, to the payment of any amounts owing to Lenders or L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that, if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in **Section 5.2** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by Lenders pro rata in accordance with the Commitments under the Credit Facility without giving effect to **Section 12.22(a)(iv)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 12.22(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

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(iii) **Certain Fees.** No Defaulting Lender shall be entitled to receive any fee payable under *Section 2.4(b)* for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(iv) **Reallocation of Applicable Percentages to Reduce Fronting Exposure.** All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to *Section 12.26*, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) **Cash Collateral.** If the reallocation described in *clause (a)(iv)* above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, Cash Collateralize L/C Issuers' Fronting Exposure in accordance with the procedures set forth in *Section 2.7*.

(b) **Defaulting Lender Cure.** If Borrower, Administrative Agent and L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by Lenders in accordance with their Applicable Percentages (without giving effect to *Section 12.22(a)(iv)*), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

**Section 12.23 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it or other obligations hereunder, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall:

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(a) notify Administrative Agent of such fact; and

(b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, *provided that*:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this **Section 12.23** shall not be construed to apply to: (A) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender); or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to Borrower or any Affiliate thereof (as to which the provisions of this **Section 12.23** shall apply).

Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

**Section 12.24 Payments Set Aside.** To the extent that any payment by or on behalf of Borrower is made to Administrative Agent, L/C Issuer or any Lender, or Administrative Agent, L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent, L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Lenders and L/C Issuer under *clause (b)* of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

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**Section 12.25 Confidentiality.** Each of Administrative Agent, L/C Issuer and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners) or any Governmental Authority, quasi-Governmental Authority or legislative committee, (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to its being under a duty of confidentiality no less restrictive than this **Section 12.25**, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective purchaser of a Lender or its holding company, (iii) any rating agency or any similar organization in connection with the rating of Borrower or the Facilities or (iv) the CUSIP Service Bureau or any similar organization in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities, (g) with the consent of Borrower, or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this **Section 12.25** or (ii) becomes available to Administrative Agent, L/C Issuer, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower. In addition, Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this **Section 12.25**, “**Information**” means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses which is clearly identified as confidential, other than any such information that is available to Administrative Agent, L/C Issuer or any Lender on a nonconfidential basis prior to disclosure by Borrower or a Subsidiary; *provided* that, in the case of information received from Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 12.25** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Each Obligated Party agrees and confirms that, as between such Obligated Party and Texas Capital Bank, the obligations of Texas Capital Bank under this **Section 12.25** supersede and replace in their respective entireties all confidentiality, non-disclosure and similar obligations of Texas Capital Bank, if any, set forth in any previous agreement between such Obligated Party and Texas Capital Bank notwithstanding anything to the contrary contained therein

**Section 12.26 Electronic Execution of Assignments and Certain Other Documents.** The words “execute,” “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

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Section 12.27 **Independence of Covenants.** All covenants under the Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or such condition exists.

Section 12.28 **Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 12.29 **NOTICE OF FINAL AGREEMENT.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 12.30 **Amended and Restated Credit Agreement.** This Agreement amends and restates the Existing Credit Agreement in its entirety. Without limiting the generality of the foregoing, (a) the Existing Credit Agreement is hereby merged and incorporated into this

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Agreement, and (b) this Agreement shall supersede and control any inconsistent provision in the Existing Credit Agreement. All references in the Loan Documents to the Existing Credit Agreement are hereby modified and shall now be deemed to refer to this Agreement. All references in the Loan Documents to the Obligations, the Notes, the Loan Documents and other terms defined herein are hereby modified and shall now be deemed to refer to such terms and items as defined or described in this Agreement. Except as modified hereby or by any other Loan Document (whether dated as of or prior to the Closing Date) which expressly modifies any of the Loan Documents, all of the terms and provisions of the existing Loan Documents (including schedules and exhibits thereto), and the indebtedness, duties and obligations thereunder, are ratified and affirmed in all respects and shall remain in full force and effect. This Agreement shall not, however, constitute a novation of the Obligated Parties' indebtedness, duties and obligations under or with respect to the Loan Documents, the Loans or any Letters of Credit outstanding.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*

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EXECUTED to be effective as of the date first written above.

BORROWER:

**CENTURY COMMUNITIES, INC.**,  
a Delaware corporation

By: /s/ David Messenger

Name: David Messenger

Title: Chief Financial Officer

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Borrower]



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ADMINISTRATIVE AGENT:

**TEXAS CAPITAL BANK, NATIONAL ASSOCIATION**

By: /s/Carolynn Alexander

Name: Carolynn Alexander

Title: Sr. Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Administrative Agent]

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LENDER:

**TEXAS CAPITAL BANK, NATIONAL ASSOCIATION**

By: /s/Carolynn Alexander

Name: Carolynn Alexander

Title: Sr. Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Texas Capital Bank]

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LENDER:

**BANK OF AMERICA, N.A.**

By: /s/ Michael J. Kauffman

Name: Michael J. Kauffman

Title: Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Bank of America]

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LENDER:

**FIFTH THIRD BANK**

By: /s/ Talianna Carlson-Manne  
Name: Talianna Carlson-Manne  
Title: Senior Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Fifth Third Bank]

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LENDER:

**U.S. BANK NATIONAL ASSOCIATION**

By: /s/ Luke Price  
Name: Luke Price  
Title: Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [U.S. Bank National Association]

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LENDER:

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Nadeige Dang

Name: Nadeige Dang

Title: Executive Director

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [JP Morgan Chase Bank, N.A.]

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LENDER:

**COMPASS BANK,  
AN ALABAMA BANKING CORPORATION**

By: /s/ Ben Weimer  
Name: Ben Weimer  
Title: Sr. Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Compass Bank]

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LENDER:

**CITIBANK, N.A.**

By: /s/ John Van Brederode

Name: John Van Brederode

Title: Managing Director

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Citibank, N.A.]



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LENDER:

**ZB, N.A.**  
**dba VECTRA BANK COLORADO**

By: /s/ Shane Frazier  
Name: Shane Frazier  
Title: Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [ZB, N.A. dba Vectra Bank Colorado]

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LENDER:

**CIBC BANK USA**

By: /s/ Russell Ruhnke

Name: Russell Ruhnke

Title: Managing Director

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [CIBC Bank USA]

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LENDER:

**FLAGSTAR BANK, FSB,**  
a federally chartered savings bank

By: /s/ Philip Trujillo  
Name: Philip Trujillo  
Title: Vice President

AMENDED AND RESTATED CREDIT AGREEMENT – Signature Page [Flagstar Bank, FSB]

SCHEDULE 2.1

Commitments and Applicable Percentages

<u>Lender</u>	<u>Commitment</u>	<u>Applicable Percentage</u>
Texas Capital Bank, National Association	\$ 75,000,000.00	13.888888888889%
Bank of America, N.A.	\$ 75,000,000.00	13.888888888889%
Fifth Third Bank	\$ 75,000,000.00	13.888888888889%
U.S. Bank National Association	\$ 75,000,000.00	13.888888888889%
JPMorgan Chase Bank, N.A.	\$ 55,000,000.00	10.185185185185%
Compass Bank	\$ 50,000,000.00	9.259259259259%
Citibank, N.A.	\$ 40,000,000.00	7.407407407407%
ZB, N.A. dba Vectra Bank Colorado	\$ 40,000,000.00	7.407407407407%
CIBC Bank USA	\$ 35,000,000.00	6.481481481482%
Flagstar Bank, FSB	\$ 20,000,000.00	3.703703703704%
Total:	<u>\$540,000,000.00</u>	<u>100.000000000000%</u>

SCHEDULE 2.1 – Solo Page

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SCHEDULE 6.5

Litigation and Judgments

None.

SCHEDULE 6.5 – Solo Page

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SCHEDULE 6.13

Real Estate Subsidiaries

Borrower owns 100% of all Real Estate Subsidiaries, either directly or indirectly.

1. AUGUSTA POINTE, LLC - a Colorado limited liability company
2. AVALON AT INVERNESS, LLC - a Colorado limited liability company
3. AVR A, LLC - a Colorado limited liability company
4. AVR B, LLC - a Colorado limited liability company
5. AVR C, LLC - a Colorado limited liability company
6. BEACON POINTE, LLC - a Colorado limited liability company
7. BENCHMARK BUILDERS NORTH CAROLINA, LLC - a Delaware limited liability company
8. BENCHMARK COMMUNITIES, LLC - a Delaware limited liability company
9. BLACKSTONE HOMES, LLC - a Colorado limited liability company
10. BMC EAST GARRISON, LLC - a Delaware limited liability company
11. BMC EG BLUFFS, LLC - a Delaware limited liability company
12. BMC EG BUNGALOW, LLC - a Delaware limited liability company
13. BMC EG COURTYARDS, LLC - a Delaware limited liability company
14. BMC EG GARDEN, LLC - a Delaware limited liability company
15. BMC EG GROVE, LLC - a Delaware limited liability company
16. BMC EG TOWNS, LLC - a Delaware limited liability company
17. BMC EG VILLAGE, LLC - a Delaware limited liability company
18. BMC MEADOWOOD II, LLC - a Delaware limited liability company
19. BMC PINE RIDGE, LLC - a Delaware limited liability company
20. BMC PROMISE WAY, LLC - a Delaware limited liability company
21. BMC RANCHO ETIWANDA, LLC - a Delaware limited liability company
22. BMC REALTY ADVISORS, INC. - a California corporation
23. BMC RED HAWK, LLC - a Delaware limited liability company
24. BMC ROSEMEAD, LLC - a Delaware limited liability company
25. BMC SAGEWOOD, LLC - a Delaware limited liability company
26. BMC SHIELDS LOCAN, LLC - a Delaware limited liability company
27. BMC TOUCHSTONE, LLC - a Delaware limited liability company
28. BMCH CALIFORNIA, LLC - a Delaware limited liability company
29. BMCH NORTH CAROLINA, LLC - a Delaware limited liability company
30. BMCH TENNESSEE, LLC - a Delaware limited liability company
31. BMCH WASHINGTON, LLC - a Delaware limited liability company
32. CASA ACQUISITION CORP. - a Delaware corporation
33. CC COMMUNITIES, LLC - a Colorado limited liability company
34. CCC HOLDINGS, LLC - a Colorado limited liability company
35. CCG CONSTRUCTORS LLC - a Georgia limited liability company
36. CCG REALTY GROUP LLC - a Georgia limited liability company
37. CCH HOMES, LLC - a Colorado limited liability company
38. CENTURY AT ANTHOLOGY, LLC - a Colorado limited liability company
39. CENTURY AT ASH MEADOWS, LLC - a Colorado limited liability company
40. CENTURY AT AUTUMN VALLEY RANCH, LLC - a Colorado limited liability company
41. CENTURY AT BEACON POINTE, LLC - a Colorado limited liability company
42. CENTURY AT BELLEVIEW PLACE, LLC - a Colorado limited liability company
43. CENTURY AT CALEY, LLC - a Colorado limited liability company
44. CENTURY AT CANDELAS, LLC - a Colorado limited liability company
45. CENTURY AT CAROUSEL FARMS, LLC - a Colorado limited liability company
46. CENTURY AT CASTLE PINES TOWN CENTER, LLC - a Colorado limited liability company
47. CENTURY AT CLAREMONT RANCH, LLC - a Colorado limited liability company

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48. CENTURY AT COLLIERS HILL, LLC - a Colorado limited liability company
  49. CENTURY AT COMPARK VILLAGE NORTH, LLC - a Colorado limited liability company
  50. CENTURY AT COMPARK VILLAGE SOUTH, LLC - a Colorado limited liability company
  51. CENTURY AT COYOTE CREEK, LLC - a Colorado limited liability company
  52. CENTURY AT FOREST MEADOWS, LLC - a Colorado limited liability company
  53. CENTURY AT HARVEST MEADOWS, LLC - a Colorado limited liability company
  54. CENTURY AT LANDMARK, LLC - a Colorado limited liability company
  55. CENTURY AT LITTLETON VILLAGE, LLC - a Colorado limited liability company
  56. CENTURY AT LITTLETON VILLAGE II, LLC - a Colorado limited liability company
  57. CENTURY AT LOR, LLC - a Colorado limited liability company
  58. CENTURY AT LOWRY, LLC - a Colorado limited liability company
  59. CENTURY AT MARVELLA, LLC - a Colorado limited liability company
  60. CENTURY AT MAYFIELD, LLC - a Colorado limited liability company
  61. CENTURY AT MIDTOWN, LLC - a Colorado limited liability company
  62. CENTURY AT MILLENNIUM, LLC - a Colorado limited liability company
  63. CENTURY AT MURPHY CREEK, LLC - a Colorado limited liability company
  64. CENTURY AT OAK STREET, LLC - a Colorado limited liability company
  65. CENTURY AT OBSERVATORY HEIGHTS, LLC - a Colorado limited liability company
  66. CENTURY AT OUTLOOK, LLC - a Colorado limited liability company
  67. CENTURY AT PEARSON GROVE, LLC - a Colorado limited liability company
  68. CENTURY AT SALISBURY HEIGHTS, LLC - a Colorado limited liability company
  69. CENTURY AT SOUTHSORE, LLC - a Colorado limited liability company
  70. CENTURY AT SPRING VALLEY RANCH, LLC - a Colorado limited liability company
  71. CENTURY AT TANGLEWOOD, LLC - a Colorado limited liability company
  72. CENTURY AT TERRAIN, LLC - a Colorado limited liability company
  73. CENTURY AT THE GROVE, LLC - a Colorado limited liability company
  74. CENTURY AT THE HEIGHTS, LLC - a Colorado limited liability company
  75. CENTURY AT THE MEADOWS, LLC - a Colorado limited liability company
  76. CENTURY AT VISTA RIDGE, LLC - a Colorado limited liability company
  77. CENTURY AT WILDGRASS, LLC - a Colorado limited liability company
  78. CENTURY AT WOLF RANCH, LLC - a Colorado limited liability company
  79. CENTURY AT WYNDHAM HILL, LLC - a Colorado limited liability company
  80. CENTURY CITY, LLC - a Colorado limited liability company
  81. CENTURY COMMUNITIES OF CALIFORNIA, LLC - a Delaware limited liability company
  82. CENTURY COMMUNITIES OF GEORGIA, LLC - a Colorado limited liability company
  83. CENTURY COMMUNITIES OF NEVADA, LLC - a Delaware limited liability company
  84. CENTURY COMMUNITIES OF NEVADA REALTY, LLC - a Nevada limited liability company
  85. CENTURY COMMUNITIES OF NORTH CAROLINA, LLC - a Delaware limited liability company
  86. CENTURY COMMUNITIES OF SOUTH CAROLINA, LLC - a Delaware limited liability company
  87. CENTURY COMMUNITIES OF TENNESSEE, LLC - a Delaware limited liability company
  88. CENTURY COMMUNITIES OF UTAH, LLC - a Utah limited liability company
  89. CENTURY COMMUNITIES OF WASHINGTON, LLC - a Delaware limited liability company
  90. CENTURY COMMUNITIES SOUTHEAST, LLC - a Colorado limited liability company
  91. CENTURY GROUP LLC - a Colorado limited liability company
  92. CENTURY LAND HOLDINGS, LLC - a Colorado limited liability company
  93. CENTURY LAND HOLDINGS II, LLC - a Colorado limited liability company
  94. CENTURY LAND HOLDINGS OF TEXAS, LLC - a Colorado limited liability company
  95. CENTURY LAND HOLDINGS OF UTAH, LLC - a Utah limited liability company
  96. CENTURY RHODES RANCH GC, LLC - a Delaware limited liability company
  97. CENTURY TOWNHOMES AT CANDELAS, LLC - Colorado limited liability company
  98. CENTURY TUSCANY GC, LLC - a Delaware limited liability company
  99. CHERRY HILL PARK, LLC - a Colorado limited liability company
  100. COTTAGES AT WILLOW PARK, LLC - a Colorado limited liability company
  101. CROWN HILL, LLC - a Colorado limited liability company
  102. ENCLAVE AT BOYD PONDS, LLC - a Colorado limited liability company
  103. ENCLAVE AT CHERRY CREEK, LLC - a Colorado limited liability company

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104. ENCLAVE AT PINE GROVE, LLC - a Colorado limited liability company
  105. ESTATES AT CHATFIELD FARMS, LLC - a Colorado limited liability company
  106. HEARTH AT OAK MEADOWS, LLC - a Colorado limited liability company
  107. HOMETOWN, LLC - a Colorado limited liability company
  108. HOMETOWN SOUTH, LLC - a Colorado limited liability company
  109. HORIZON BUILDING SERVICES, LLC - a Colorado limited liability company
  110. LAKEVIEW FORT COLLINS, LLC - a Colorado limited liability company
  111. MADISON ESTATES, LLC - a Colorado limited liability company
  112. MERIDIAN RANCH, LLC - a Colorado limited liability company
  113. MONTECITO AT RIDGEGATE, LLC - a Colorado limited liability company
  114. NEIGHBORHOOD ASSOCIATIONS GROUP, LLC - a Delaware limited liability company
  115. PARK 5TH AVENUE DEVELOPMENT CO., LLC - a Colorado limited liability company
  116. PRESERVE AT BRIARGATE, LLC - a Colorado limited liability company
  117. RESERVE AT HIGHPOINTE ESTATES, LLC - a Colorado limited liability company
  118. RESERVE AT THE MEADOWS, LLC - a Colorado limited liability company
  119. SADDLEBACK HEIGHTS, LLC - a Colorado limited liability company
  120. SADDLE ROCK GOLF, LLC - a Colorado limited liability company
  121. STETSON RIDGE HOMES, LLC - a Colorado limited liability company
  122. SWMJ CONSTRUCTION, INC. - a Texas corporation
  123. THE RETREAT AT RIDGEGATE, LLC - a Colorado limited liability company
  124. THE VISTAS AT NOR'WOOD, LLC - a Colorado limited liability company
  125. UCP, LLC - a Delaware limited liability company
  126. UCP BARCLAY III, LLC - a Delaware limited liability company
  127. UCP EAST GARRISON, LLC - a Delaware limited liability company
  128. UCP HILLCREST HOLLISTER, LLC - a Delaware limited liability company
  129. UCP KERMAN, LLC - a Delaware limited liability company
  130. UCP MEADOWOOD III, LLC - a Delaware limited liability company
  131. UCP SAGEWOOD, LLC - a Delaware limited liability company
  132. UCP SANTA ANA HOLLISTER, LLC - a Delaware limited liability company
  133. UCP SOLEDAD, LLC - a Delaware limited liability company
  134. UCP TAPESTRY, LLC - a Delaware limited liability company
  135. UCP QUAIL RUN, LLC - a Delaware limited liability company
  136. VENUE AT ARISTA, LLC - a Colorado limited liability company
  137. VERONA ESTATES, LLC - a Colorado limited liability company
  138. VILLAS AT MURPHY CREEK, LLC - a Colorado limited liability company
  139. WATERSIDE AT HIGHLAND PARK, LLC - a Colorado limited liability company
  140. WESTOWN CONDOMINIUMS, LLC - a Colorado limited liability company
  141. WESTOWN TOWNHOMES, LLC - a Colorado limited liability company
  142. WILDGRASS, LLC - a Colorado limited liability company



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SCHEDULE 6.25

Material Agreements

1. Bond Indenture

[The remainder of this page is intentionally left blank.]

SCHEDULE 6.25 – Solo Page

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SCHEDULE 8.1

Existing Debt

1. \$2,320,000 secured loan from Community Development Group of Erie, Inc., made on May 23, 2017 for the development of Colliers Hill.

[The remainder of this page is intentionally left blank.]

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SCHEDULE 8.5

Existing Investments

1. Borrower owns 50% of the membership interests of WJH LLC, a Delaware limited liability company. As of March 31, 2018, the book value of such investment was \$27,916,000.00.

[The remainder of this page is intentionally left blank.]

SCHEDULE 8.5 – Solo Page

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SCHEDULE 12.11

Notices

Notices under this Agreement shall be given:

(a) if to Borrower, to Century Communities, Inc., at 8390 East Crescent Parkway, Suite 650, Greenwood Village, Colorado 80111, Attention of Chief Financial Officer;

(b) if to Administrative Agent, to Texas Capital Bank, National Association, at its Principal Office at:

Attention Jeff Scott  
2000 McKinney Avenue  
Suite 700  
Dallas, Texas 75201;

**Reporting Items:**

Attention Jeff Scott  
Facsimile No. (214) 210-3047;  
Telephone No. (214) 932-6760;  
Agency@TexasCapitalBank.com;

**Borrowing Requests, Repayments & Conversions:**

Attention: Loan Operations/PSE  
Facsimile No. (877) 839-0609;  
Telephone No. (972) 656-6432;

(c) if to L/C Issuer - Same as (b)

(d) if to a Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

EXHIBIT A

Assignment and Assumption

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “**Assignor**”) and the Assignee identified in item 2 below (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities), and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to **clause (i)** above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to **clauses (i)** and **(ii)** above being referred to herein collectively as the “**Assigned Interest**”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor[s]: \_\_\_\_\_  
\_\_\_\_\_

[Assignor [is] [is not] a Defaulting Lender]

2. Assignee[s]: \_\_\_\_\_  
\_\_\_\_\_

[for each Assignee, indicate [Affiliate][Approved Fund] of [identify Lender]]

3. Borrower: \_\_\_\_\_

4. Administrative Agent: Texas Capital Bank, National Association, as the administrative agent under the Credit Agreement
5. Credit Agreement: The \$540,000,000 Amended and Restated Credit Agreement, dated as of June 5, 2018 among Century Communities, Inc., Texas Capital Bank, National Association, as Administrative Agent and L/C Issuer, and the Lenders a party thereto from time to time.
6. Assigned Interest:

<u>Assignor</u>	<u>Assignee</u>	<u>Facility Assigned</u>	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans	CUSIP Number
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

**[7. Trade Date: \_\_\_\_\_]**

Effective Date: \_\_\_\_\_, 20 \_\_\_\_\_ **[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

**[NAME OF ASSIGNOR]**

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

ASSIGNEE

**[NAME OF ASSIGNEE]**

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

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**[Consented to and]** Accepted:

TEXAS CAPITAL BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

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

**[Consented to]:**

**[CENTURY COMMUNITIES, INC.]**

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

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ANNEX 1

Standard Terms and Conditions for Assignment and Assumption

**1. Representations and Warranties.**

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is **[not]** a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under *Section 12.8(b)(iii)*, (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under *Section 12.8(b)(iii)* of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to *Section 7.1* thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.



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2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of Texas.

ANNEX 1 – Standard Terms and Conditions for Assignment and Assumption, Page 2

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EXHIBIT B

Borrowing Base Report

[The form of Borrowing Base Report follows this cover page.]

EXHIBIT B – Borrowing Base Report – Cover Page

**BORROWING BASE REPORT**

EFFECTIVE DATE: \_\_\_\_\_ (the “*Subject Month*”)  
ADMINISTRATIVE AGENT: Texas Capital Bank, National Association  
BORROWER: Century Communities, Inc.

This Borrowing Base Report (this “*Certificate*”) is delivered under the Amended and Restated Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”) dated as of June 5, 2018, by and among Borrower, the Lenders from time to time party thereto and Administrative Agent. Capitalized terms used in this Certificate shall, unless otherwise indicated, have the meanings set forth in the Credit Agreement. The undersigned hereby certifies to Administrative Agent and Lenders as of the date hereof that (a) he/she is the \_\_\_\_\_ of Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to Administrative Agent on behalf of Borrower, (b) to the best of his/her knowledge, no Default or Event of Default has occurred and is continuing, (c) a review of the activities of Borrower during the Subject Month has been made under the undersigned’s supervision with a view to determining the amount of the current Borrowing Base, (d) the Cash and Equivalents, Entitled Land, LUD, Lots, Model Houses, Pre-Sold Houses and Spec Houses included in the Borrowing Base Property as shown on the attachment, and as summarized below, meet all conditions to qualify for inclusion therein as set forth in the Credit Agreement, and all representations and warranties set forth in the Credit Agreement with respect thereto are true and correct in all material respects as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (e) the information attached hereto and set forth below hereto is true and correct as of the last day of the Subject Month.

**BORROWING BASE PROPERTY**

1. Cash and Equivalents (minus \$40,000,000) (100% of value)	(+)	\$	_____
2. Entitled Land (50% of cost)	(+)	\$	_____
3. LUD (65% of cost)	(+)	\$	_____
4. Lots (75% of cost)	(+)	\$	_____
5. Model Houses (85% of cost)	(+)	\$	_____
6. Pre-Sold Houses (90% of cost)	(+)	\$	_____
7. Spec Houses (90% of cost; reduced to 75% at 18 months, and reduced to 50% at 24 months)	(+)	\$	_____
8. <b>Total of Lines 1 through 7:</b>		\$	_____

**BORROWING BASE**

9. Aggregate outstanding amount of Borrower’s Other Debt	(-)	\$	_____
10. <b>Line 8 minus Line 9</b>		\$	_____

**DEDUCTIONS**

11. Aggregate outstanding balance of the Notes	(-)	\$	_____
12. L/C Obligations	(-)	\$	_____
13. <b>Total of Lines 11 and 12:</b>		\$	_____

14. **TOTAL NET BORROWING AVAILABILITY**  
 (Line 10 minus Line 13) \$ \_\_\_\_\_  
*(If result is a negative figure, this amount is due immediately as a principal payment.)* (not to exceed Commitment)
- BORROWING LIMITATION (2.3(a)):** Line 17 does not exceed lesser of Line 10 or Credit Facility Amount **Yes** **No**
15. Aggregate outstanding balance of the Notes (+) \$ \_\_\_\_\_
16. L/C Obligations (+) \$ \_\_\_\_\_
17. **Total of Lines 15 and 16:** \$ \_\_\_\_\_
18. **SPEC HOUSE SUBLIMIT (2.3(h)):** The number of Spec Houses in the Borrowing Base does not exceed 50% of the total number of all Houses owned by Borrower (provided, however, the limit will seasonally increase to 60% from 02/01 to 05/31 of each year) **Yes** **No**
- \_\_\_\_\_ ÷ \_\_\_\_\_ = \_\_\_\_\_ %  
 # of Spec Houses in BB Total # of all Houses
19. **COMPLETED SPEC HOUSE SUBLIMIT (2.3(i)):** The number of Completed Spec Houses in the Borrowing Base does not exceed 25% of the total number of all Houses owned by Borrower **Yes** **No**
- \_\_\_\_\_ ÷ \_\_\_\_\_ = \_\_\_\_\_ %  
 # of Comp. Spec Houses in BB Total # of all Houses
20. **RISK ASSETS: Maximum Credit Amount**
- Max. Credit Amount of all Land (Line 2): \$ \_\_\_\_\_
- Max. Credit Amount of all LUD (Line 3): \$ \_\_\_\_\_
- Max. Credit Amount of all Lots (Line 4): \$ \_\_\_\_\_ Total \$ \_\_\_\_\_
21. **RISK ASSETS SUBLIMIT (2.3(j)):** Revolving Credit Exposure to Risk Assets does not exceed 150% of Tangible Net Worth **Yes** **No**
- A. Max. Credit Amount of all Risk Assets: (Line 20) \$ \_\_\_\_\_
- B. Max. Credit Amount of all Assets (Line 8): \$ \_\_\_\_\_
- A ÷ B = \_\_\_\_\_ % (X%)
- C. Total Revolving Credit Exposure (Line 17): \$ \_\_\_\_\_
- D. Revolving Credit Exposure to Risk Assets: C x X% = \$ \_\_\_\_\_
- E. Tangible Net Worth: \$ \_\_\_\_\_
- F. Tangible Net Worth x 150% = \$ \_\_\_\_\_
- If D does not exceed F, then "Yes;" otherwise, "No."

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*IN WITNESS WHEREOF*, the undersigned has executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_.

**RESPONSIBLE OFFICER:**

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Name: David Messenger  
Title: Chief Financial Officer

**[Attach a schedule of Borrowing Base Property.]**

BORROWING BASE REPORT – Page 3

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EXHIBIT C

Compliance Certificate

[The form of Compliance Certificate follows this cover page.]

EXHIBIT C – Compliance Certificate – Cover Page

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**COMPLIANCE CERTIFICATE**

FOR QUARTER ENDED \_\_\_\_\_ (the “*Subject Period*”)  
ADMINISTRATIVE AGENT: Texas Capital Bank, National Association  
BORROWER: Century Communities, Inc.

This Compliance Certificate (this “*Certificate*”) is delivered under the Amended and Restated Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”) dated as of June 5, 2018, by and among Borrower, the Lenders from time to time party thereto and Administrative Agent. Capitalized terms used in this Certificate shall, unless otherwise indicated, have the meanings set forth in the Credit Agreement. The undersigned hereby certifies to Administrative Agent and Lender as of the date hereof that: (a) he is the \_\_\_\_\_ of Borrower, and that, as such, he is authorized to execute and deliver this Certificate to Administrative Agent on behalf of Borrower; (b) he has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his supervision, a detailed review of the transactions and condition (financial or otherwise) of Borrower during the Subject Period; (c) during the Subject Period, to the best of his knowledge, Borrower performed and observed each covenant and condition of the Loan Documents applicable to it and no Default or Event of Default currently exists or has occurred which has not been cured or waived by Required Lenders or all Lenders, as required by the Loan Documents; (d) the representations and warranties of Borrower contained in *Article 6* of the Credit Agreement, and any representations and warranties of Borrower that are contained in any document furnished at any time under or in connection with the Loan Documents, are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Certificate, the representations and warranties contained in *Section 6.2* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *Section 7.1* of the Credit Agreement, including the statements in connection with which this Certificate is delivered; (e) the financial statements of Borrower attached to this Certificate were prepared in accordance with GAAP, and present, on a consolidated basis, fairly and accurately the financial condition and results of operations of Borrower and its Subsidiaries as of the end of and for the Subject Period; (f) the financial covenant analyses and information set forth below are true and accurate on and as of the date of this Certificate; and (g) the status of compliance by Borrower with certain covenants of the Credit Agreement at the end of the Subject Period is as set forth below:

		In Compliance as of End of Subject Period (Please Indicate)	
1.	<u>Financial Statements and Reports</u>		
	(a) Provide annual audited FYE financial statements within 90 days after the last day of each fiscal year.	Yes	No
	(b) Provide quarterly financial statements within 45 days after the last day of the first three fiscal quarters of each year.	Yes	No
	(c) Provide monthly Borrowing Base Report within 30 days after the last day of each month.	Yes	No
	(d) Provide a quarterly Compliance Certificate within 45 days after the last day of each fiscal quarter.	Yes	No
	(e) Provide quarterly Inventory and Sales Status Report within 45 days after the last day of each fiscal quarter.	Yes	No
	(f) Provide annual projections no more than 60 days after the start of each fiscal year	Yes	No
2.	<u>Real Estate Subsidiaries</u>		
	None, except as listed on <i>Schedule 6.13</i> , or that have executed a Guaranty.	Yes	No
3.	<u>Debt</u>		
	None, except Debt permitted by <i>Section 8.1</i> of the Credit Agreement.	Yes	No
4.	<u>Liens</u>		
	None, except Liens permitted by <i>Section 8.2</i> of the Credit Agreement.	Yes	No
5.	<u>Acquisitions and Mergers</u>		
	None, except those permitted by <i>Section 8.3</i> of the Credit Agreement.	Yes	No
6.	<u>Dividends and Stock Repurchase</u>		
	None, except as permitted by <i>Section 8.4</i> of the Credit Agreement. (if applicable, Dollar amount during Subject Period: \$____)	Yes	No
7.	<u>Loans and Investments</u>		
	None, except those permitted by <i>Section 8.5</i> of the Credit Agreement.	Yes	No
8.	<u>Issuance of Equity</u>		
	None, except issuances permitted by <i>Section 8.6</i> of the Credit Agreement.	Yes	No
9.	<u>Affiliate Transactions</u>		
	None, except transactions permitted by <i>Section 8.7</i> of the Credit Agreement.	Yes	No



10.	<u>Dispositions of Assets</u> None, except dispositions permitted by Section 8.8 of the Credit Agreement.	Yes	No
11.	<u>Sale and Leaseback Transactions</u> None, except transactions permitted by Section 8.9 of the Credit Agreement.	Yes	No
12.	<u>Prepayment of Debt</u> None, except prepayments permitted by Section 8.10 of the Credit Agreement.	Yes	No
13.	<u>Changes in Nature of Business</u> None, except changes permitted by Section 8.11 of the Credit Agreement.	Yes	No
14.	<u>Environmental Protection</u> No activity likely to cause violations of Environmental Laws or create any Environmental Liabilities.	Yes	No
15.	<u>Changes in Fiscal Year; Accounting Practices</u> None, except transactions permitted by Section 8.13 of the Credit Agreement.	Yes	No
16.	<u>No Negative Pledge</u> None, except those permitted by Section 8.14 of the Credit Agreement.	Yes	No
17.	<u>Leverage Ratio</u> <ul style="list-style-type: none"> <li>• Maximum of 1.50 to 1.00 at end of Subject Period, if no Triggering Event</li> <li>• Maximum of 1.75 to 1.00 for the first 4 Subject Periods ending after a Triggering Event</li> <li>• Maximum of 1.60 to 1.00 for the 5<sup>th</sup> and 6<sup>th</sup> Sub. Periods ending after a Triggering Event</li> <li>• Maximum of 1.50 to 1.00 for all other Subject Periods ending after a Triggering Event (Defined as Debt divided by TNW).</li> </ul> $\frac{\text{_____}}{\text{Debt}} \div \frac{\text{_____}}{\text{TNW}} = \text{_____}$	Yes	No
	Has Triggering Event Occurred? Date of Triggering Event: _____, 20____	Yes	No
18.	<u>Interest Coverage Ratio</u> Minimum of 1.50 to 1.00 at end of Subject Period (Defined as EBITDA divided by Cash Interest Expense; calculated on a rolling 4 quarter basis).	Yes	No

$$\frac{\text{EBITDA}}{\text{Interest Expense}} = \text{_____}$$

19. Tangible Net Worth (TNW) Yes      No  
 Minimum of \$\_\_\_\_\_ at end of Subject Period (defined as (a) \$546,000,000 plus (b) 50% of net proceeds of equity issuances after 3/31/18, plus (c) the sum of 50% of the amount of quarterly net income (without deduction for net loss) after 3/31/18.

Equity Issuances: \$\_\_\_\_\_ X 50% = \$\_\_\_\_\_

Quarterly Net Income: \$\_\_\_\_\_ X 50% = \$\_\_\_\_\_

$$\begin{aligned}
 &\$546,000,000 + \frac{\text{_____}}{\text{50\% of Equity Issuances after 3/31/2018}} + \frac{\text{_____}}{\text{50\% Net Income after 3/31/2018}} = \text{_____}
 \end{aligned}$$

Tangible Net Worth: \$\_\_\_\_\_

20. Liquidity Yes      No  
 Minimum of \$40,000,000 at end of Subject Period

$$\text{Cash} + \text{Available to Draw} = \text{Liquidity}$$

21. Risk Asset Ratio  
 Maximum of 1.50 to 1.00 at end of Subject Period (Defined as Risk Assets divided by Tangible Net Worth).

$$\frac{\text{Land} + \text{LUD} + \text{Lots}}{\text{Risk Assets}} = \text{_____}$$

$$\frac{\text{Risk Assets}}{\text{TNW}} = \text{_____}$$

Yes      No  
  
Yes      No

---

*IN WITNESS WHEREOF*, the undersigned has executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_.

**RESPONSIBLE OFFICER:**

---

Name: David Messenger  
Title: Chief Financial Officer

EXHIBIT D

Borrowing Request

Date: \_\_\_\_\_, \_\_\_\_

To: Texas Capital Bank, National Association, as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of June 5, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**;" the terms defined therein being used herein as therein defined), among CENTURY COMMUNITIES, INC., a Delaware corporation ("**Borrower**"), the Lenders from time to time party thereto, and Texas Capital Bank, National Association, as Administrative Agent and L/C Issuer.

The undersigned hereby requests (select one):

- A Borrowing of Loans
- A conversion or continuation of Loans
  1. On \_\_\_\_\_ (a Business Day).
  2. In the amount of \$ \_\_\_\_\_
  3. Comprised of \_\_\_\_\_  
(Type of Loan requested)

The undersigned Responsible Officer hereby represents and warrants that the conditions specified in *Section 5.2* of the Credit Agreement shall be satisfied on and as of the date of the requested Borrowing.

**RESPONSIBLE OFFICER:**

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

EXHIBIT E

Note

\$ \_\_\_\_\_

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, CENTURY COMMUNITIES, INC., a Delaware corporation ("**Borrower**"), hereby promises to pay to the order of ("**Lender**"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal sum of \_\_\_\_\_ AND XX/100 DOLLARS (\$ \_\_\_\_\_) or so much thereof as may be advanced by Lender from time to time to or for the benefit or account of Borrower under that certain Amended and Restated Credit Agreement, dated as of June 5, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**;" the terms defined therein being used herein as therein defined), among Borrower, the lenders from time to time party thereto, and Texas Capital Bank, National Association, as Administrative Agent (in such capacity, "**Administrative Agent**"), and L/C Issuer.

Borrower promises to pay interest on the unpaid principal amount of this Note from the date hereof until the Loans made by Lender are paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to Administrative Agent for the account of Lender in Dollars in immediately available funds at Administrative Agent's Principal Office. If any amount is not paid in full when due hereunder, then such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. The Loans made by Lender shall be evidenced by an account maintained by Lender in the ordinary course of business. Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE, AND ANY CLAIM, CONTROVERSY, OR DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS NOTE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOLLOWS]

---

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

BORROWER:

**CENTURY COMMUNITIES, INC.,**  
a Delaware corporation

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

Note  
Signature Page

EXHIBIT F-1

U.S. Tax Compliance Certificate

(For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of June 5, 2018 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Century Communities, Inc., Texas Capital Bank, National Association, as Administrative Agent, L/C Issuer and each Lender from time to time party thereto.

Pursuant to the provisions of *Section 3.4* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of *Section 881(c)(3)(A)* of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code and (iv) it is not a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished Administrative Agent and Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN (or W-8BEN-E, as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

EXHIBIT F-2

U.S. Tax Compliance Certificate

(For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of June 5, 2018 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Century Communities, Inc., Texas Capital Bank, National Association, as Administrative Agent, L/C Issuer and each Lender from time to time party thereto.

Pursuant to the provisions of *Section 3.4* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of *Section 881(c)(3)(A)* of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code and (iv) it is not a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN (or W-8BEN-E, as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_



EXHIBIT F-3

U.S. Tax Compliance Certificate

(For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of June 5, 2018 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Century Communities, Inc., Texas Capital Bank, National Association, as Administrative Agent, L/C Issuer and each Lender from time to time party thereto.

Pursuant to the provisions of *Section 3.4* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of *Section 881(c)(3)(A)* of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN (or W-8BEN-E, as applicable), or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN (or W-8BEN-E, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

EXHIBIT F-4

U.S. Tax Compliance Certificate

(For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of June 5, 2018 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Century Communities, Inc., Texas Capital Bank, National Association, as Administrative Agent, L/C Issuer and each Lender from time to time party thereto.

Pursuant to the provisions of *Section 3.4* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of *Section 881(c)(3)(A)* of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished Administrative Agent and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN (or W-8BEN-E, as applicable), or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN (or W-8BEN-E, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

EXHIBIT I – U.S Tax Compliance Certificate – Page 4

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## Section 3: EX-99.1 (EX-99.1)

Exhibit 99.1



### CENTURY COMMUNITIES UPSIZES CREDIT FACILITY AND EXTENDS MATURITY DATE TO 2022

**GREENWOOD VILLAGE, COLORADO (June 5, 2018)** – Century Communities, Inc. (NYSE: CCS) (“Century”), a leading national homebuilder, today announced that it has upsize its senior unsecured credit facility to \$540 million, with an accordion feature allowing the Company to increase the borrowing capacity to \$640 million. Borrowings under the credit facility will bear interest at a rate of LIBOR plus a minimum spread of 2.60%. The term of the credit facility has been extended to mature in April 2022. The credit facility will be available for working capital needs, general corporate purposes and growth initiatives. Currently there are no borrowings outstanding on the credit facility.

“We are pleased to announce the upsize and the maturity date extension of our unsecured credit facility,” said Dave Messenger, Chief Financial Officer. “We expect this enhanced facility to reduce overall borrowing costs and further improve our already strong liquidity position. We appreciate our bank group’s continued support for Century and our strategic plan.”

Texas Capital Bank, Fifth Third Bank, Bank of America Merrill Lynch and U.S. Bank acted as joint Lead Arrangers and 6 additional banks are

participants in the credit facility. Additional details on pricing and other terms of the credit facility may be found in the Form 8-K that will be filed with the Securities and Exchange Commission and also available on the Investor Relations section of our website at [www.centurycommunities.com](http://www.centurycommunities.com).

#### **About Century Communities:**

Century Communities, Inc. (NYSE:CCS) is one of the nation's largest U.S. homebuilders, engaged in all aspects of homebuilding, including the acquisition, entitlement and development of land and the construction, marketing and sale of quality homes designed to appeal to a wide range of homebuyers. The Colorado-based Company operates in 10 states across the West, Mountain, Texas and Southeast Regions and offers title and lending services in select markets through its Parkway Title and Inspire Home Loan subsidiaries. To learn more about Century Communities please visit [www.centurycommunities.com](http://www.centurycommunities.com).

#### **Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and, as such, may involve known and unknown risks, uncertainties and assumptions. Forward-looking statements may be identified by the use of words such as "anticipate," "believe," "expect," "estimate," "plan," "outlook," and "project" and other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. Forward-looking statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Forward-looking statements are based on historical information available at the time the statements are made and are based on management's reasonable belief or expectations with respect to future events, and are subject to risks and uncertainties, many of which are beyond the Company's control, that could cause actual performance or results to differ

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materially from the belief or expectations expressed in or suggested by the forward-looking statements. Forward-looking statements speak only as of the date on which they are made and the Company undertakes no obligation to update any forward-looking statement to reflect future events, developments or otherwise, except as may be required by applicable law. Investors are referred to the Company's Annual Report on Form 10-K for additional information regarding the risks and uncertainties that may cause actual results to differ materially from those expressed in any forward-looking statement.

**Contact Information:**

Investor Relations:

303-268-8398

InvestorRelations@CenturyCommunities.com

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