

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 10-K

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

For the fiscal year ended OCTOBER 31, 2003

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 (NO FEE REQUIRED)

Commission file number: 1-8551

**Hovnanian Enterprises, Inc.**

*(Exact Name of Registrant as Specified in Its Charter)*

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

22-1851059  
*(I.R.S. Employer  
Identification No.)*

10 Highway 35, P.O. Box 500, Red Bank, N.J.  
*(Address of Principal Executive Offices)*

07701  
*(Zip Code)*

732-747-7800

*(Registrant's Telephone Number, Including Area Code)*

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

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Class A Common Stock, \$.01 par value per share	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act – None

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

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

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

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity as of April 30, 2003 was \$654,743,810.

As of the close of business on January 5, 2004, there were outstanding 23,044,974 shares of the Registrant's Class A Common Stock and 7,330,140 shares of its Class B Common Stock.

**Documents Incorporated by Reference:**

Part III – Those portions of registrant's definitive proxy statement to be filed pursuant to Regulation 14A in connection with registrant's annual meeting of shareholders to be held on March 5, 2004 which are responsive to Items 10, 11, 12 and 13.

**HOVNIANIAN ENTERPRISES, INC.**  
**FORM 10-K**  
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**PART I**

**ITEMS 1 AND 2 – BUSINESS AND PROPERTIES**

**Business Overview**

We design, construct and market high quality single-family detached homes and attached condominium apartments and townhouses in planned residential developments and are one of the nation's largest builders of residential homes. Originally founded in 1959 by Kevork Hovnanian, Hovnanian Enterprises, Inc. was incorporated in New Jersey in 1967 and reincorporated in Delaware in 1982. Since the incorporation of our predecessor company, we have delivered in excess of 167,000 homes, including 11,531 homes in fiscal 2003. The Company consists of two operating groups: homebuilding and financial services. Our financial services group provides mortgage loans and title services to our homebuilding customers.

We are currently offering homes for sale in 257 communities in 23 markets throughout the United States. We primarily market and build homes for first-time buyers, first-time and second-time move-up buyers, luxury buyers, active adult buyers and empty nesters. We offer a variety of home styles at base prices ranging from \$70,000 to \$973,000 with an average sales price including options in fiscal 2003 of \$271,000.

Our operations span all significant aspects of the home-buying process – from design, construction and sale, to mortgage origination and title services.

The following is a summary of our growth history:

1959 – Founded by Kevork Hovnanian as a New Jersey homebuilder.

1983 – Completed initial public offering.

1986 – Entered the North Carolina homebuilding market through the acquisition of New Fortis.

1992 – Entered the greater Washington D.C. market.

1994 – Entered the Coastal Southern California market.

1998 – Expanded in the greater Washington D.C. market through the acquisition of P.C. Homes.

1999 – Entered the Dallas, Texas market through our acquisition of Goodman Homes. Further diversified and strengthened our position as New Jersey’s largest homebuilder through the acquisition of Matzel & Mumford.

2001 – Continued expansion in the greater Washington D.C. and North Carolina markets through the acquisition of Washington Homes. This acquisition further strengthened our operations in each of these markets.

2002 – Entered the Central Valley market in Northern California and Inland Empire region of Southern California through the acquisition of Forecast Homes.

2003 – Expanded operations in the Texas and entered the Houston market through the acquisition of Parkside Homes and Brighton Homes. Entered the greater Ohio market through our acquisition of Summit Homes and entered the greater metro Phoenix market through our acquisition of Great Western Homes.

2004 – In November 2003 we entered the greater Tampa, Florida market through the acquisition of Windward Homes.

Hovnanian markets and builds homes that are constructed on-site in four regions which include 16 of the nation’s strongest housing markets. These four regions are the Northeast, Southeast, Southwest, and West.

### Geographic Breakdown of Markets by Region

Northeast:	New Jersey, Southern New York, Pennsylvania, and Ohio
Southeast:	Washington D.C., Maryland, North Carolina, South Carolina, Virginia, West Virginia, and Florida
Southwest:	Arizona and Texas
West:	California

We employed approximately 3,249 full-time associates as of October 31, 2003.

Our Corporate offices are located at 10 Highway 35, P. O. Box 500, Red Bank, New Jersey 07701, our telephone number is (732)747-7800, and our Internet website address is [www.khov.com](http://www.khov.com). We make available through our website our annual report on Form 10-K as soon as reasonably practicable after it is filed with the SEC. Copies of the Company’s quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to these reports are available free of charge upon request.

### Business Strategies

The following is a summary of our key business strategies. We believe that these strategies separate us from our competitors in the residential homebuilding industry and the adoption, implementation, and adherence to these principles will dramatically improve our business, lead to higher profitability for our shareholders and give us a clear advantage over our competitors.

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Our market concentration strategy is a key factor that enables us to achieve powers and economies of scale and differentiate ourselves from most of our competitors. Our goal is to become a significant builder in each of the selected markets in which we operate.

We offer a broad product array to provide housing to a wide range of customers. Our customers consist of first-time buyers, first- and second-time move-up buyers, luxury buyers, active adult buyers and empty nesters. Our diverse product array includes single family detached, attached townhomes and condominiums, urban infill and active adult homes.

We are committed to customer satisfaction and quality in the homes that we build. We recognize that our future success rests in the ability to deliver quality homes to satisfied customers. We seek to expand our commitment to customer service through a variety of quality initiatives. In addition, our focus remains on attracting and developing quality associates. We use several leadership development and mentoring programs to identify key individuals and prepare them for positions of greater responsibility within the Company.

We focus on achieving high return on invested capital. Each new community, whether through organic growth or acquisition, is evaluated based on its ability to meet or exceed internal rate of return projections. Incentives for both local and senior management are based, primarily, on the ability to generate returns on capital deployed. Our belief is that the best way to create lasting value for our shareholders is through a strong focus on return on invested capital.

We utilize a risk adverse land strategy. We attempt to acquire land with a minimum cash investment and negotiate takedown options, thereby limiting the financial exposure to the amounts invested in property and predevelopment costs. This policy significantly reduces our risk and generally allows us to obtain necessary development approvals before acquisition of the land.

We adhere to a strategy of achieving growth through expansion of our organic operations and through the selected acquisition of other homebuilders. In our existing markets, we continue to introduce a broader product array to gain market share and reach a more diverse group of customers. Selective acquisitions have expanded our geographic footprint, strengthened our market share in existing markets and further diversified our product offerings. Integration of acquired companies is our core strength and organic growth after an acquisition is boosted by deployment of our broad product array. Acquisitions limit our market-specific start-up costs, and allow us to gain an immediate foothold in a market, without the usual learning curve and associated risks.

We seek to expand our financial services operations to better serve all of our homebuyers. Our current mortgage financing and title service operations enhance the profitability and growth of our company.

We are committed to becoming a better and more efficient homebuilding company. Over the past few years, our strategies have included several initiatives to fundamentally transform our traditional practices used to design, build and sell homes and focus on “building better.” These performance enhancing initiatives, processes and systems have been successfully used in other manufacturing industries and include implementation of standardized “best practice processes”, rapid cycle times, vendor consolidation, vendor partnering, distribution, fabrication and installation, and just-in-time material procurement. Other initiatives include standardized home designs that can be deployed in multiple geographic markets with minimal architectural modification.

## **Operating Policies and Procedures**

We attempt to reduce the effect of certain risks inherent in the housing industry through the following policies and procedures:

Training is designed to provide our associates with the knowledge, attitudes, skill and habits necessary to succeed at their jobs. Our Training Department regularly conducts training classes in sales, construction, administration, and managerial skills.

Through our presence in multiple geographic markets, our goal is to reduce the effects that housing industry cycles, seasonality and local conditions in any one area may have on our business.

*Land Acquisition, Planning and Development* – Before entering into a contract to acquire land, we complete extensive comparative studies and analyses which assist us in evaluating the economic feasibility of such land acquisition. We generally follow a policy of acquiring options to purchase land for future community developments.

- We typically acquire land for future development principally through the use of land options which need not be exercised before the completion of the regulatory approval process. We attempt to structure these options with flexible take down schedules rather than with an obligation to take down the entire parcel upon approval. Additionally, we purchase improved lots in certain markets by acquiring a small number of improved lots with an option on

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additional lots. This allows us to minimize the economic costs and risks of carrying a large land inventory, while maintaining our ability to commence new developments during favorable market periods.

- Our option and purchase agreements are typically subject to numerous conditions, including, but not limited to, our ability to obtain necessary governmental approvals for the proposed community. Generally, the deposit on the agreement will be returned to us if all approvals are not obtained, although predevelopment costs may not be recoverable. By paying an additional, nonrefundable deposit, we have the right to extend a significant number of our options for varying periods of time. In most instances, we have the right to cancel any of our land option agreements by forfeiture of our deposit on the agreement. In such instances, we generally are not able to recover any predevelopment costs.

We offer a wide range of customer options to satisfy individual customer tastes. We have large regional home design galleries in New Jersey, Virginia, Maryland, North Carolina, Texas, and California.

*Design* – Our residential communities are generally located in suburban areas near major highways. Our communities are designed as neighborhoods that fit existing land characteristics. We strive to create diversity within the overall planned community by offering a mix of homes with differing architecture, textures and colors. Recreational amenities such as swimming pools, tennis courts, club houses and tot lots are frequently included.

*Construction* – We design and supervise the development and building of our communities. Our homes are constructed according to standardized prototypes which are designed and engineered to provide innovative product design while attempting to minimize costs of construction. We employ subcontractors for the installation of site improvements and construction of homes. Agreements with subcontractors are generally short term and provide for a fixed price for labor and materials. We rigorously control costs through the use of computerized monitoring systems. Because of the risks involved in speculative building, our general policy is to construct an attached condominium or townhouse building only after signing contracts for the sale of at least 50% of the homes in that building. A majority of our single family detached homes are constructed after the signing of a contract and mortgage approval has been obtained. This limits the build-up of inventory of unsold homes and the costs of maintaining and carrying that inventory.

*Materials and Subcontractors* – We attempt to maintain efficient operations by utilizing standardized materials available from a variety of sources. In addition, we contract with subcontractors to construct our homes. Hovnanian has reduced construction and administrative costs by consolidating the number of vendors serving markets and by executing national purchasing contracts with select vendors. In recent years, Hovnanian has experienced no significant construction delays due to shortages of materials or labor. Hovnanian cannot predict, however, the extent to which shortages in necessary materials or labor may occur in the future.

*Marketing and Sales* – Our residential communities are sold principally through on-site sales offices. In order to respond to our customers’ needs and trends in housing design, we rely upon our internal market research group to analyze information gathered from, among other sources, buyer profiles, exit interviews at model sites, focus groups and demographic data bases. We make use of newspaper, radio, magazine, our website, billboard, video and direct mail advertising, special promotional events, illustrated brochures, full-sized and scale model homes in our comprehensive marketing program. In addition, we have opened home design galleries in our Northeast Region, Virginia, Maryland, Texas, North Carolina, and California, which have increased option sales and profitability in these markets.

*Customer Service and Quality Control* – Associates responsible for customer service participate in pre-closing quality control inspections as well as responding to post-closing customer needs. Prior to closing, each home is inspected and any necessary completion work is undertaken by us. In some of our markets, our homes are enrolled in a standard limited warranty program which, in general, provides a homebuyer with a one-year warranty for the home’s

materials and workmanship, a two-year warranty for the home's heating, cooling, ventilating, electrical and plumbing systems and a ten-year warranty for major structural defects. All of the warranties contain standard exceptions, including, but not limited to, damage caused by the customer.

*Customer Financing* – We sell our homes to customers who generally finance their purchases through mortgages. During the year ended October 31, 2003, 8.3% of our homebuyers paid in cash and over 74% of our non-cash homebuyers obtained mortgages originated by one of our wholly-owned mortgage banking subsidiaries or our mortgage joint venture in California. Mortgages originated by our wholly-owned mortgage banking subsidiaries are sold in the secondary market.

## Residential Development Activities

Our residential development activities include evaluating and purchasing properties, master planning, obtaining governmental approvals and constructing, marketing and selling homes. A residential development generally includes single family detached homes and/or a number of residential buildings containing from two to twenty-four individual homes per building, together with amenities such as recreational buildings, swimming pools, tennis courts and open areas.

Our development activities include site planning and engineering, obtaining environmental and other regulatory approvals and constructing roads, sewer, water and drainage facilities, and for our residential developments, recreational facilities and other amenities. These activities are performed by our staff, together with independent architects, consultants and contractors. Our staff also carries out long-term planning of communities.

Current base prices for our homes in contract backlog at October 31, 2003 (exclusive of upgrades and options) range from \$70,000 to \$700,000 in our Northeast Region, from \$93,000 to \$931,000 in our Southeast Region, from \$84,000 to \$654,000 in our Southwest Region, and from \$150,000 to \$973,000 in our West Region. Closings generally occur and are typically reflected in revenues from two to nine months after sales contracts are signed.

Information on homes delivered by market area is set forth below:

<i>(Housing Revenue in Thousands)</i>	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
<b>Northeast Region<sup>(1)</sup>:</b>			
Housing Revenues	\$ 774,209	\$ 660,250	\$ 570,647
Homes Delivered	2,387	2,144	1,860
Average Price	\$ 324,344	\$ 307,952	\$ 306,799
<b>Southeast Region<sup>(3)</sup>:</b>			
Housing Revenues	\$ 682,210	\$ 660,328	\$ 566,205
Homes Delivered	2,720	2,806	2,743
Average Price	\$ 250,813	\$ 235,327	\$ 206,418
<b>Southwest Region<sup>(1)</sup>:</b>			
Housing Revenues	\$ 481,634	\$ 240,181	\$ 215,045
Homes Delivered	2,431	1,033	1,003
Average Price	\$ 198,122	\$ 232,508	\$ 214,402
<b>West Region<sup>(2)</sup>:</b>			
Housing Revenues	\$1,190,516	\$ 852,373	\$ 280,582
Homes Delivered	3,984	3,220	760
Average Price	\$ 298,824	\$ 264,712	\$ 369,187
<b>Other<sup>(4)</sup>:</b>			
Housing Revenues	\$ 1,261	\$ 48,963	\$ 61,238
Homes Delivered	9	311	425
Average Price	\$ 140,111	\$ 157,437	\$ 144,089
<b>Combined Total:</b>			
Housing Revenues	\$3,129,830	\$2,462,095	\$1,693,717
Homes Delivered	11,531	9,514	6,791
Average Price	\$ 271,427	\$ 258,787	\$ 249,406

<sup>(1)</sup> October 31, 2003 includes deliveries from our Texas, Ohio, and Arizona acquisitions beginning on November 1, 2002, January 1, 2003, April 1, 2003, and August 13, 2003, respectively.

<sup>(2)</sup> October 31, 2002 includes deliveries from our California acquisition beginning on January 10, 2002.

<sup>(3)</sup> October 31, 2001 includes deliveries from our Southeast Region acquisition beginning on January 24, 2001.

<sup>(4)</sup> Other includes operations from markets we have exited in recent years.

The value of our net sales contracts increased 35.4% to \$3,294.6 million for the year ended October 31, 2003 from \$2,432.2 million for the year ended October 31, 2002. This increase was the net result of a 30.8% increase in the number of homes contracted to 12,285 in 2003 from 9,394 in 2002. By market, on a dollar basis, the Northeast Region increased 38.6%, the Southeast Region increased 27.7%, the Southwest Region increased 111.4% and the West Region

increased 24.7%. Excluding acquisitions, our net contracts increased in all of our regions and we continue to experience solid demand for new homes in all our markets. Our increases were due to increased sales and increased sales prices in all of our regions except in our Southwest Region where sales prices decreased slightly due to a shift in our mix of communities to those with more entry level homes.

The following table summarizes our active communities under development as of October 31, 2003. The contracted not delivered and remaining home sites available in our active communities under development are included in the 74,298 total home lots under the total residential real estate chart in Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

	Communities	Approved Lots	Homes Delivered	Contracted Not Delivered <sup>(1)</sup>	Remaining Home Sites Available <sup>(2)</sup>
Northeast Region	32	12,937	4,401	1,477	7,059
Southeast Region	107	16,360	6,197	1,761	8,402
Southwest Region	81	10,495	3,368	989	6,138
West Region	37	14,746	7,387	793	6,566
Total	257	54,538	21,353	5,020	28,165

<sup>(1)</sup> Includes 807 lots under option and excludes 741 lots under our “build on your own lot” program.

<sup>(2)</sup> Of the total remaining home sites available, 1,354 were under construction or completed (including 275 models and sales offices), 16,267 were under option, and 268 were financed through purchase money mortgages.

The following table summarizes our total started or completed unsold homes as of October 31, 2003:

	Unsold Homes	Models	Total
Northeast Region	130	44	174
Southeast Region	207	32	239
Southwest Region	557	94	651
West Region	185	105	290
Total	1,079	275	1,354

## Backlog

At October 31, 2003 and October 31, 2002, we had a backlog of signed contracts for 5,761 homes and 3,857 homes, respectively, with sales values aggregating \$1,530.4 million and \$1,076.7 million, respectively. Substantially all of our backlog at October 31, 2003 is expected to be completed and closed within the next twelve months. At November 30, 2003 and 2002, our backlog of signed contracts was 6,508 homes and 4,051 homes, respectively, with sales values aggregating \$1,716.8 million and \$1,130.8 million, respectively.

Sales of our homes typically are made pursuant to a standard sales contract that provides the customer with a statutorily mandated right of rescission for a period ranging up to 15 days after execution. This contract requires a nominal customer deposit at the time of signing. In addition, in the Northeast Region and the Southeast Region we typically obtain an additional 5% to 10% down payment due 30 to 60 days after signing. The contract may include a financing contingency, which permits the customer to cancel his obligation in the event mortgage financing at prevailing interest rates (including financing arranged or provided by us) is unobtainable within the period specified in the contract. This contingency period typically is four to eight weeks following the date of execution.

## Residential Land Inventory

It is our objective to control a supply of land, primarily through options, consistent with anticipated homebuilding requirements in each of our housing markets. Controlled land as of October 31, 2003, exclusive of communities under development described under “Business and Properties – Residential Development Activities,” is summarized in the following table. The proposed developable lots in communities under development are included in the 74,298 total home lots under the total residential real estate chart in Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

(In Thousands)	Number of Proposed Communities	Proposed Developable Lots	Total Land Option Price	Book Value <sup>(1)(2)</sup>
Northeast Region:				
Under Option	110	14,331	\$541,472	\$ 76,145
Owned	5	1,413		56,731
Total	115	15,744		132,876

<b>Southeast Region:</b>				
Under Option	91	10,614	\$637,389	23,935
Owned	8	1,731		36,666
Total	99	12,345		60,601
<b>Southwest Region:</b>				
Under Option	49	6,191	\$158,551	18,195
Owned	4	622		6,997
Total	53	6,813		25,192
<b>West Region:</b>				
Under Option	21	4,618	\$139,096	22,326
Owned	13	1,593		45,037
Total	34	6,211		67,363
<b>Totals:</b>				
Under Option	271	35,754		140,601
Owned	30	5,359		145,431
Combined Total	301	41,113		\$286,032

<sup>(1)</sup> Properties under option also include costs incurred on properties not under option but which are under evaluation. For properties under option, as of October 31, 2003, option fees and deposits aggregated approximately \$60.9 million. As of October 31, 2003, we spent an additional \$79.7 million in non-refundable predevelopment costs on such properties.

<sup>(2)</sup> The book value of \$286.0 million is identified on the balance sheet as "Inventories – land, land options, held for future development or sale," and does not include inventory in Poland amounting to \$4.0 million for communities partially under construction. The book value does include option deposits of \$7.3 million for specific performance options, \$4.7 million for other option deposits, and \$7.5 million for variable interest entity deposits reported under "Consolidated Inventory Not Owned".

In our Northeast Region, our objective is to control a supply of land sufficient to meet anticipated building requirements for at least four years. We typically option parcels of unimproved land for development.

In our Southeast Region, a portion of the land we acquired was from land developers on a lot takedown basis. In our Southwest Region, we primarily acquire improved lots from land developers. Under a typical agreement with the lot developer, we purchase a minimal number of lots. The balance of the lots to be purchased is covered under an option agreement or a non-recourse purchase agreement. Due to the dwindling supply of improved lots in these markets, we are currently optioning parcels of unimproved land for development.

In our West Region, where possible, we plan to option developed or partially developed lots. With a limited supply of developed lots in the West, we are also optioning parcels of unimproved land for development.

## Customer Financing

At our communities, on-site personnel facilitate sales by offering to arrange financing for prospective customers through our mortgage subsidiaries. We believe that the ability to offer financing to customers on competitive terms as a part of the sales process is an important factor in completing sales.

Our business consists of providing our customers with competitive financing and coordinating and expediting the loan origination transaction through the steps of loan application, loan approval and closing. We originate loans in New Jersey, New York, Pennsylvania, Maryland, Virginia, North Carolina, Texas, Ohio, and California. During the year ended October 31, 2003, approximately 8.3% of our homebuyers paid in cash and over 74% of our non-cash homebuyers obtained mortgages originated by one of our wholly-owned mortgage banking subsidiaries or our mortgage joint venture in our Northeast Region and West Region.

We customarily sell virtually all of the loans and loan servicing rights that we originate. Loans are sold either individually or in pools to GNMA, FNMA, or FHLMC or against forward commitments to institutional investors, including banks, mortgage banking firms, and savings and loan associations.

## Competition

Our residential business is highly competitive. We are among the top ten homebuilders in the United States in both homebuilding revenues and home deliveries. We compete with numerous real estate developers in each of the geographic areas in which we operate. Our competition range from small local builders to larger regional and national builders and developers, some of which have greater sales and financial resources than us. Previously owned homes and the availability of rental housing provide additional competition. We compete primarily on the basis of reputation, price, location, design, quality, service and amenities.

## Regulation and Environmental Matters

*General.* We are subject to various local, state and federal statutes, ordinances, rules and regulations concerning zoning, building design, construction and similar matters, including local regulations which impose restrictive zoning and density requirements in order to limit the number of homes that can eventually be built within the boundaries of a particular locality. In addition, we are subject to registration and filing requirements in connection with the construction, advertisement and sale of our communities in certain states and localities in which we operate even if all necessary government approvals have been obtained. We

may also be subject to periodic delays or may be precluded entirely from developing communities due to building moratoriums that could be implemented in the future in the states in which we operate. Generally, such moratoriums relate to insufficient water or sewerage facilities or inadequate road capacity.

*Environmental.* We are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning protection of health and the environment ("environmental laws"). The particular environmental laws which apply to any given community vary greatly according to the community site, the site's environmental conditions and the present and former uses of the site. These environmental laws may result in delays, may cause us to incur substantial compliance and other costs, and prohibit or severely restrict development in certain environmentally sensitive regions or areas.

*Conclusion.* Despite our past ability to obtain necessary permits and approvals for our communities, we anticipate that increasingly stringent requirements will be imposed on developers and homebuilders in the future. Although we cannot predict the effect of these requirements, they could result in time-consuming and expensive compliance programs and substantial expenditures for pollution and water quality control, which could have a material adverse effect on our profitability. In addition, the continued effectiveness of permits already granted or approvals already obtained is dependent upon many factors, some of which are beyond our control, such as changes in policies, rules and regulations and their interpretation and application.

*Company Offices:* We own a 24,000 square foot office complex located in the Northeast Region that serves as our corporate headquarters. We also own 234,992 square feet of office and warehouse space throughout our Northeast Region and 6,846 square feet of office space in our Southeast Region. We lease approximately 330,038 square feet of space for our other operating divisions located in our Northeast Region, Southeast Region, Southwest Region and West Region.

### ITEM 3 – LEGAL PROCEEDINGS

We are involved in litigation arising in the ordinary course of business, none of which is expected to have a material adverse effect on us. Over the past several years, general liability insurance for homebuilding companies and their suppliers and subcontractors has become very difficult to obtain. The availability of general liability insurance has been limited due to a decreased number of insurance companies willing to write for the industry. In addition, those few insurers willing to write liability insurance have significantly increased the premium costs. The Company has been able to obtain general liability insurance but at higher premium costs with higher deductibles. The Company has been advised that a significant number of its subcontractors and suppliers have also had difficulty obtaining insurance that also provides coverage to the Company. While no assurance can be given, the Company believes that it will be able to continue to obtain coverage but at higher total costs.

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### ITEM 4 – SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

During the fourth quarter of the year ended October 31, 2003 no matters were submitted to a vote of security holders.

#### Executive Officers of the Registrant

Information on executive officers of the registrant is incorporated herein from Part III, Item 10.

## PART II

### ITEM 5 – MARKET FOR THE REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDERS MATTERS

Our Class A Common Stock is traded on the New York Stock Exchange and was held by 459 shareholders of record at January 5, 2004. There is no established public trading market for our Class B Common Stock, which was held by 334 shareholders of record at January 5, 2004. In order to trade Class B Common Stock, the shares must be converted into Class A Common Stock on a one-for-one basis. The high and low sales prices for our Class A Common Stock were as follows for each fiscal quarter during the years ended October 31, 2003, 2002, and 2001:

Quarter	Class A Common Stock					
	Oct. 31, 2003		Oct. 31, 2002		Oct. 31, 2001	
	High	Low	High	Low	High	Low
First	\$38.80	\$29.13	\$22.40	\$10.00	\$ 9.99	\$ 7.19
Second	\$40.20	\$28.72	\$32.40	\$19.07	\$18.75	\$ 8.75
Third	\$69.17	\$39.21	\$38.75	\$24.31	\$19.34	\$13.00
Fourth	\$82.57	\$47.92	\$40.56	\$24.70	\$15.00	\$ 9.71

Certain debt instruments to which we are a party contain restrictions on the payment of cash dividends. As a result of the most restrictive of these provisions, approximately \$372.8 million of retained earnings was free of such restrictions at October 31, 2003. We have never paid a cash dividend nor do we currently intend to pay cash dividends.

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### ITEM 6 – SELECTED CONSOLIDATED FINANCIAL DATA



The following table sets forth selected financial data and should be read in conjunction with the financial statements included elsewhere in this Form 10-K. Per common share data and weighted average number of common shares outstanding reflect all stock splits.

Summary Consolidated Income Statement Data (In Thousands, Except Per Share Data)	Year Ended				
	October 31, 2003	October 31, 2002	October 31, 2001	October 31, 2000	October 31, 1999
Revenues	\$3,201,857	\$2,551,106	\$1,741,990	\$1,135,559	\$946,414
Expenses	2,790,339	2,325,376	1,635,636	1,083,741	897,133
Income before income taxes	411,518	225,730	106,354	51,818	49,281
State and Federal income taxes	154,138	88,034	42,668	18,655	19,206
Net income	\$ 257,380	\$ 137,696	\$ 63,686	\$ 33,163	\$ 30,075
Per Share Data:					
Basic:					
Net income	\$ 8.31	\$ 4.53	\$ 2.38	\$ 1.51	\$ 1.41
Weighted average number of common shares outstanding	30,960	30,405	26,810	21,933	21,404
Assuming Dilution:					
Net income	\$ 7.85	\$ 4.28	\$ 2.29	\$ 1.50	\$ 1.39
Weighted average number of common shares outstanding	32,769	32,155	27,792	22,043	21,612
Summary Consolidated Balance Sheet Data	October 31, 2003	October 31, 2002	October 31, 2001	October 31, 2000	October 31, 1999
Total assets	\$2,332,371	\$1,678,128	\$1,064,258	\$873,541	\$712,861
Mortgages, term loans and notes payable	\$ 326,216	\$ 215,365	\$ 111,795	\$ 78,206	\$110,228
Senior notes, and senior subordinated notes	\$ 687,166	\$ 546,390	\$ 396,544	\$396,430	\$250,000
Stockholders' equity	\$ 819,712	\$ 562,549	\$ 375,646	\$263,359	\$236,426

Note: See Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" for impact of our 2001, 2002, and 2003 acquisitions in our operating results.

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#### Ratios of Earnings to Fixed Charges and Earnings to Combined Fixed Charges and Preferred Stock Dividends

For purposes of computing the ratio of earnings to fixed charges and the ratio earnings to combined fixed charges and preferred dividends, earnings consist of earnings from continuing operations before income taxes, minority interest, extraordinary items and cumulative effect of accounting changes, plus fixed charges (interest charges and preferred share dividend requirements of subsidiaries, adjusted to a pretax basis), less interest capitalized, less preferred share dividend requirements of subsidiaries adjusted to a pretax basis and less undistributed earnings of affiliates whose debt is not guaranteed by us.

The following table sets forth the ratios of earnings to fixed charges and earnings to combined fixed charges and preferred dividends for the periods indicated:

	Years Ended October 31,				
	2003	2002	2001	2000	1999
Ratio of earnings to fixed charges	6.7	4.7	3.1	2.2	3.0
Ratio of earnings to combined fixed charges and preferred stock dividends	6.7	4.7	3.1	2.2	3.0

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## ITEM 7 – MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Critical Accounting Policies

Management believes that the following critical accounting policies affect its more significant judgments and estimates used in the preparation of its consolidated financial statements:

*Business Combinations* – When we make an acquisition of another company, we use the purchase method of accounting in accordance with the Statement of Financial Accounting Standards ("SFAS") No. 141 "Business Combinations" ("SFAS 141"). Under SFAS 141 (for acquisitions subsequent to June 30, 2001) and Accounting Principles Board ("APB") Opinion 16 (for acquisitions prior to June 30, 2001) we record as our cost the estimated fair value of the acquired assets less liabilities assumed. Any difference between the cost of an acquired company and the sum of the fair values of tangible assets less liabilities is recorded as

goodwill, indefinite or definite life intangibles. The reported income of an acquired company includes the operations of the acquired company from the date of acquisition.

*Income Recognition from Home and Land Sales* – Income from home and land sales are recorded when title is conveyed to the buyer, adequate cash payment has been received and there is no continued involvement.

*Income Recognition from Mortgage Loans* – Profits and losses relating to the sale of mortgage loans are recognized when legal control passes to the buyer and the sales price is collected.

*Inventories* – For inventories of communities under development, a loss is recorded when events and circumstances indicate impairment and the undiscounted future cash flows generated are less than the related carrying amounts. The impairment loss is based on discounted future cash flows generated from expected revenue, cost to complete including interest, and selling costs. Inventories and long-lived assets held for sale are recorded at the lower of cost or fair value less selling costs. Fair value is defined as the amount at which an asset could be bought or sold in a current transaction between willing parties, that is, other than in a forced or liquidation sale. Construction costs are accumulated during the period of construction and charged to cost of sales under specific identification methods. Land, land development, and common facility costs are allocated based on buildable acres to product types within each community, then charged to cost of sales equally based upon the number of homes to be constructed in each product type.

*Insurance Deductible Reserves* – Our deductible is \$150,000 per occurrence for worker’s compensation and general liability insurance. Reserves have been established based upon actuarial analysis of estimated future losses during 2003 and 2002.

*Interest* – Costs related to properties under development are capitalized during the land development and home construction period and expensed along with the associated cost of sales as the related inventories are sold. Costs related to properties not under development are charged to interest expense.

*Land Options* – Costs are capitalized when incurred and either included as part of the purchase price when the land is acquired or charged to operations when we determine we will not exercise the option. In accordance with Financial Accounting Standards Board (“FASB”) issued Interpretation No. 46 (“FIN 46”) “Consolidation of Variable Interest Entities” an interpretation of Accounting Research Bulletin No. 51, SFAS No. 49 “Accounting for Product Financing Arrangements” (“SFAS 49”), SFAS No. 98 “Accounting for Leases” (“SFAS 98”), and Emerging Issues Task Force (“EITF”) No. 97-10 “The Effects of Lessee Involvement in Asset Construction” (“EITF 97-10”), we record on the Consolidated Balance Sheet specific performance options, options with variable interest entities, and other options under Consolidated inventory not owned with the offset to Liabilities from inventory not owned, Minority interest from inventory not owned and Minority interest from consolidated joint ventures.

*Intangible Assets* – The intangible assets recorded on our balance sheet are goodwill, tradenames, architectural designs, distribution processes, and contractual agreements with both definite and indefinite lives resulting from company acquisitions. We no longer amortize goodwill or indefinite life intangibles, but instead assess them periodically for impairment. We performed such assessments utilizing a fair value approach as of October 31, 2003 and 2002, and determined that no impairment of intangibles existed. We are amortizing the definite life intangibles over their expected useful life, ranging from three to seven years.

*Post Development Completion Costs* – In those instances where a development is substantially completed and sold and we have additional construction work to be incurred, an estimated liability is provided to cover the cost of such work and is recorded in accounts payable and other liabilities in the accompanying consolidated balance sheets.

## **Capital Resources and Liquidity**

Our operations consist primarily of residential housing development and sales in our Northeast Region (New Jersey, southern New York state, Pennsylvania, and Ohio), our Southeast Region (Washington D.C., Maryland, Virginia, West Virginia, North Carolina, South Carolina, and Florida), our Southwest Region (Texas and Arizona), and our West Region

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(California). During the year ended October 31, 2002, we substantially liquidated our operations in the Mid-South. In addition, we provide financial services to our homebuilding customers.

Our cash uses during the twelve months ended October 31, 2003 were for operating expenses, increases in housing inventories, construction, income taxes, interest, the repurchase of common stock, the purchase of senior notes, the paydown of our revolving credit facility, and the acquisition of four homebuilders. We provided for our cash requirements from housing and land sales, the revolving credit facility, the issuance of \$150 million Senior Subordinated Notes, financial service revenues, and other revenues. We believe that these sources of cash are sufficient to finance our working capital requirements and other needs.

At October 31, 2003, there was no cash balance outstanding under our \$590 million revolving credit facility and we had approximately \$120 million of cash. At October 31, 2003, we had issued \$130.3 million of letters of credit which reduces cash available under our revolving credit facility.

Cash requirements for fiscal 2004 are projected to increase as we continue to open new communities and fund organic growth. We anticipate moderate usage under the existing revolving credit facility to replenish inventory associated with the construction of new homes. On November 3, 2003, we issued 6 1/2% Senior Notes which generated proceeds of approximately \$215 million. The purpose of this issuance was to fund existing operations and to ensure that we maintain ample liquidity to fund future growth.

Our net income historically does not approximate cash flow from operating activities. The difference between net income and cash flow from operating activities is primarily caused by changes in receivables, prepaid and other assets, interest and other accrued liabilities, accounts payable, inventory levels, mortgage loans and liabilities, and non-cash charges relating to depreciation, the writeoff of computer software costs, and impairment losses. In 2001, a portion of the difference was also due to goodwill amortization. When we are expanding our operations, which was the case in fiscal 2003 and 2002, inventory levels, receivables, prepaids and other assets increase causing cash flow from operating activities to decrease. Liabilities also increase as operations expand. The increase in liabilities partially offsets the negative effect on cash flow from operations caused by the increase in inventory levels, receivables, prepaids and other assets. As our mortgage warehouse loan asset increases, cash flow from financing operations decrease. Conversely, as such warehouse loan assets decrease, cash flow from

financing operations increase. Depreciation, intangible amortization and impairment losses always increase cash flow from operating activities since they are non-cash charges to operations.

On July 3, 2001, our Board of Directors authorized a stock repurchase program to purchase up to 2 million shares of Class A Common Stock. As of October 31, 2003, 903,938 shares have been purchased under this program, of which 297,619 and 147,619 were repurchased during the twelve months ended October 31, 2003 and 2002, respectively. In addition, in 2003, we retired 0.8 million shares that were held by a seller of a previous acquisition.

Our homebuilding bank borrowings are made pursuant to an amended and restated revolving credit agreement (the "Agreement") that provides a revolving credit line and letter of credit line of \$590 million through July 2006. Interest is payable monthly and at various rates of either the prime rate plus 0.275% or LIBOR plus 1.75%. In addition, we pay a fee equal to 0.350% per annum on the weighted average unused portion of the line. We believe that we will be able either to extend the Agreement beyond July 2006 or negotiate a replacement facility, but there can be no assurance of such extension or replacement facility. We currently are in compliance and intend to maintain compliance with the covenants under the Agreement. Each of our significant subsidiaries, except for our financial services subsidiaries and joint ventures, is a guarantor under the revolving credit agreement. As of October 31, 2003, there were no borrowings under the Agreement.

At October 31, 2003 we had \$390.2 million of outstanding senior debt (\$387.2 million, net of discount), comprised of \$140.3 million 10 1/2% Senior Notes due 2007, \$150 million 9 1/8% Senior Notes due 2009, and \$100 million 8% Senior Notes due 2012. At October 31, 2003, we had \$300 million outstanding senior subordinated debt comprised of \$150 million 8 7/8% Senior Subordinated Notes due 2012, and \$150 million 7 3/4% Senior Subordinated Notes due 2013. Each of our significant subsidiaries except for our financial services subsidiaries and joint ventures are a guarantor under the Senior Notes and Senior Subordinated Notes.

On January 22, 2002 we executed a \$165 million five-year Term Loan. The Term Loan matures January 22, 2007, and bears interest at either the prime rate plus 1.25% or LIBOR plus 2.5%. Each of our significant subsidiaries except for our financial services subsidiaries and joint ventures is a guarantor under the Term Loan. At October 31, 2003, borrowings under the Term Loan were \$115 million.

Our mortgage banking subsidiary's warehousing agreement was amended and restated on July 31, 2003. Pursuant to the agreement, we may borrow up to \$200 million. The agreement expires in July 2004 and interest is payable monthly at the Federal Funds Rate plus 1.375%. We believe that we will be able either to extend this agreement beyond July 2004 or negotiate a replacement facility, but there can be no assurance of such extension or replacement facility. As of October 31, 2003, the aggregate principal amount of all borrowings under this agreement was \$166.7 million.

Total inventory increased \$480.5 million during the twelve months ended October 31, 2003. This increase excluded the change in Consolidated Inventory Not Owned of \$98 million consisting of specific performance options, options with variable interest entities, and other options that were added to our balance sheet in accordance with SFAS 49, SFAS 98, and EITF 97-10, and Variable Interest Entities in accordance with FIN 46. See the "Recent Accounting Pronouncements" section of "Management's Discussion and Analysis of Financial Condition and Results of Operations" for additional explanation on FIN 46. Excluding the impact from acquisitions of \$159.3 million, total inventory in our Northeast Region increased \$129.4 million, the Southeast Region increased \$75.9 million and our West Region increased \$121.1 million. The increase in our existing regions was primarily the result of planned future organic growth. These increases were slightly offset by a \$4.7 million decrease in our Southwest Region due to fewer active selling communities. Substantially all homes under construction or completed and included in inventory at October 31, 2003 are expected to be closed during the next twelve months. Most inventory completed or under development is financed through our line of credit, term loan, and senior subordinated indebtedness.

We usually option property for development prior to acquisition. By optioning property, we are only subject to the loss of the cost of the option and predevelopment costs if we choose not to exercise the option. As a result, our commitment for major land acquisitions is reduced.

The following table summarizes housing lots included in our total residential real estate:

	Total Home Lots	Contracted Not Delivered	Remaining Lots Available
<b>October 31, 2003:</b>			
Northeast Region	24,280	1,477	22,803
Southeast Region	22,508	1,761	20,747
Southwest Region	13,940	989	12,951
West Region	13,570	793	12,777
Total	74,298	5,020	69,278
Owned	21,470	4,213	17,257
Optioned	52,828	807	52,021
Total	74,298	5,020	69,278
<b>October 31, 2002:</b>			
Northeast Region	21,399	1,371	20,028
Southeast Region	18,045	1,221	16,824
Southwest Region	4,084	277	3,807
West Region	10,431	955	9,476
Other	29	7	22
Total	53,988	3,831	50,157
Owned	13,362	3,195	10,167
Optioned	40,626	636	39,990
Total	53,988	3,831	50,157

Housing under contract at October 31, 2003 and October 31, 2002 was 5,761 homes and 3,857 homes, respectively, including our “build on your own lot” contracts not included in the above lot table.

The following table summarizes our started or completed unsold homes in active and substantially completed communities:

	October 31, 2003			October 31, 2002		
	Unsold Homes	Models	Total	Unsold Homes	Models	Total
Northeast Region	130	44	174	73	46	119
Southeast Region	207	32	239	225	63	288
Southwest Region	557	94	651	261	31	292
West Region	185	105	290	193	65	258
Other	—	—	—	2	—	2
Total	1,079	275	1,354	754	205	959

Receivables, deposits and notes increased \$16.2 million to \$42.5 million at October 31, 2003. The increase was primarily due to increased deposits and escrows related to construction activities and acquisitions in fiscal 2003. Deposits and escrows, and receivables from home sales amounted to \$21.6 million and \$4.1 million, respectively, at October 31, 2003.

Prepaid expenses and other assets increased \$10.8 million to \$97.4 million at October 31, 2003. The increase was primarily due to increases in joint ventures and prepaid project costs. We have entered into a few joint ventures with independent third parties to develop and sell land or to develop land to build and sell homes. At October 31, 2003 we have invested \$23.2 million in joint ventures. We have no guarantees associated with these unconsolidated joint ventures. Prepaid project costs consist of community specific expenditures that are used over the life of the community. Such prepaids are expensed as homes are delivered. At October 31, 2003, we have \$34.2 million of prepaid project costs. Prepaid expenses and other assets also include debt issuance fees, prepaid insurance, non-qualified associate benefit plan assets and miscellaneous prepaids and assets.

Intangibles increased \$57.3 million to \$139.6 million at October 31, 2003. \$82.7 million are categorized as goodwill and indefinite life intangibles. This amount resulted from company acquisitions prior to fiscal 2003. \$57.0 million are categorized as definite life intangibles resulting from acquisitions made in fiscal 2003. To the extent the acquisition price was greater than the book value of tangible assets which were stepped up to fair values, purchase price premiums are classified as intangibles. Professionals were hired to appraise all acquired intangibles. Such appraisals resulted in all fiscal 2003 acquisition premiums to be categorized as definite life intangibles. See the “Critical Accounting Policies” section of “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for additional explanation of intangibles. For tax purposes all our intangibles, except those resulting from an acquisition classified as a tax free exchange, are being amortized over 15 years.

*Financial Services* – Mortgage loans held for sale consist of residential mortgages receivable of which \$223.9 million and \$91.3 million at October 31, 2003 and October 31, 2002, respectively, are being temporarily warehoused and awaiting sale in the secondary mortgage market. The balance of mortgage loans held for sale are being held as an investment. We may incur risk with respect to mortgages that become delinquent, but only to the extent the losses are not covered by mortgage insurance or resale value of the house. Historically, we have incurred minimal credit losses.

Accounts payable and other liabilities increased \$31.7 million to \$230 million at October 31, 2003. Accounts payable and other liabilities consist primarily of accounts payable, accrued expenses, accrued compensation and reserves, which amounted to \$68.9 million, \$46.8 million, \$67.4 million, and \$46.7 million, respectively, at October 31, 2003. The majority of the reserves consist of a warranty accrual for repair costs to homes over \$1,000, for community amenities and land development infrastructure. We accrue for warranty costs at the time each home is closed and title and possession have been transferred to the homebuyer as part of cost of sales. In addition, we accrue for warranty costs under our \$150,000 per occurrence general liability insurance deductibles as part of selling, general, and administration. Warranty accruals are based upon historical experience. At October 31, 2003 and 2002 the warranty and general liability accruals amounted to \$39.5 million and \$22.4 million, respectively.

## Results of Operations

### Total Revenues

Compared to the same prior period, revenues increased (decreased) as follows:

(Dollars in Thousands)	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Homebuilding:			
Sale of homes	\$667,735	\$768,378	\$588,251
Land sales and other revenues	(27,499)	31,396	6,076

Financial services	10,515	9,342	12,104
<b>Total change</b>	<b>\$650,751</b>	<b>\$809,116</b>	<b>\$606,431</b>
Total revenues percent change	25.5%	46.4%	53.4%

## Homebuilding

Compared to the same prior period, housing revenues increased \$667.7 million or 27.1% for the year ended October 31, 2003, increased \$768.4 million or 45.4% for the year ended October 31, 2002, and increased \$588.3 million or 53.2% for the year ended October 31, 2001. Housing revenues are recorded at the time when title is conveyed to the buyer, adequate cash payment has been received and there is no continued involvement.

Information on homes delivered by market area is set forth below:

(Dollars in Thousands)	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
<b>Northeast Region<sup>(1)</sup>:</b>			
Housing Revenues	\$ 774,209	\$ 660,250	\$ 570,647
Homes Delivered	2,387	2,144	1,860
<b>Southeast Region<sup>(3)</sup>:</b>			
Housing Revenues	\$ 682,210	\$ 660,328	\$ 566,205
Homes Delivered	2,720	2,806	2,743
<b>Southwest Region<sup>(1)</sup>:</b>			
Housing Revenues	\$ 481,634	\$ 240,181	\$ 215,045
Homes Delivered	2,431	1,033	1,003
<b>West Region<sup>(2)</sup>:</b>			
Housing Revenues	\$1,190,516	\$ 852,373	\$ 280,582
Homes Delivered	3,984	3,220	760
<b>Other<sup>(4)</sup>:</b>			
Housing Revenues	\$ 1,261	\$ 48,963	\$ 61,238
Homes Delivered	9	311	425
<b>Totals:</b>			
Housing Revenues	\$3,129,830	\$2,462,095	\$1,693,717
Homes Delivered	11,531	9,514	6,791

<sup>(1)</sup> October 31, 2003 includes deliveries from our Texas, Ohio, and Arizona acquisitions beginning on November 1, 2002, January 1, 2003, April 1, 2003, and August 13, 2003, respectively.

<sup>(2)</sup> October 31, 2002 includes deliveries from our California acquisition beginning on January 10, 2002.

<sup>(3)</sup> October 31, 2001 includes deliveries from our Southeast Region acquisition beginning on January 24, 2001.

<sup>(4)</sup> Other includes operations from markets we have exited in recent years.

The increase in housing revenues during the year ended October 31, 2003 was primarily due to organic growth within our existing operations. Excluding acquisitions, housing revenues and average sales prices increased in all four of our regions combined by 16.8% and 10.9%, respectively. Deliveries increased 5.3% in all regions, combined after excluding deliveries for fiscal 2003 acquisitions. We realized increases in all regions except the Southeast. The decline in deliveries in the Southeast was due to delayed community openings because of severe weather conditions during the early part of fiscal 2003.

Unaudited quarterly housing revenues and net sales contracts by market area using base sales prices for the years ending October 31, 2003, 2002, and 2001 are set forth below:

(In Thousands)	Quarter Ended			
	October 31, 2003	July 31, 2003	April 30, 2003	January 31, 2003
<b>Housing Revenues:</b>				
<b>Northeast Region</b>	\$ 279,252	\$210,039	\$148,155	\$136,763
<b>Southeast Region</b>	202,345	165,583	156,162	158,120
<b>Southwest Region</b>	151,406	129,907	106,767	72,662
<b>West Region</b>	392,039	325,205	255,469	238,695
<b>Other</b>	—	—	—	1,261
<b>Total</b>	<b>\$1,025,042</b>	<b>\$830,734</b>	<b>\$666,553</b>	<b>\$607,501</b>

**Sales Contracts (Net of Cancellations):**

<b>Northeast Region</b>	<b>\$ 219,101</b>	<b>\$261,625</b>	<b>\$204,943</b>	<b>\$ 115,447</b>
<b>Southeast Region</b>	<b>230,807</b>	<b>239,817</b>	<b>248,324</b>	<b>149,037</b>
<b>Southwest Region</b>	<b>112,487</b>	<b>125,292</b>	<b>143,979</b>	<b>68,927</b>
<b>West Region</b>	<b>291,532</b>	<b>336,889</b>	<b>312,469</b>	<b>233,616</b>
<b>Other</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>313</b>
<b>Total</b>	<b>\$ 853,927</b>	<b>\$963,623</b>	<b>\$909,715</b>	<b>\$567,340</b>

## Quarter Ended

	October 31, 2002	July 31, 2002	April 30, 2002	January 31, 2002
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*(In Thousands)***Housing Revenues:**

<b>Northeast Region</b>	<b>\$ 205,079</b>	<b>\$177,153</b>	<b>\$145,249</b>	<b>\$132,769</b>
<b>Southeast Region</b>	<b>207,671</b>	<b>182,467</b>	<b>143,117</b>	<b>127,073</b>
<b>Southwest Region</b>	<b>67,403</b>	<b>65,432</b>	<b>52,820</b>	<b>54,526</b>
<b>West Region</b>	<b>316,412</b>	<b>242,631</b>	<b>178,688</b>	<b>114,642</b>
<b>Other</b>	<b>8,717</b>	<b>13,646</b>	<b>12,512</b>	<b>14,088</b>
<b>Total</b>	<b>\$ 805,282</b>	<b>\$681,329</b>	<b>\$532,386</b>	<b>\$443,098</b>

**Sales Contracts (Net of Cancellations):**

<b>Northeast Region</b>	<b>\$ 154,623</b>	<b>\$148,390</b>	<b>\$165,148</b>	<b>\$109,689</b>
<b>Southeast Region</b>	<b>138,802</b>	<b>154,488</b>	<b>253,492</b>	<b>132,787</b>
<b>Southwest Region</b>	<b>55,893</b>	<b>54,437</b>	<b>73,145</b>	<b>43,827</b>
<b>West Region</b>	<b>283,607</b>	<b>288,885</b>	<b>261,002</b>	<b>84,122</b>
<b>Other</b>	<b>3,206</b>	<b>6,443</b>	<b>9,053</b>	<b>11,365</b>
<b>Total</b>	<b>\$ 636,131</b>	<b>\$652,643</b>	<b>\$761,840</b>	<b>\$381,790</b>

## Quarter Ended

	October 31, 2001	July 31, 2001	April 30, 2001	January 31, 2001
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*(In Thousands)***Housing Revenues:**

<b>Northeast Region</b>	<b>\$ 163,955</b>	<b>\$156,366</b>	<b>\$126,700</b>	<b>\$123,626</b>
<b>Southeast Region</b>	<b>166,720</b>	<b>195,422</b>	<b>134,720</b>	<b>68,489</b>
<b>Southwest Region</b>	<b>68,441</b>	<b>62,360</b>	<b>46,434</b>	<b>37,810</b>
<b>West Region</b>	<b>109,099</b>	<b>61,830</b>	<b>65,339</b>	<b>44,314</b>
<b>Other</b>	<b>11,505</b>	<b>21,313</b>	<b>20,108</b>	<b>9,166</b>
<b>Total</b>	<b>\$ 519,720</b>	<b>\$497,291</b>	<b>\$393,301</b>	<b>\$283,405</b>

**Sales Contracts (Net of Cancellations):**

<b>Northeast Region</b>	<b>\$ 109,585</b>	<b>\$119,073</b>	<b>\$155,693</b>	<b>\$125,433</b>
<b>Southeast Region</b>	<b>130,425</b>	<b>137,126</b>	<b>248,440</b>	<b>73,660</b>
<b>Southwest Region</b>	<b>45,299</b>	<b>63,640</b>	<b>64,343</b>	<b>37,177</b>
<b>West Region</b>	<b>38,350</b>	<b>66,794</b>	<b>88,620</b>	<b>65,547</b>
<b>Other</b>	<b>12,088</b>	<b>12,673</b>	<b>20,741</b>	<b>4,663</b>
<b>Total</b>	<b>\$ 335,747</b>	<b>\$399,306</b>	<b>\$577,837</b>	<b>\$306,480</b>

An important indicator of our future results are recently signed contracts and our home contract backlog for future deliveries. Our contract backlog using base sales prices by market area is set forth below:

<i>(Dollars In Thousands)</i>	October 31, 2003	October 31, 2002	October 31, 2001
<b>Northeast Region:</b>			
Total Contract Backlog	<b>\$ 581,865</b>	<b>\$ 416,264</b>	<b>\$322,100</b>
Number of Homes	<b>2,218</b>	<b>1,397</b>	<b>1,160</b>
<b>Southeast Region:</b>			
Total Contract Backlog	<b>\$ 526,348</b>	<b>\$ 331,682</b>	<b>\$312,504</b>
Number of Homes	<b>1,761</b>	<b>1,221</b>	<b>1,313</b>
<b>Southwest Region:</b>			
Total Contract Backlog	<b>\$ 157,655</b>	<b>\$ 60,532</b>	<b>\$ 64,961</b>
Number of Homes	<b>989</b>	<b>277</b>	<b>263</b>
<b>West Region:</b>			
Total Contract Backlog	<b>\$ 264,536</b>	<b>\$ 267,305</b>	<b>\$ 53,338</b>
Number of Homes	<b>793</b>	<b>955</b>	<b>172</b>

Other:				
Total Contract Backlog	\$	—	\$ 945	\$ 20,171
Number of Homes		—	7	125
Totals:				
Total Contract Backlog		\$1,530,404	\$1,076,728	\$773,074
Number of Homes		5,761	3,857	3,033

In the month of November 2003 we signed an additional 1,125 net contracts amounting to \$312.9 million. Between our October 31, 2003 contract backlog and November 2003 net contracts, we have sold approximately 47% of our projected deliveries for fiscal 2004.

Cost of sales includes expenses for housing and land and lot sales. A breakout of such expenses for housing sales and housing gross margin is set forth below:

(Dollars In Thousands)	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Sale of homes	\$3,129,830	\$2,462,095	\$1,693,717
Cost of sales	2,331,393	1,919,941	1,344,735
Housing gross margin	\$ 798,437	\$ 542,154	\$ 348,982
Gross margin percentage	25.5%	22.0%	20.6%

Cost of sales expenses as a percentage of home sales revenues are presented below:

	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Sale of homes	100.0%	100.0%	100.0%
Cost of sales:			
Housing, land and development costs	67.1	70.6	71.5
Commissions	2.1	2.2	2.3
Financing concessions	0.9	1.0	1.0
Overheads	4.4	4.2	4.6
Total cost of sales	74.5	78.0	79.4
Gross margin percentage	25.5%	22.0%	20.6%

We sell a variety of home types in various local communities, each yielding a different gross margin. As a result, depending on the mix of both the communities and of home types delivered, consolidated gross margin will fluctuate up or down. We achieved higher gross margins during the year ended October 31, 2003 compared to the same period last year. The consolidated gross margin increased 3.5% during the year ended October 31, 2003. This increased margin is primarily the result of higher sales prices. During the year ended October 31, 2003 our margins increased in all of our regions,

except in the Southwest Region where they remained flat. During the year ended October 31, 2002, our gross margin percentage increased 1.4% from the previous year. This increase was due to higher sales prices and lower costs resulting from our improvement initiatives. Gross margins for the year ended October 31, 2002 increased in our Southeast Region, West Region (excluding our California acquisition in fiscal 2002), and the Northeast Region. In the Southwest, gross margins declined very slightly in fiscal 2002. The dollar increases in gross margin for each of the three years ended October 31, 2003, 2002, and 2001 were attributed to increased sales, resulting from our acquisitions and increased deliveries in previously existing markets.

Homebuilding selling, general, and administrative expenses as a percentage of homebuilding revenues have averaged approximately 8.0% for the years ended October 31, 2003, 2002, and 2001. Such expenses increased to \$253.7 million for the year ended October 31, 2003 and increased to \$194.9 million for the year ended October 31, 2002 from \$140.1 million for the previous year. The increased spending year over year was primarily due to our acquisitions and increased deliveries in previously existing markets.

We have written off or written down certain inventories totaling \$5.2, \$8.2, and \$4.4 million during the years ended October 31, 2003, 2002, and 2001, respectively, to their estimated fair value. See "Notes to Consolidated Financial Statements – Note 11" for additional explanation. These write-offs and write-downs were incurred primarily because of the decision not to exercise certain options to purchase land, redesign of communities in planning, a change in the marketing strategy to liquidate a particular property or lower property values.

During the years ended October 31, 2003, 2002, and 2001, we wrote off residential land options and approval and engineering costs amounting to \$4.5, \$4.0, and \$1.9 million, respectively, which are included in the total write-offs mentioned above. When a community is redesigned, abandoned engineering costs are written off. Option and approval and engineering costs are written off when a community's proforma profitability does not produce adequate returns on the investment commensurate with the risk and we cancel the option. Such write-offs were located in our Northeast Region, Southeast Region, West Region, and Poland.



During the year ended October 31, 2003 we wrote down one community \$0.7 million in our Southwest Region. This property was acquired as part of one of our acquisitions. A decision was made to liquidate this property resulting in lower sales prices.

The write-downs of residential inventory during the year ended October 31, 2002 were attributed to Poland and the Mid-South. The write-down in Poland was based upon changes in market conditions. In the Mid-South, land was written down based on a purchase offer. We have made a decision to discontinue selling homes in these two markets and offer the remaining lots for sale. The result of the above decisions was a reduction in inventory carrying amounts to fair value, resulting in a \$4.2 million impairment loss.

During the year ended October 31, 2001, we wrote down two residential communities in the Northeast Region, and three in the Southeast Region. The write-down in the Northeast Region was attributed to two communities that were part of a large land acquisition, which resulted in a loss. The write-downs in the Southeast Region were based upon changes in market conditions. The result of the above decisions was a reduction in inventory carrying amounts to fair value, resulting in a \$2.5 million impairment loss.

## Land Sales and Other Revenues

Land sales and other revenues consist primarily of land and lot sales. A breakout of land and lot sales is set forth below:

<i>(In Thousands)</i>	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Land and lot sales	\$14,205	\$42,312	\$11,356
Cost of sales	10,931	35,897	10,646
Land and lot sales gross margin	\$ 3,274	\$ 6,415	\$ 710

Land and lot sales are incidental to our residential housing operations and are expected to continue in the future but may significantly fluctuate up or down.

## Financial Services

Financial services consists primarily of originating mortgages from our homebuyers, selling such mortgages in the secondary market, and title insurance activities. During the years ended October 31, 2003, October 31, 2002, and October 31, 2001, financial services provided a \$22.9, \$18.2, and \$10.0 million pretax profit, respectively. The increases in 2003, 2002, and 2001 were primarily due to a change in management, reduced costs, increased mortgage loan amounts, and the addition of mortgage operations from our acquisitions. In addition to our wholly-owned mortgage subsidiaries, customers obtained mortgages from our mortgage joint ventures in our Northeast Region (Ohio) in 2003, our West Region in 2002, and our Southwest Region in 2001. In the market areas served by our wholly-owned mortgage banking subsidiaries, approximately 74%, 71%, and 57% of our non-cash homebuyers obtained mortgages originated by these subsidiaries during the years ended October 31, 2003, 2002, and 2001, respectively. Servicing rights on new mortgages originated by us will be sold as the loans are closed.

## Corporate General and Administrative

Corporate general and administrative expenses include the operations at our headquarters in Red Bank, New Jersey. Such expenses include our executive offices, information services, human resources, corporate accounting, training, treasury, process redesign, internal audit, construction services, and administration of insurance, quality, and safety. As a percentage of total revenues, such expenses were 2.0% for the years ended October 31, 2003 and 2002, respectively, and 2.5% for the year ended October 31, 2001. The percentage decrease from the year ended October 31, 2001 was due to increased housing revenues. Increases in corporate general and administrative dollar expenses are primarily attributed to higher employee incentives due to higher returns on equity.

## Interest

Interest expense includes housing, and land and lot interest. Interest expense is broken down as follows:

<i>(In Thousands)</i>	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Sale of homes	\$63,108	\$59,276	\$51,046
Land and lot sales	550	1,095	400
Total	\$63,658	\$60,371	\$51,446

Housing interest as a percentage of sale of home revenues amounted to 2.0%, 2.4%, and 3.0% for the years ended October 31, 2003, 2002, and 2001, respectively. These percentage decreases are primarily attributed to a decrease in debt leverage of our Company due to growth in equity from earnings and lower interest rates.

## Other Operations

Other operations consist primarily of miscellaneous residential housing operations expenses, senior residential property operations, amortization of senior and senior subordinated note issuance expenses, earnout payments from homebuilding company acquisitions, amortization of the consultant's agreement and the right



of first refusal agreement from our California acquisition in fiscal 2002, minority interest relating to joint ventures, corporate-owned life insurance, expenses associated with the early extinguishment of debt, and certain contributions. Also reported in other operations are restructuring charges associated with our Southeast Region merger in fiscal 2001 and expenses associated with exiting our Mid-South market as well as the write off of costs associated with SAP in fiscal 2002, our enterprise-wide operating software. We were not successful in implementing SAP, due to the complexities and limitations in the software program.

## Recent Accounting Pronouncements

In November 2002, the FASB issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"). FIN 45 elaborates on the existing disclosure requirements for most guarantees, including loan guarantees such as standby letters of credit. It also clarifies that at the time a company issues a guarantee, the company must recognize an initial liability for the fair value, or market value, of the obligations it assumes under the guarantee and must disclose that information in its interim and annual financial statements. The provisions related to recognizing a liability at inception of the guarantee for the fair value of the guarantor's obligations does not apply to product warranties. The initial recognition and initial measurement provisions apply on a

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prospective basis to guarantees issued or modified after December 31, 2002. The adoption of the initial recognition and initial measurement provisions of FIN 45 did not have a material effect on our financial position or results of operations. Our disclosure of guarantees is included in Note 20 to the consolidated financial statements.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure" ("SFAS 148"), which amends SFAS No. 123, "Accounting for Stock-Based Compensation", ("SFAS 123"). The new standard provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. It also requires prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the affect of the method used on reported results. We have not elected to change to the fair value based method of accounting for stock-based employee compensation. We adopted the disclosure provisions of SFAS No. 148 in our second fiscal quarter ending April 30, 2003. Our disclosure of accounting for stock-based compensation is included in Notes 2 and 13 to the consolidated financial statements.

In January 2003, the FASB issued FIN 46. A Variable Interest Entity ("VIE") is created when (i) the equity investment at risk is not sufficient to permit the entity from financing its activities without additional subordinated financial support from other parties or (ii) equity holders either (a) lack direct or indirect ability to make decisions about the entity, (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur. If an entity is deemed to be a VIE, pursuant to FIN 46, an enterprise that absorbs a majority of the expected losses of the VIE is considered the primary beneficiary and must consolidate the VIE. FIN 46 is effective immediately for VIE's created after January 31, 2003. Pursuant to FASB revision to FIN 46 ("FSP 46-6"), a public entity need not apply the provisions of FIN 46 to an interest held in a variable interest entity or potential variable interest entity until the end of the first interim or annual period ending after March 15, 2004, if the VIE was created before February 1, 2003, and the public entity has not issued financial statements reporting that VIE in accordance with FIN 46. We have elected to defer the application of FIN 46 to our interests in potential variable interest entities created prior to February 1, 2003 pursuant to FSP 46-6.

Based on the provisions of FIN 46, we have concluded that whenever we option land or lots from an entity and pay a non-refundable deposit, a VIE is created under condition (ii) (b) and (c) of the previous paragraph. We have been deemed to have provided subordinated financial support, which refers to variable interests that will absorb some or all of an entity's expected theoretical losses if they occur. For each VIE created with a significant nonrefundable option fee, we will compute expected losses and residual returns based on the probability of future cash flows as outlined in FIN 46. If we are deemed to be the primary beneficiary of the VIE we will consolidate it on our balance sheet. The fair value of the VIE's inventory will be reported as "Consolidated Inventory Not Owned – Variable Interest Entities".

Management believes FIN 46 was not clearly thought out for application in the homebuilding industry for land and lot options. Under FIN 46, we can have an option and put down a small deposit as a percentage of the purchase price and still have to consolidate the entity. Our exposure to loss as a result of our involvement with the VIE is only the deposit, not it's total assets consolidated on the balance sheet. In certain cases we will have to place inventory on our balance sheet the VIE has optioned to other developers. In addition, if the VIE has creditors, it's debt will be placed on our balance sheet even though the creditors have no recourse against our Company. Based on these observations we believe consolidating VIE's based on land and lot option deposits does not reflect the economic realities or risks of owning and developing land.

At October 31, 2003, we consolidated VIE's created from February 1, 2003 to October 31, 2003 as a result of our options to purchase land or lots from the selling entities. We paid cash or issued letters of credit deposits to these eleven VIE's totaling \$13 million. Our option deposits represent our maximum exposure to loss. The fair value of the property owned by the VIE's was \$100.3 million of which \$6.2 million was not optioned to our Company. Because we could not get the remainder of the selling entities to provide us with any financial information, the fair value of the optioned property less our cash deposits and liabilities from inventory not owned, which totaled \$90.3 million, was reported on the balance sheet as "Minority interest from inventory not owned". Creditors of these VIE's have no recourse against our Company.

We will continue to secure land and lots using options. Including the deposits with the eleven VIE's above, at October 31, 2003 we have total cash and letters of credit deposits amounting to approximately \$168.6 million to purchase land and lots with a total purchase price of \$2.3 billion. Not all our deposits are with VIE's. The maximum exposure to loss is limited to the deposits although some deposits are refundable at our request or refundable if certain conditions are not met.

In April 2003, the FASB issued SFAS No. 149, "Amendment of Derivative Instruments and Hedging Activities" ("SFAS 149"). SFAS 149 amends and clarifies financial accounting and reporting for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities that fall within the scope of SFAS No. 133, "Account-

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ing for Derivative Instruments and Hedging Activities”. SFAS 149 also amends certain other existing pronouncements, which will result in more consistent reporting of contracts that are derivatives in their entirety or that contain embedded derivatives that warrant separate accounting. SFAS 149 is effective for contracts entered into or modified after June 30, 2003. The adoption of SFAS 149 did not have a material effect on our financial position or results of operations.

In May 2003, the FASB issued SFAS No. 150, “Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity” (“SFAS 150”). SFAS 150 is effective for financial instruments entered into or modified after May 15, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. It is to be implemented by reporting the cumulative effect of a change in an accounting principle for financial instruments created before the issuance date of the Statement and still existing at the beginning of the interim period of adoption. The adoption of SFAS 150 did not have a material effect on our financial position or results of operations.

## **Total Taxes**

Total taxes as a percentage of income before taxes amounted to approximately 37.5%, 39.0%, and 40.1% for the years ended October 31, 2003, 2002, and 2001, respectively. The decrease in this percentage from 2002 to 2003 is primarily attributed to state tax reduction initiatives adopted during Fiscal 2003. In addition, as our pretax profits increase, permanent tax differences that remain relatively constant in dollars have less impact on increasing the effective Federal income tax rate. Deferred federal and state income tax assets primarily represent the deferred tax benefits arising from temporary differences between book and tax income which will be recognized in future years as an offset against future taxable income. If for some reason the combination of future years income (or loss) combined with the reversal of the timing differences results in a loss, such losses can be carried back to prior years to recover the deferred tax assets. As a result, management is confident such deferred tax assets reflected in the balance sheet are recoverable regardless of future income. (See “Notes to Consolidated Financial Statements – Note 10” for an additional explanation of taxes.)

## **Inflation**

Inflation has a long-term effect on us because increasing costs of land, materials, and labor result in increasing sale prices of our homes. In general, these price increases have been commensurate with the general rate of inflation in our housing markets and have not had a significant adverse effect on the sale of our homes. A significant risk faced by the housing industry generally is that rising house costs, including land and interest costs, will substantially outpace increases in the income of potential purchasers. In recent years, in the price ranges in which our homes sell, we have not found this risk to be a significant problem.

Inflation has a lesser short-term effect on us because we generally negotiate fixed price contracts with our subcontractors and material suppliers for the construction of our homes. These prices usually are applicable for a specified number of residential buildings or for a time period of between four to twelve months. Construction costs for residential buildings represent approximately 56% of our homebuilding cost of sales.

## **Mergers and Acquisitions**

On January 10, 2002, we acquired a California homebuilder for a total purchase price of \$196.5 million, of which \$151.6 million was paid in cash and 2,208,738 shares of our Class A Common Stock were issued. At the date of acquisition we also paid off approximately \$88 million of their third party debt. During the second quarter ended April 30, 2003, we exercised the right to retire at no cost 750,000 Class A Common Stock shares that were held by the selling principal under the terms of the acquisition. On November 1, 2002, and December 31, 2002 we acquired two Texas homebuilding companies. On April 9, 2003, we acquired a build-on-your-own lot homebuilder in Ohio, and on August 8, 2003, we acquired a homebuilder in Arizona. Our aggregate net cash purchase price, including payment of third party debt, for fiscal year 2003 acquisitions was approximately \$186.4 million. All 2003 acquisitions provide for other payments to be made, generally dependant upon achievement of certain future operating and return objectives.

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## **Safe Harbor Statement**

All statements in this Form 10-K that are not historical facts should be considered as “Forward-Looking Statements” within the meaning of the Private Securities Litigation Act of 1995. Such statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by the forward looking statements. Although we believe that our plans, intentions and expectations reflected in, or suggested by such forward-looking statements are reasonable, we can give no assurance that such plans, intentions, or expectations will be achieved. Such risks, uncertainties and other factors include, but are not limited to:

- . Changes in general and local economic and business conditions;
- . Weather conditions;
- . Changes in market conditions;
- . Changes in home prices and sales activity in the California, New Jersey, Texas, North Carolina, Virginia, and Maryland markets;
- . Government regulation, including regulations concerning development of land, the homebuilding process, and the environment;
- . Fluctuations in interest rates and the availability of mortgage financing;
- . Shortages in and price fluctuations of raw materials and labor;
- . The availability and cost of suitable land and improved lots;

- . Levels of competition;
- . Availability of financing to the Company;
- . Utility shortages and outages or rate fluctuations; and
- . Geopolitical risks, terrorist acts and other acts of war.

Certain risks, uncertainties, and other factors are described in detail in Item 1 and 2 “Business and Properties” in this Form 10-K.

#### ITEM 7A – QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

The primary market risk facing us is interest rate risk on our long term debt. In connection with our mortgage operations, mortgage loans held for sale and the associated mortgage warehouse line of credit are subject to interest rate risk; however, such obligations reprice frequently and are short-term in duration. In addition, we hedge the interest rate risk on mortgage loans by obtaining forward commitments from private investors. Accordingly the risk from mortgage loans is not material. We do not hedge interest rate risk other than on mortgage loans using financial instruments. We are also subject to foreign currency risk but this risk is not material. The following tables set forth as of October 31, 2003 and 2002, our long term debt obligations, principal cash flows by scheduled maturity, weighted average interest rates and estimated fair market value (“FMV”). There have been no significant changes in our market risk from October 31, 2002 to October 31, 2003.

(Dollars in Thousands)	For the Year Ended October 31, 2003						Total	FMV at 10/31/03
	2004	2005	2006	2007	2008	Thereafter		
<b>Long Term Debt<sup>(1)</sup>:</b>								
Fixed Rate	\$43,869	\$ 81	\$ 88	\$140,346	\$ 104	\$550,253	\$734,741	\$798,347
Average interest rate	6.49%	8.38%	8.38%	10.50%	8.38%	8.48%	8.74%	—
Variable rate	—	—	—	—	\$115,000	—	\$115,000	\$115,000
Average interest rate	—	—	—	—	(2)	—	—	—

(Dollars in Thousands)	For the Year Ended October 31, 2002						Total	FMV at 10/31/02
	2003	2004	2005	2006	2007	Thereafter		
<b>Long Term Debt<sup>(1)</sup>:</b>								
Fixed Rate	\$ 14,177	\$ 75	\$ 81	\$ 88	\$150,096	\$400,349	\$564,866	\$549,991
Average interest rate	10.31%	8.38%	8.38%	8.38%	10.50%	8.75%	9.25%	—
Variable rate	—	—	—	—	\$115,000	—	\$115,000	\$115,000
Average interest rate	—	—	—	—	(2)	—	—	—

<sup>(1)</sup> Does not include bonds collateralized by mortgages receivable.

<sup>(2)</sup> Libor plus 2.5%.

In addition, the Company has reassessed the market risk for its variable debt, which is based upon LIBOR, and believes that a one percent increase in the LIBOR rate would have an approximate \$1.2 million annual increase in interest expense based on \$115 million of variable rate debt outstanding at October 31, 2003 and 2002, respectively.

#### ITEM 8 – FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Financial statements of Hovnanian Enterprises, Inc. and its consolidated subsidiaries are set forth herein beginning on Page F-1.

#### ITEM 9 – CHANGES IN OR DISAGREEMENT WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

During the years ended October 31, 2003, 2002, and 2001, there have not been any changes in, or disagreements with, accountants on accounting and financial disclosure.

#### ITEM 9A – CONTROLS AND PROCEDURES

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company’s reports under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms, and that such information is accumulated and communicated to the Company’s management, including its chief executive officer

and chief financial officer, as appropriate, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. The Company's management, with the participation of the Company's chief executive officer and chief financial officer, has evaluated the effectiveness of the design and operation of the Company's disclosure controls and procedures as of October 31, 2003. Based upon that evaluation and subject to the foregoing, the Company's chief executive officer and chief financial officer concluded that the design and operation of the Company's disclosure controls and procedures are effective to accomplish their objectives.

In addition, there was no change in the Company's internal control over financial reporting that occurred during the quarter ended October 31, 2003 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

### PART III

#### ITEM 10 – DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information called for by Item 10, except as set forth below in this Item 10, is incorporated herein by reference to our definitive proxy statement to be filed pursuant to Regulation 14A, in connection with the Company's annual meeting of shareholders to be held on March 5, 2004, which will involve the election of directors.

##### Executive Officers of the Registrant

Our executive officers are listed below and brief summaries of their business experience and certain other information with respect to them are set forth following the table. Each executive officer holds such office for a one year term.

Name	Age	Position	Year Started With Company
Kevork S. Hovnanian	80	Chairman of the Board and Director of the Company.	1967
Ara K. Hovnanian	46	Chief Executive Officer, President and Director of the Company.	1979
Paul W. Buchanan	53	Senior Vice President—Corporate Controller.	1981
Kevin C. Hake	44	Vice President, Finance and Treasurer.	2000
Peter S. Reinhart	53	Senior Vice President and General Counsel.	1978
J. Larry Sorsby	48	Executive Vice President and Chief Financial Officer and Director of the Company.	1988

Mr. K. Hovnanian founded the predecessor of the Company in 1959 (Hovnanian Brothers, Inc.) and has served as Chairman of the Board of the Company since its incorporation in 1967. Mr. K. Hovnanian was also Chief Executive Officer of the Company from 1967 to July 1997.

Mr. A. Hovnanian was appointed President in April 1988, after serving as Executive Vice President from March 1983. He has also served as Chief Executive Officer since July 1997. Mr. A. Hovnanian was elected a Director of the Company in December 1981. Mr. A. Hovnanian is the son of Mr. K. Hovnanian.

Mr. Buchanan has been Senior Vice President—Corporate Controller since May 1990. Mr. Buchanan resigned as a Director of the Company on September 13, 2002, a position in which he served since March 1982, for the purpose of reducing the number of non-independent board members.

Mr. Hake joined the Company in July 2000 as Vice President, Finance and Treasurer. Prior to joining the Company, Mr. Hake was Director, Real Estate Finance at BankBoston Corporation from 1994 to June 2000.

Mr. Reinhart has been Senior Vice President and General Counsel since April 1985. Mr. Reinhart resigned as a Director of the Company on September 13, 2002, a position in which he served since December 1981, for the purpose of reducing the number of non-independent board members.

Mr. Sorsby was appointed Executive Vice President and Chief Financial Officer of the Company in October 2000 after serving as Senior Vice President, Treasurer, and Chief Financial Officer from February 1996 and as Vice President—Finance/Treasurer of the Company since March 1991.

#### CODE OF ETHICS AND CORPORATE GOVERNANCE GUIDELINES

We have adopted a Code of Ethics that applies to Hovnanian's principal executive officer, principal financial officer, controller, and all other associates of the Company, including its directors and other officers. We have posted the text of this Code of Ethics on our website at [www.khov.com](http://www.khov.com) under "Investor Relations/Corporate Governance." We have also adopted Corporate Governance Guidelines and posted them on our website at [www.khov.com](http://www.khov.com) under "Investor Relations/Corporate Governance." A printed copy of the Code and Guidelines is also available to the public at no charge by writing to: Hovnanian Enterprises, Inc., Attn: Human Resources Department, 10 Highway 35, P.O. Box 500, Red Bank, N.J. 07701 or calling Corporate headquarters at 732-747-7800.

We have adopted charters that apply to Hovnanian's Audit Committee and Compensation Committee. We have posted the text of these charters on our website at [www.khov.com](http://www.khov.com) under "Investor Relations/Corporate Governance". A printed copy of each charter is available to any shareholder who requests it by writing to: Hovnanian Enterprises, Inc., Attn: Human Resources Department, 10 Highway 35, P. O. Box 500, Red Bank, N.J. 07701 or calling corporate headquarters at 732-747-7800.

## ITEM 11 – EXECUTIVE COMPENSATION

The information called for by Item 11 is incorporated herein by reference to our definitive proxy statement to be filed pursuant to Regulation 14A, in connection with our annual meeting of shareholders to be held on March 5, 2004, which will involve the election of directors.

## ITEM 12 – SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information called for by Item 12 is incorporated herein by reference to our definitive proxy statement to be filed pursuant to Regulation 14A, in connection with our annual meeting of shareholders to be held on March 5, 2004, which will involve the election of directors.

The following table provides information as of October 31, 2003 with respect to compensation plans (including individual compensation arrangements) under which our equity securities are authorized for issuance.

### Equity Compensation Plan Information

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (in thousands)	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a) (in thousands)
	(a)	(b)	(c)
Equity compensation plans approved by security holders	3,396	5.89	3,221
Equity compensation plans not approved by security holders			
<b>Total</b>	<b>3,396</b>	<b>5.89</b>	<b>3,221</b>

## ITEM 13 – CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information called for by Item 13 is incorporated herein by reference to our definitive proxy statement, with the exception of the information regarding certain relationships, as described below, to be filed pursuant to Regulation 14A, in connection with our annual meeting of shareholders to be held on March 5, 2004, which will involve the election of directors.

At October 31, 2002 we stopped making loans to both Mr. K. Hovnanian and Mr. A. Hovnanian. The weighted average interest rate on Mr. K. Hovnanian and Mr. A. Hovnanian's related party debt was 1.79% and 3.90% for the years ended October 31, 2002 and 2001, respectively. The largest amount of debt outstanding held by Mr. K. Hovnanian for the years ending October 31, 2002 and 2001 was \$22,000 and \$56,000, respectively. The largest amount of debt outstanding held by Mr. A. Hovnanian for the years ending October 31, 2002 and 2001 was \$1,729,000 and \$3,002,000, respectively. The interest rate on six month Treasury bills at October 31, 2002 and 2001 was 1.55% and 2.01%, respectively. During the years ended October 31, 2003, 2002, and 2001, we received \$62,000, \$62,000, and \$76,000, respectively, from our affected partnerships.

## PART IV

## ITEM 15 – EXHIBITS, FINANCIAL STATEMENTS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

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No schedules have been prepared because the required information of such schedules is not present, is not present in amounts sufficient to require submission of the schedule or because the required information is included in the financial statements and notes thereto.

**Exhibits:**

3(a)	Certificate of Incorporation of the Registrant. <sup>(1)</sup>
3(b)	Certificate of Amendment of Certificate of Incorporation of the Registrant. <sup>(5)</sup>
3(c)	Restated Bylaws of the Registrant. <sup>(12)</sup>
4(a)	Specimen Class A Common Stock Certificate. <sup>(13)</sup>
4(b)	Specimen Class B Common Stock Certificate.
4(c)	Indenture dated as of May 4, 1999, relating to 9 1/8% Senior Notes, between the Registrant and First Union National Bank.
4(d)	First Supplemental Indenture to the Indenture dated as of May 4, 1999, relating to 9 1/8% Senior Notes, between the Registrant and First Union National Bank, including the form of 9 1/8% Senior Notes due May 1, 2009. <sup>(14)</sup>
4(e)	Indenture dated as of October 2, 2000, relating to 10 1/2% Senior Notes, between the Registrant and First Union National Bank, including form of 10 1/2% Senior Notes due October 1, 2007. <sup>(9)</sup>
4(f)	Indenture dated March 26, 2002, relating to 8% Senior Notes, between the Registrant and First Union National Bank, including form of 8% Senior Notes due April 1, 2012. <sup>(10)</sup>
4(g)	Indenture dated March 26, 2002, relating to 8.875% Senior Subordinated Notes, between the Registrant and First Union National Bank, including form of 8.875% Senior Subordinated Notes due April 1, 2012. <sup>(10)</sup>
4(h)	Indenture dated May 9, 2003, relating to 7 3/4% Senior Subordinated Notes, among K. Hovnanian Enterprises, Inc., the Guarantors named therein and Wachovia Bank, National Association, as Trustee, including form of 7 3/4% Senior Subordinated Notes due May 15, 2013. <sup>(4)</sup>
4(i)	Indenture dated as of November 3, 2003, relating to 6 1/2% Senior Notes, among K. Hovnanian Enterprises, Inc., Hovnanian Enterprises, Inc. and Wachovia Bank, National Association, as Trustee, as supplemented by the First Supplemental Indenture dated as of November 3, 2003 among K. Hovnanian Enterprises, Inc., Hovnanian Enterprises, Inc., the other Guarantors named therein and Wachovia Bank, National Association, as Trustee, including form of 6 1/2% Senior Notes due January 15, 2014. <sup>(2)</sup>
10(a)	Credit Agreement dated June 19, 2003, among K. Hovnanian, as Borrower, the Company, as Guarantor, the banks listed therein, PNC Bank, National Association, Bank of America, Fleet National Bank, Wachovia Bank, National Association, Guaranty Bank, National Association, Bank One, NA, AM South Bank, Comerica Bank, SunTrust Bank, National City Bank, Washington Mutual Bank, FA, BNP PARIBAS, Credit Lyonnais, New York Branch, US Bancorp. <sup>(5)</sup>
10(b)	Description of Management Bonus Arrangements.
10(c)	Description of Savings and Investment Retirement Plan. <sup>(1)</sup>
10(d)	1999 Stock Incentive Plan (as amended and restated March 8, 2002). <sup>(3)</sup>
10(e)	1983 Stock Option Plan (as amended and restated March 8, 2002). <sup>(3)</sup>

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10(f)	Management Agreement dated August 12, 1983 for the management of properties by K. Hovnanian Investment Properties, Inc. <sup>(1)</sup>
10(g)	Management Agreement dated December 15, 1985, for the management of properties by K. Hovnanian Investment Properties, Inc.
10(h)	Description of Deferred Compensation Plan.
10(i)	Senior Executive Short-Term Incentive Plan. <sup>(8)</sup>
10(j)	\$165,000,000 Term Loan Credit Agreement. <sup>(11)</sup>
10(k)	\$110,000,000 K. Hovnanian Mortgage, Inc. Revolving Credit Agreement dated June 7, 2002. <sup>(7)</sup>
10(l)	First Amendment to K. Hovnanian Mortgage, Inc. Revolving Credit Agreement dated July 25, 2002. <sup>(7)</sup>
12	Ratio of Earnings to Fixed Charges
21	Subsidiaries of the Registrant.
23	Consent of Independent Auditors
31(a)	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer.
31(b)	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer.
32(a)	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32(b)	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(1) Incorporated by reference to Exhibits to Registration Statement (No. 2-85198) on Form S-1 of the Registrant.

(2) Incorporated by reference to Exhibits to Current Report on Form 8-K filed on November 7, 2003.

(3) Incorporated by reference to Exhibits to Annual Report on Form 10-K for the year ended October 31, 2002 of the Registrant.

(4) Incorporated by reference to Exhibits to Registration Statement (No. 333-10716401) on Form S-4 of the Registrant.

(5) Incorporated by reference to Exhibits to Registration Statement (No. 333-106761) on Form S-3 of the Registrant.

(6) Incorporated by reference to Exhibits to Registration Statement (No. 333-75939) on Form S-3 of the Registrant.

(7) Incorporated by reference to Exhibits to Quarterly Report on Form 10-Q for the quarter ended July 31, 2002 of the Registrant.

- (8) Incorporated by reference to Exhibit B of the Proxy Statement of the Registrant on Schedule 14A filed January 26, 2000.
- (9) Incorporated by reference to Exhibits to Registration Statement (No. 333-52836-01) on Form S-4 of the Registrant.
- (10) Incorporated by reference to Exhibits to Registration Statement (No. 333-89976-01) on Form S-4 of the Registrant.
- (11) Incorporated by reference to Exhibits to Quarterly Report on Form 10-Q for the quarter ended April 30, 2002 of the Registrant.
- (12) Incorporated by reference to Exhibits to Registration Statement (No. 1-08551) on Form 8-A of the Registrant.
- (13) Incorporated by reference to Exhibits to Registration Statement (No. 333-111231) on Form S-3 of the Registrant.
- (14) Incorporated by reference to Exhibits to Current Report on Form 8-K filed on September 22, 1999.

## Reports on Form 8-K

The following reports have been filed during the quarter ended October 31, 2003:

- (i) On November 7, 2003, the Company filed a report on Form 8-K, Items 5 and 7, relating to issuance and sale in an underwritten public offering of \$215,000,000 in aggregate principal amount of 6 1/2% Senior Notes due 2014 of K. Hovnanian Enterprises, Inc., guaranteed by the Company and certain of the Company's subsidiaries.
- (ii) On November 3, 2003, the Company filed a report on Form 8-K, Items 5 and 7, relating to the issuance and sale in an underwritten public offering of \$215,000,000 in aggregate principal amount of 6 1/2% Senior Notes due 2014 of K. Hovnanian Enterprises, Inc., guaranteed by the Company and certain of the Company's subsidiaries.

The following reports have been furnished during the quarter ended October 31, 2003:

- (i) On December 8, 2003, the Company furnished a report on Form 8-K, Items 7 and 12, relating the Company's press release dated December 8, 2003 relating to its preliminary financial results for the fourth quarter ended October 31, 2003.
- (ii) On September 4, 2003, the Company furnished a report on Form 8-K/A, Items 7 and 12, relating the Company's press release dated September 3, 2003 relating to its preliminary financial results for the third quarter ended July 31, 2003, solely to remedy formatting problems of tables within Exhibit 99.1.
- (iii) On September 3, 2003, the Company furnished a report on Form 8-K, Items 7 and 12, relating the Company's press release dated September 3, 2003 relating to its preliminary financial results for the third quarter ended July 31, 2003.

## SIGNATURES

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

Hovnanian Enterprises, Inc.

By: /s/ KEVORK S. HOVNIANIAN

Kevork S. Hovnanian  
Chairman of the Board

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

/s/ KEVORK S. HOVNIANIAN	Chairman of The Board and Director	1/21/04
Kevork S. Hovnanian		
/s/ ARA K. HOVNIANIAN	Chief Executive Officer, President and Director	1/21/04
Ara K. Hovnanian		
/s/ PAUL W. BUCHANAN	Senior Vice President	1/21/04

<u>Paul W. Buchanan</u>	Corporate Controller	
<u>/s/ KEVIN C. HAKE</u>	Vice President, Finance and Treasurer	1/21/04
Kevin C. Hake		
<u>/s/ PETER S. REINHART</u>	Senior Vice President and General Counsel	1/21/04
Peter S. Reinhart		
<u>/s/ LARRY SORSBY</u>	Executive Vice President, Chief Financial Officer and Director	1/21/04
J. Larry Sorsby		

**HOVNANIAN ENTERPRISES, INC.**  
**Index to Consolidated Financial Statements**

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No schedules have been prepared because the required information of such schedules is not present, is not present in amounts sufficient to require submission of the schedule or because the required information is included in the financial statements and notes thereto.

**Report of Independent Auditors**

To the Stockholders and  
Board of Directors of  
Hovnanian Enterprises, Inc.

We have audited the accompanying consolidated balance sheets of Hovnanian Enterprises, Inc. and subsidiaries as of October 31, 2003 and 2002 and the related consolidated statements of income, stockholders' equity and cash flows for each of the three years in the period ended October 31, 2003. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Hovnanian Enterprises, Inc. and subsidiaries at October 31, 2003 and 2002 and the consolidated results of their operations and their cash flows for each of the three years in the period ended October 31, 2003 in conformity with accounting principles generally accepted in the United States.

As discussed in Notes 2 and 17 to the consolidated financial statements, in 2002 the Company changed its method of accounting for goodwill, and in 2003, the Company adopted FASB Interpretation No. 46 "Consolidation of Variable Interest Entities".

*Ernst & Young LLP*



*Hovnanian Enterprises, Inc. and Subsidiaries*

## Consolidated Balance Sheets

<i>(In Thousands)</i>	October 31, 2003	October 31, 2002
<b>ASSETS</b>		
Homebuilding:		
Cash and cash equivalents (Note 5)	\$ 121,913	\$ 262,675
Inventories – At the lower of cost or fair value (Notes 7, 11, and 12):		
Sold and unsold homes and lots under development	1,184,907	803,829
Land and land options held for future development or sale	270,502	171,081
Consolidated Inventory Not Owned:		
Specific performance options	56,082	67,183
Variable interest entities	100,327	
Other options	48,226	39,489
Total Consolidated Inventory Not Owned	204,635	106,672
Total Inventories	1,660,044	1,081,582
Receivables, deposits, and notes (Note 12)	42,506	26,276
Property, plant, and equipment – net (Note 4)	26,263	19,242
Senior residential rental properties – net (Notes 4 and 7)	9,118	9,504
Prepaid expenses and other assets	97,407	86,582
Goodwill and indefinite life intangibles (Note 18)	82,658	82,275
Definite life intangibles (Note 18)	56,978	
Total Homebuilding	2,096,887	1,568,136
Financial Services:		
Cash and cash equivalents	6,308	7,315
Mortgage loans held for sale (Notes 6 and 7)	224,052	91,451
Other assets	3,945	11,226
Total Financial Services	234,305	109,992
Income Taxes Receivable – Including deferred tax benefits (Note 10)	1,179	
Total Assets	\$2,332,371	\$1,678,128

See notes to consolidated financial statements.

*Hovnanian Enterprises, Inc. and Subsidiaries*

## Consolidated Balance Sheets

<i>(In Thousands)</i>	October 31, 2003	October 31, 2002
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		

## Homebuilding:

Nonrecourse land mortgages (Note 7)	\$ 43,795	\$ 11,593
Accounts payable and other liabilities	229,986	198,290
Customers' deposits (Note 5)	58,376	40,422
Nonrecourse mortgages secured by operating properties (Note 7)	710	3,274
Liabilities from inventory not owned	94,780	97,983
Total Homebuilding	427,647	351,562
<b>Financial Services:</b>		
Accounts payable and other liabilities	5,917	4,857
Mortgage warehouse line of credit (Notes 6 and 7)	166,711	85,498
Total Financial Services	172,628	90,355
<b>Notes Payable:</b>		
Term loan (Note 7)	115,000	115,000
Senior notes (Note 8)	387,166	396,390
Senior subordinated notes (Note 8)	300,000	150,000
Accrued interest (Notes 7 and 8)	15,675	9,555
Total Notes Payable	817,841	670,945
Income Taxes Payable – Net of deferred tax benefits (Note 10)		777
Total Liabilities	1,418,116	1,113,639
Minority interest from inventory not owned (Note 17)	90,252	
Minority interest from consolidated joint ventures	4,291	1,940
<b>Stockholders' Equity (Notes 13 and 18):</b>		
Preferred Stock, \$.01 par value—authorized 100,000 shares; none issued Common Stock, Class A, \$.01 par value—authorized 87,000,000 shares; issued 28,016,497 shares in 2003 and 27,453,994 shares in 2002 (including 5,390,218 shares in 2003 and 4,343,240 shares in 2002 held in Treasury)	280	275
Common Stock, Class B, \$.01 par value (convertible to Class A at time of sale) – authorized 13,000,000 shares; issued 7,768,508 shares in 2003 and 7,788,061 shares in 2002 (both years include 345,874 shares held in Treasury)	78	78
Paid in Capital	163,712	152,977
Retained Earnings (Note 8)	705,182	447,802
Deferred Compensation		(21)
Treasury Stock – at cost	(49,540)	(38,562)
Total Stockholders' Equity	819,712	562,549
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$2,332,371</b>	<b>\$1,678,128</b>

See notes to consolidated financial statements.

Hovnanian Enterprises, Inc. and Subsidiaries

**Consolidated Statements of Income**

	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
<i>(In Thousands Except Per Share Data)</i>			
<b>Revenues:</b>			
<b>Homebuilding:</b>			
Sale of homes	\$3,129,830	\$2,462,095	\$1,693,717
Land sales and other revenues (Note 12)	20,742	48,241	16,845
Total Homebuilding	3,150,572	2,510,336	1,710,562
Financial Services	51,285	40,770	31,428
Total Revenues	3,201,857	2,551,106	1,741,990
<b>Expenses:</b>			
<b>Homebuilding:</b>			
Cost of sales	2,342,324	1,955,838	1,355,381
Selling, general and administrative	253,724	194,903	140,126
Inventory impairment loss (Note 11)	5,150	8,199	4,368
Total Homebuilding	2,601,198	2,158,940	1,499,875
Financial Services	28,415	22,543	21,443
Corporate General and Administrative (Note 3)	66,008	51,974	44,278
Interest (Notes 7 and 8)	63,658	60,371	51,446
Other operations (Note 18)	22,680	31,548	14,830
Intangible Amortization (Note 18)	8,380		3,764

Total Expenses	2,790,339	2,325,376	1,635,636
Income Before Income Taxes	411,518	225,730	106,354
State and Federal Income Taxes:			
State (Note 10)	17,458	8,993	4,024
Federal (Note 10)	136,680	79,041	38,644
Total Taxes	154,138	88,034	42,668
Net Income	\$ 257,380	\$ 137,696	\$ 63,686
Per Share Data:			
Basic:			
Income Per Common Share	\$ 8.31	\$ 4.53	\$ 2.38
Weighted Average Number of Common Shares Outstanding	30,960	30,405	26,810
Assuming Dilution:			
Income Per Common Share	\$ 7.85	\$ 4.28	\$ 2.29
Weighted Average Number of Common Shares Outstanding	32,769	32,155	27,792

See notes to consolidated financial statements.

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Hovnanian Enterprises, Inc. and Subsidiaries

## Consolidated Statements of Stockholders' Equity

(Dollars In Thousands)	A Common Stock		B Common Stock		Paid-In Capital	Retained Earnings	Deferred Comp	Treasury Stock	Total
	Shares Issued and Outstanding	Amount	Shares Issued and Outstanding	Amount					
Balance, October 31, 2000	13,572,448	\$173	7,633,029	\$ 79	\$ 46,086	\$ 246,420	\$ (29,399)	\$ 263,359	
Acquisitions	6,546,932	66			51,361			51,427	
Sale of common stock under employee stock option plan	519,673	5			2,885			2,890	
Stock bonus plan	63,429	1			625			626	
Conversion of Class B to Class A common stock	159,976	1	(159,976)	(1)					
Deferred compensation							(127)	(127)	
Treasury stock purchases	(458,700)						(6,215)	(6,215)	
Net Income						63,686		63,686	
Balance, October 31, 2001	20,403,758	246	7,473,053	78	100,957	310,106	(127)	375,646	
Acquisitions	2,402,769	24			48,051			48,075	
Sale of common stock under employee stock option plan	357,165	4			3,577			3,581	
Stock bonus plan	63,815	1			392			393	
Conversion of Class B to Class A common stock	30,866		(30,866)						
Deferred compensation							106	106	
Treasury stock purchases	(147,619)						(2,948)	(2,948)	
Net Income						137,696		137,696	
Balance, October 31, 2002	23,110,754	275	7,442,187	78	152,977	447,802	(21)	562,549	
Acquisitions	49,261				3,713			3,713	
Shares returned in connection with prior year acquisition	(749,359)								
Sale of common stock under employee stock option plan	405,110	4			7,043			7,047	
Stock bonus plan	88,579	1			(21)			(20)	
Conversion of Class B to Class A common stock	19,553		(19,553)						
Deferred compensation							21	21	
Treasury stock purchases	(297,619)						(10,978)	(10,978)	
Net Income						257,380		257,380	
Balance, October 31, 2003	22,626,279	\$280	7,422,634	\$ 78	\$ 163,712	\$ 705,182	\$ (49,540)	\$ 819,712	

See notes to consolidated financial statements.

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Hovnanian Enterprises, Inc. and Subsidiaries

## Consolidated Statements of Cash Flows

(In Thousands)	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Cash Flows From Operating Activities:			
Net Income	\$ 257,380	\$ 137,696	\$ 63,686
Adjustments to reconcile net income to net cash (used in) provided by operating			

activities:			
Depreciation	6,714	6,506	8,164
Intangible Amortization	8,380		3,764
Loss (gain) on sale and retirement of property and assets	2,872	12,328	641
Deferred income taxes	4,223	(18,307)	(6,265)
Impairment losses	5,150	8,199	4,368
Decrease (increase) in assets:			
Mortgage notes receivable	(130,591)	14,870	(42,573)
Receivables, prepaids and other assets	(9,446)	39,452	(35,805)
Inventories	(367,773)	(31,573)	12,540
Increase (decrease) in liabilities:			
State and Federal income taxes	(548)	21,138	7,004
Tax effect from exercise of stock options	(5,631)	(1,335)	(566)
Customers' deposits	18,948	1,006	4,543
Interest and other accrued liabilities	45,305	38,494	20,586
Accounts payable	(29,492)	20,066	(3,018)
Net cash (used in) provided by operating activities	(194,509)	248,540	37,069
Cash Flows From Investing Activities:			
Net proceeds from sale of property and assets	3,123	627	5,325
Purchase of property, equipment, and other fixed assets and acquisitions of homebuilding companies	(198,095)	(144,485)	(44,688)
Investment in and advances to unconsolidated affiliates	(2,783)	(15,828)	(372)
Net cash (used in) investing activities	(197,755)	(159,686)	(39,735)
Cash Flows From Financing Activities:			
Proceeds from mortgages and notes	1,941,244	1,895,429	1,472,789
Proceeds from senior debt		99,152	
Proceeds from senior subordinated debt	150,000	150,000	
Principal payments on mortgages and notes	(1,830,756)	(1,880,873)	(1,494,528)
Principal payments on subordinated debt	(9,750)	(99,747)	
Purchase of treasury stock	(10,978)	(2,948)	(6,215)
Proceeds from sale of stock and employee stock plan	10,735	3,974	3,516
Net cash provided by (used in) financing activities	250,495	164,987	(24,438)
Net Increase (Decrease) In Cash	(141,769)	253,841	(27,104)
Cash and Cash Equivalents Balance, Beginning Of Year	269,990	16,149	43,253
Cash and Cash Equivalents Balance, End Of Year	\$ 128,221	\$ 269,990	\$ 16,149
Supplemental Disclosures Of Cash Flows:			
Cash paid during the period for:			
Interest	\$ 59,709	\$ 59,101	\$ 53,100
Income Taxes	\$ 152,532	\$ 85,203	\$ 45,498
Supplemental disclosures of noncash operating activities:			
Consolidated Inventory Not Owned:			
Specific performance options	\$ 52,996	\$ 58,494	
Variable interest entities	87,312		
Other options	44,764	39,489	
Total Inventory Not Owned	\$ 185,072	\$ 97,983	

See notes to consolidated financial statements.

## Notes to Consolidated Financial Statements

For the Years Ended October 31, 2003, 2002, and 2001

### 1. Basis of Presentation and Segment Information

*Basis of Presentation* – The accompanying consolidated financial statements include our accounts and all wholly-owned subsidiaries after elimination of all significant intercompany balances and transactions.

*Segment Information* – Statement of Financial Accounting Standards (SFAS) No. 131 “Disclosures About Segments of an Enterprise and Related Information” establishes standards for segment reporting based on the way management organizes segments within a company for making operating decisions and assessing performance. Our financial reporting segments consist of homebuilding, financial services, and corporate. Our homebuilding operations comprise the most substantial part of our business, with approximately 98% of consolidated

revenues in the years ended October 31, 2003, 2002, and 2001 contributed by the homebuilding operations. We are a Delaware corporation, currently building and selling homes in more than 257 new home communities in New Jersey, Pennsylvania, New York, Ohio, Virginia, West Virginia, Maryland, North Carolina, South Carolina, Texas, Arizona, and California. We offer a wide variety of homes that are designed to appeal to first time buyers, first and second time move up buyers, luxury buyers, active adult buyers and empty nesters. Our financial services operations provide mortgage banking and title services to the homebuilding operations' customers. We do not retain or service the mortgages that we originate but rather, sell the mortgages and related servicing rights to investors. Corporate primarily includes the operations of our corporate office whose primary purpose is to provide executive services, accounting, information services, human resources, management reporting, training, cash management, internal audit, risk management, and administration of process redesign, quality and safety. Assets, liabilities, revenues and expenses of our reportable segments are separately included in the consolidated balance sheets and consolidated statements of income.

## 2. Summary of Significant Accounting Policies

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

*Business Combinations* – When we make an acquisition of another company, we use the purchase method of accounting in accordance with the Statement of Financial Accounting Standards (“SFAS”) No. 141 “Business Combinations” (“SFAS 141”). Under SFAS No. 141 (for acquisitions subsequent to June 30, 2001) and Accounting Principles Board (“APB”) Opinion 16 (for acquisitions prior to June 30, 2001) we record as our cost the estimated fair value of the acquired assets less liabilities assumed. Any difference between the cost of an acquired company and the sum of the fair values of tangible assets less liabilities is recorded as goodwill, indefinite or definite life intangibles. The reported income of an acquired company includes the operations of the acquired company from the date of acquisition.

*Income Recognition from Home and Land Sales* – Income from home sales are recorded when title is conveyed to the buyer, adequate cash payment has been received and there is no continued involvement.

*Income Recognition from Mortgage Loans* – Profits and losses relating to the sale of mortgage loans are recognized when legal control passes to the buyer and the sales price is collected.

*Cash and Cash Equivalents* – Cash and cash equivalents include cash deposited in checking accounts, overnight repurchase agreements, certificates of deposit, Treasury bills and government money market funds with original maturities of 90 days or less when purchased.

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The Company’s cash balances are held primarily at one financial institution and may, at times, exceed insurable amounts. The Company believes it mitigates its risk by investing in or through a major financial institution.

*Fair Value of Financial Instruments* – The fair value of financial instruments is determined by reference to various market data and other valuation techniques as appropriate. Our financial instruments consist of cash equivalents, receivables, customer deposits and notes, accounts payable and other liabilities, mortgages and notes receivable, mortgages and notes payable, our term loan, and the senior and senior subordinated notes payable. The fair value of both the Senior Notes and Senior Subordinated Notes is estimated based on the quoted market prices for the same or similar issues or on the current rates offered to us for debt of the same remaining maturities. The fair value of the Senior Notes and Senior Subordinated Notes is estimated at \$444.3 million and \$321 million, respectively, as of October 31, 2003. Unless otherwise disclosed, the fair value of financial instruments approximates their recorded values.

*Inventories* – For inventories of communities under development, a loss is recorded when events and circumstances indicate impairment and the undiscounted future cash flows generated are less than the related carrying amounts. The impairment loss is based on discounted future cash flows generated from expected revenue, cost to complete including interest, and selling costs. Inventories and long-lived assets held for sale are recorded at the lower of cost or fair value less selling costs. Fair value is defined as the amount at which an asset could be bought or sold in a current transaction between willing parties, that is, other than in a forced or liquidation sale. Construction costs are accumulated during the period of construction and charged to cost of sales under specific identification methods. Land, land development, and common facility costs are allocated based on buildable acres to product types within each community, then charged to cost of sales equally based upon the number of homes to be constructed in each product type.

*Insurance Deductible Reserves* – Our deductible is \$150,000 per occurrence for worker’s compensation and general liability insurance. Reserves have been established based upon actuarial analysis of estimated future losses during 2003 and 2002.

*Interest* – Costs related to properties under development are capitalized during the land development and home construction period and expensed along with the associated cost of sales as the related inventories are sold. Costs related to properties not under development are charged to interest expense.

Interest costs incurred, expensed and capitalized were:

(Dollars in Thousands)	Year Ended		
	October	October	October

	31, 2003	31, 2002	31, 2001
Interest capitalized at beginning of year	\$22,159	\$25,124	\$25,694
Plus acquired entity interest	3,604		
Plus interest incurred <sup>(1)(2)</sup>	66,332	57,406	47,272
Less interest expensed <sup>(2)</sup>	63,658	60,371	51,446
Interest capitalized at end of year <sup>(2)</sup>	\$24,833	\$22,159	\$25,124

(1) Data does not include interest incurred by our mortgage and finance subsidiaries.

(2) Represents interest on borrowings for construction, land and development costs which are charged to interest expense when homes are delivered or when land is not under active development.

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*Land Options* – Costs are capitalized when incurred and either included as part of the purchase price when the land is acquired or charged to operations when we determine we will not exercise the option. In accordance with Financial Accounting Standards Board (“FASB”) issued Interpretation No. 46 “Consolidation of Variable Interest Entities” an interpretation of Accounting Research Bulletin No. 51 (“FIN 46”), SFAS No. 49 “Accounting for Product Financing Arrangements” (“SFAS 49”), SFAS No. 98 “Accounting for Leases” (“SFAS 98”), and Emerging Issues Task Force (“EITF”) No. 97-10 “The Effects of Lessee Involvement in Asset Construction” (“EITF 97-10”), we record on the Consolidated Balance Sheet specific performance options, options with variable interest entities, and other options under Consolidated inventory not owned with the offset to Liabilities from inventory not owned, Minority interest from inventory not owned and Minority interest from consolidated joint ventures.

*Intangible Assets* – The intangible assets recorded on our balance sheet are goodwill, tradenames, architectural designs, distribution processes, and contractual agreements with both definite and indefinite lives resulting from our acquisitions. We no longer amortize goodwill or indefinite life intangibles, but instead assess them periodically for impairment. We performed such assessments utilizing a fair value approach as of October 31, 2003 and 2002, and determined that no impairment of intangibles existed. We are amortizing the definite life intangibles over their expected useful life, ranging from three to seven years.

*Finance Subsidiary Net Worth* – In accordance with Statement of Position 01-6 (“SOP 01-6”) of the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants, we are required to disclose the minimum net worth requirements by regulatory agencies, secondary market investors and states in which it conducts business. At October 31, 2003 and 2002, our mortgage subsidiary’s net worth was \$61.5 million and \$18.7 million, respectively, which exceeded all our regulatory agencies net worth requirements.

*Deferred Bond Issuance Costs* – Costs associated with the issuance of our Senior and Senior Subordinated Notes are capitalized and amortized over the associated term of each note issuance into other operations on the consolidated statements of income.

*Debt Issued At a Discount* – Debt issued at a discount to the face amount is credited back up to its face amount utilizing the effective interest method over the term of the note and recorded as a component of Interest on the consolidated statements of income.

*Post Development Completion Costs* – In those instances where a development is substantially completed and sold and we have additional construction work to be incurred, an estimated liability is provided to cover the cost of such work and is recorded in accounts payable and other liabilities in the accompanying consolidated balance sheets.

*Advertising Costs* – Advertising costs are treated as period costs and expensed as incurred. During the years ended October 31, 2003, 2002, and 2001, advertising costs expensed amounted to \$30.8 million, \$23.4 million, and \$18.5 million, respectively.

*Deferred Income Tax* – Deferred income taxes or income tax benefits are provided for temporary differences between amounts recorded for financial reporting and for income tax purposes.

*Common Stock* – Each share of Class A Common Stock entitles its holder to one vote per share and each share of Class B Common Stock entitles its holder to ten votes per share. The amount of any regular cash dividend payable on a share of Class A Common Stock will be an amount equal to 110% of the corresponding regular cash dividend payable on a share of Class B Common Stock. If a shareholder desires to sell shares of Class B Common Stock, such stock must be converted into shares of Class A Common Stock.

On July 3, 2001, our Board of Directors authorized a stock repurchase program to purchase up to 2 million shares of Class A Common Stock. As of October 31, 2003, 903,938

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shares have been purchased under this program, of which 297,619 and 147,619 were repurchased during the twelve months ended October 31, 2003 and 2002, respectively. In addition, we retired 0.8 million shares under the terms of the acquisition agreements that were held by sellers of two previous acquisitions.

*Depreciation* – Property, plant and equipment are depreciated using the straight-line method over the estimated useful life of the assets.

*Prepaid Expenses* – Prepaid expenses which relate to specific housing communities (model setup, architectural fees, homeowner warranty program fees, etc.) are amortized to costs of sales as the applicable inventories are sold. All other prepaid expenses are amortized over a specific time period or as used and charged to overhead expense.

*Stock Options* – SFAS No. 123 “Accounting for Stock-Based Compensation”, (“SFAS 123”) establishes a fair value-based method of accounting for stock-based compensation plans, including stock options. Registrants may elect to continue accounting for stock option plans under APB Opinion No. 25 “Accounting for Stock Issued to Employees” (“APB 25”), but are required to provide pro forma net income and earnings per share information “as if” the new fair value approach had been adopted. We intend to continue accounting for our stock option plan under APB 25. Under APB 25, no compensation expense is recognized when the exercise price of our employee stock options equals the market price of the underlying stock on the date of grant (see Note 13).

In December 2002, the FASB issued SFAS No. 148, “Accounting for Stock-Based Compensation – Transition and Disclosure” (“SFAS 148”). SFAS 148 amends SFAS 123 to provide alternative methods of transition for an entity that voluntarily adopts the fair value recognition method of recording stock option expense. SFAS 148 also amends the disclosure provisions of SFAS 123 and APB Opinion No. 28, “Interim Financial Reporting” to require disclosure in the summary of significant accounting policies of the effects of an entity’s accounting policy with respect to stock options on reported net income and earnings per share in annual and interim financial statements.

For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options’ vesting period. Our pro forma information follows (dollars in thousands except for earnings per share information):

<i>(Dollars in Thousands)</i>	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Net income to common shareholders; as reported	\$257,380	\$137,696	\$63,686
Deduct: total stock-based employee compensation expense determined under fair value based method for all awards, net of minority interest	2,075	560	195
Pro forma net income	\$255,305	\$137,136	\$63,491
Pro forma basic earnings per share	\$ 8.25	\$ 4.51	\$ 2.37
Basic earnings per share as reported	\$ 8.31	\$ 4.53	\$ 2.38
Pro forma diluted earnings per share	\$ 7.79	\$ 4.26	\$ 2.28
Diluted earnings per share as Reported	\$ 7.85	\$ 4.28	\$ 2.29

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Pro forma information regarding net income and earnings per share is to be calculated as if we had accounted for our stock options under the fair value method of SFAS No. 123. The fair value for those options is established at the date of grant using a Black-Scholes option pricing model with the following weighted-average assumptions for 2003, 2002, and 2001: risk-free interest rate of 4.3%, 4.3%, and 4.4%, respectively; dividend yield of zero; volatility factor of the expected market price of our common stock of 0.43, 0.43, and 0.38, respectively; and a weighted-average expected life of the option of 5.1, 5.5, and 5.1 years, respectively.

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because our employee stock options have characteristics significantly different from those of our traded options, and changes in the subjective input assumptions can materially affect the fair value estimate, management believes the existing models do not necessarily provide a reliable measure of the fair value of its employee stock options.

*Per Share Calculations* – Basic earnings per common share is computed using the weighted average number of shares outstanding. Diluted earnings per common share is computed using the weighted average number of shares outstanding adjusted for the incremental shares attributed to outstanding options to purchase common stock shares of approximately 1,809,000, 1,750,000, and 982,000 for the years ended October 31, 2003, 2002, and 2001, respectively.

*Computer Software Development* – We capitalize certain costs incurred in connection with developing or obtaining software for internal use. Upon entering the application and development phase, the capitalized costs are amortized over the systems estimated useful life. For the years ended October 31, 2002 and 2001 we recorded amortization expense of the SAP system in the amount of approximately \$2.0 million based on an estimated useful life of 10 years, respectively. We wrote off the majority of the capitalized costs associated with the development and implementation of the SAP systems during the year ended October 31, 2002, totaling \$12.4 million pretax included in other operations in the accompanying consolidated statements of income, or \$7.6 million after taxes equal to \$0.24 per fully diluted share. Such costs were written off as a result of the decision to not use the SAP software after October 31, 2003. Certain costs in the amount of \$2.0 million related to active communities using the SAP software were not written off in 2002, but were amortized over the life of these communities. As of October 31, 2003 all costs associated with the SAP software have been expensed.

*Accounting for Derivative Instruments and Hedging Activities* – In April 2003, the Financial Accounting Standards Board issued (SFAS) No. 149, “Amendment of Derivative Instruments and Hedging Activities.” SFAS 149 amends and clarifies financial accounting and reporting for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities that fall within the scope of SFAS 133, “Accounting for Derivative Instruments and Hedging Activities.” SFAS 149 also amends certain other existing pronouncements, which will result in more consistent reporting of contracts that are derivatives in their entirety or that contain embedded derivatives that warrant separate accounting. SFAS 149 is effective for contracts entered into or modified after June 30, 2003. The adoption of SFAS 149 did not have a material effect on our financial position or results of operations.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity" ("SFAS 150"). SFAS 150 is effective for financial instruments entered into or modified after May 15, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. It is to be implemented by reporting the cumulative effect of a change in an accounting principle for

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financial instruments created before the issuance date of the Statement and still existing at the beginning of the interim period of adoption. The adoption of SFAS 150 did not have a material effect on our financial position or results of operations.

We manage our interest rate risk on mortgage loans held for sale and our estimated future commitments to originate and close mortgage loans at fixed prices through the use of best-efforts whole loan delivery commitments. These instruments are classified as derivatives and generally have maturities of three months or less. Accordingly, gains and losses are recognized in current earnings during the period of change.

*Reclassifications* – Certain amounts in the 2002 and 2001 consolidated financial statements have been reclassified to conform to the 2003 presentation.

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### **3. Corporate Initiatives**

We have embarked on long term improvement initiatives of total quality, process redesign, and training. Included in Corporate General and Administrative expense is \$2.8 million, \$4.1 million, and \$7.2 million for the years ended October 31, 2003, 2002, and 2001, respectively, related to such initiatives. These amounts are in addition to software development costs capitalized in those years.

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### **4. Property**

Homebuilding property, plant, and equipment consists of land, land improvements, buildings, building improvements, furniture and equipment used to conduct day to day business and are recorded at cost less accumulated depreciation. Homebuilding accumulated depreciation related to these assets at October 31, 2003 and October 31, 2002 amounted to \$23.9 million and \$18.5 million, respectively. In addition we have two senior citizen residential rental communities recorded as senior residential rental properties on the consolidated balance sheets. Accumulated depreciation on senior residential rental properties at October 31, 2003 and October 31, 2002 amounted to \$3.5 million and \$3.1 million, respectively.

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### **5. Deposits**

We hold escrow cash amounting to \$8.0 million and \$3.5 million at October 31, 2003 and October 31, 2002, respectively, which primarily represents customers' deposits which are restricted from use by us. We are able to release other escrow cash by pledging letters of credit and surety bonds. Escrow cash accounts are substantially invested in short-term certificates of deposit, time deposits, or money market accounts. The remaining deposits are not restricted from use by us.

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### **6. Mortgage Loans Held for Sale**

Our wholly-owned mortgage banking subsidiary originates mortgage loans, primarily from the sale of our homes. Such mortgage loans are sold in the secondary mortgage market with servicing released. At October 31, 2003 and 2002, respectively, \$223.9 million and \$91.3 million of such mortgages were pledged against our mortgage warehouse line (see Note 7). We may incur risk with respect to mortgages that are delinquent, but only to the extent the losses are not covered by mortgage insurance or resale value of the home. Historically, we have incurred minimal credit losses. The mortgage loans held for sale are carried at the lower of cost or market value, determined on an aggregate basis. There was no valuation adjustment at October 31, 2003 or 2002.

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### **7. Mortgages and Notes Payable**

Substantially all of the nonrecourse land mortgages are short-term borrowings. Nonrecourse mortgages secured by operating properties are installment obligations having annual principal maturities in the following years ending October 31, of approximately \$0.1 million in 2004, 2005, 2006, 2007 and 2008, and \$0.3 million after 2008. The interest rates on these obligations range from 6.0% to 10.5%.



We have an unsecured Revolving Credit Agreement (“Agreement”) with a group of banks that provides a revolving credit line of \$590 million through July 2006. Interest is payable monthly and at various rates of either the prime rate plus 0.275% or LIBOR plus 1.75%. In addition, we pay a fee equal to 0.350% per annum on the weighted average unused portion of the line. Each of our significant subsidiaries, except for our financial services subsidiaries and joint ventures, are a guarantor under the revolving credit agreement. As of October 31, 2003 and 2002, there was no outstanding balance under the Agreement.

On January 22, 2002, we issued a \$165 million five year Term Loan. The Term Loan matures January 22, 2007, and bears interest at either the prime rate plus 1.25% or LIBOR plus 2.5%. The proceeds from the issuance of the Term Loan were primarily used to partially fund our California acquisition on January 10, 2002. Each of our significant subsidiaries, except for our financial services subsidiaries and joint ventures, are a guarantor under the Term Loan. As of October 31, 2003 and 2002, borrowings under the Term Loan were \$115,000,000. See Note 20 for loan guarantee.

Average interest rates and average balances outstanding under the Agreement are as follows:

(Dollars in Thousands)	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Average monthly outstanding borrowings	\$ 2,485	\$10,717	\$ 74,543
Average interest rate during period	4.5%	4.4%	7.1%
Average interest rate at end of period <sup>(1)</sup>	2.8%	3.6%	4.1%
Maximum outstanding at any month end	\$29,800	\$36,425	\$120,600

<sup>(1)</sup> Average interest rate at the end of the period excludes any charges on unused loan balances.

In addition, we have a secured mortgage loan warehouse agreement with a group of banks, which is a short-term borrowing, that provides up to \$200 million through July 2004. Interest is payable monthly at the Federal Funds Rate plus 1.375% (approximately 2.41% and 3.195% at October 31, 2003 and 2002, respectively) of the outstanding loan balance. The loan is repaid when the underlying mortgage loans are sold to permanent investors by the Company. As of October 31, 2003 borrowings under the agreement were \$166.7 million.

## 8. Senior and Senior Subordinated Notes

On June 7, 1993, we issued \$100 million principal amount of 9 3/4% Subordinated Notes due June 1, 2005. In April 2001, we retired \$0.3 million of these notes. Interest is payable semi-annually. The notes were redeemable in whole or in part at our option, initially at 104.875% of their principal amount on or after June 1, 1999 and reducing to 100% of their principal amount on or after June 1, 2002. On April 29, 2002 we used a portion of the proceeds from our March 2002 debt issuance (see below) to redeem the remainder of these notes. We recorded \$0.9 million of expenses associated with the early extinguishment of this debt in Other operations on the Consolidated Statement of Income in 2002.

On May 4, 1999, we issued \$150 million principal amount of 9 1/8% Senior Notes due May 1, 2009. Interest is payable semi-annually. The notes are redeemable in whole or in part at our option, initially at 104.563% of their principal amount on or after May 1, 2004 and reducing to 100% of their principal amount on or after May 1, 2007.

On October 2, 2000, we issued \$150 million principal amount of 10 1/2% Senior Notes due October 1, 2007. During the year ended October 31, 2003 we paid down \$9.8 million of these notes. The 10 1/2% Senior Notes were issued at a discount to yield 11% and have been reflected net of the unamortized discount in the accompanying Consolidated Balance Sheet. Interest is payable semi-annually. The notes are redeemable in whole or in part at our option at 100% of their principal amount upon payment of a make-whole price.

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On March 26, 2002, we issued \$100 million 8% Senior Notes due 2012 and \$150 million 8 7/8% Senior Subordinated Notes due 2012. The 8% Senior Notes were issued at a discount to yield 8.125% and have been reflected net of the unamortized discount in the accompanying Consolidated Balance Sheet. Interest on both notes is paid semi-annually. The notes are redeemable in whole or in part at our option at 100% of their principal amount upon payment of a make-whole price. The proceeds were used to redeem the remaining 9 3/4% Subordinated Notes (see above), repay a portion of our Term Loan Facility (see Note 7), repay the current outstanding indebtedness under our Revolving Credit Agreement, and the remainder for general corporate purposes.

On May 9, 2003, we issued \$150 million 7 3/4% Senior Subordinated Notes due 2013. The net proceeds of the note offering were used to repay the current outstanding indebtedness under the Revolving Credit Agreement and the remainder for general corporate purposes.

On November 3, 2003, we issued \$215 million 6 1/2% Senior Notes due 2014. The net proceeds of the issuance were used for general corporate purposes.

The indentures relating to the Senior and Subordinated Notes and the Revolving Credit Agreement contain a Company guarantee (see Note 20) and restrictions on the payment of cash dividends. At October 31, 2003, \$372.8 million of retained earnings were free of such restrictions.

At October 31, 2003, we had total issued and outstanding \$690.2 million Senior and Senior Subordinated Notes. These notes plus the \$215.0 million Senior Notes issued November 3, 2003 have annual principal maturities in the following years ending October 31, of \$140.2 million in 2007 and \$765.0 million after 2008.

## 9. Retirement Plan

In December 1982, we established a defined contribution savings and investment retirement plan. Under such plan there are no prior service costs. All associates are eligible to participate in the retirement plan and employer contributions are based on a percentage of associate contributions. Plan costs charged to operations amount to \$7.5 million, \$6.6 million, and \$3.7 million for the years ended October 31, 2003, 2002, and 2001, respectively. The year over year increases are the result of increased number of participants from acquisitions and increased profit sharing contributions resulting from higher Company Returns on Equity.

## 10. Income Taxes

Income Taxes (receivable) payable including deferred benefits, consists of the following:

(Dollars In Thousands)	Year Ended	
	October 31, 2003	October 31, 2002
<b>State income taxes:</b>		
Current	\$ 8,455	\$ 7,092
Deferred	(9,009)	(7,088)
<b>Federal income taxes:</b>		
Current	19,999	27,541
Deferred	(20,624)	(26,768)
<b>Total</b>	<b>\$ (1,179)</b>	<b>\$ 777</b>

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The provision for income taxes is composed of the following charges (benefits):

(Dollars In Thousands)	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
<b>Current income tax expense:</b>			
Federal	\$ 130,536	\$ 97,347	\$ 48,478
State <sup>(1)</sup>	19,379	13,808	6,461
	<b>149,915</b>	111,155	54,939
<b>Deferred income tax (benefit) expense:</b>			
Federal	6,144	(18,307)	(9,834)
State	(1,921)	(4,814)	(2,437)
	<b>4,223</b>	(23,121)	(12,271)
<b>Total</b>	<b>\$ 154,138</b>	<b>\$ 88,034</b>	<b>\$ 42,668</b>

<sup>(1)</sup> The current state income tax expense is net of the use of state loss carryforwards amounting to \$13.5 million, \$45.8 million, and \$26.8 million for the years ended October 31, 2003, 2002, and 2001, respectively.

The deferred tax liabilities or assets have been recognized in the consolidated balance sheets due to temporary differences as follows:

(Dollars In Thousands)	Year Ended	
	October 31, 2003	October 31, 2002
<b>Deferred tax assets:</b>		
Association subsidy reserves	\$ 231	\$ 659
Inventory impairment loss	700	1,048
Uniform capitalization of overhead	5,980	14,157
Post development completion costs	7,989	8,006
Acquisition goodwill	8,806	2,995
Restricted stock bonus	8,790	2,710

Provision for losses	8,952	1,878
State net operating loss carryforwards	24,816	27,684
Other	9,433	5,411
<b>Total</b>	<b>75,697</b>	<b>64,548</b>
Valuation allowance	(24,816)	(27,684)
<b>Total deferred tax assets</b>	<b>50,881</b>	<b>36,864</b>
Deferred tax liabilities:		
Research and engineering costs	13,437	
Installment sales		72
Accelerated depreciation	2,816	2,936
Acquisition goodwill	4,735	
Other	260	
<b>Total deferred tax liabilities</b>	<b>21,248</b>	<b>3,008</b>
<b>Net deferred tax assets</b>	<b>\$ 29,633</b>	<b>\$ 33,856</b>

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The effective tax rates varied from the expected rate. The sources of these differences were as follows:

<i>(Dollars In Thousands)</i>	Year Ended		
	October 31, 2003	October 31, 2002	October 31, 2001
Computed "expected" tax rate	35.0%	35.0%	35.0%
State income taxes, net of Federal income tax benefit	2.7	2.6	3.2
Permanent timing differences	—	1.4	1.6
Low income housing tax credit	(0.3)	(0.6)	(1.3)
Other	0.1	0.6	1.6
<b>Effective tax rate</b>	<b>37.5%</b>	<b>39.0%</b>	<b>40.1%</b>

We have state net operating loss carryforwards for financial reporting and tax purposes of \$335.3 million due to expire between the years October 31, 2004 and October 31, 2017.

## 11. Reduction of Inventory to Fair Value

We record impairment losses on inventories related to communities under development when events and circumstances indicate that they may be impaired and the undiscounted cash flows estimated to be generated by those assets are less than their related carrying amounts. As of October 31, 2003, inventory with a carrying amount of \$3.1 million was written down by \$0.7 million in our Southeast Region. This property was acquired as part of one of our acquisitions. In 2003, a decision was made to liquidate this property resulting in lower sales prices. As of October 31, 2002, inventory with a carrying amount of \$9.4 million was written down by \$4.2 million to its fair market value. This write-down was attributed to two properties in Poland and one community in the Mid-South. We have made a decision to discontinue selling homes in these two markets and offer the remaining lots for sale. During the year ended October 31, 2001, inventory with a carrying amount of \$13.5 million was written down \$2.5 million to its fair value. The 2001 writedowns were primarily the result of the acquisition of two communities in the Northeast Region that were part of a large land acquisition and were subsequently revalued, resulting in a loss.

The total aggregate impairment losses, which are presented in the Consolidated Statements of Income and deducted from inventory held for future development or sale were \$0.7 million, \$4.2 million, and \$2.5 million for the years ended October 31, 2003, 2002, and 2001, respectively.

On the Statement of Income the line entitled "Homebuilding – Inventory impairment loss" also includes write-offs of options, and approval, engineering, and capitalized interest costs. During the years ended October 31, 2003, 2002, and 2001 write-offs amounted to \$4.5 million, \$4.0 million, and \$1.9 million, respectively. During the years ended October 31, 2003, 2002, and 2001 we redesigned communities, abandoning certain engineering costs, and we did not exercise options in various locations because the communities pro forma profitability did not produce adequate returns on investment commensurate with the risk. Those communities were located in our Northeast Region, Southeast Region, West Region, and Poland.

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## 12. Transactions with Related Parties

Our Board of Directors adopted a general policy providing that it will not make loans to our officers or directors or their relatives at an interest rate less than the interest rate at the date of the loan on six month U.S. Treasury Bills, that the aggregate of such loans will not exceed \$3 million at any one time, and that such loans will be made only with the approval of the members of our Board of Directors who have no interest in the transaction. At October 31, 2003 and 2002 related party receivables from officers and directors amounted to zero. Interest income from these loans for the years ended October 31, 2003, 2002, and 2001 amounted to zero, \$18,000, and \$84,000, respectively.

We provide property management services to various limited partnerships including one partnership in which Mr. A. Hovnanian, our Chief Executive Officer, President and a Director, is a general partner, and members of his family and certain officers and directors are limited partners. During the years ended October 31, 2003, 2002, and 2001 we received \$0.1 million in fees for such management services. At October 31, 2003 and 2002, no amounts were due us by these partnerships.

During the year ended October 31, 2003, we entered into an agreement to purchase land in California for approximately \$33.4 million from an entity that is owned by a family relative of our Chairman of the Board and our Chief Executive Officer. As of October 31, 2003, we have an option deposit of \$3.9 million related to this land acquisition agreement. In connection with this agreement, we also have consolidated \$29.5 million in accordance with FIN 46 under "Consolidated Inventory Not Owned" in the Consolidated Balance Sheet (see Note 17). Neither the Company nor the Chairman of the Board and Chief Executive Officer has a financial interest in the relative's company from whom the land was purchased.

During the year ended October 31, 2001, we entered into an agreement to purchase land from an entity that is owned by a family relative of our Chairman of the Board and our Chief Executive Officer, totalling \$26.9 million. As of October 31, 2003 and 2002, land aggregating \$18.4 million and \$10.3 million, respectively, has been purchased. Neither the Company nor the Chairman of the Board and Chief Executive Officer has a financial interest in the relative's company from whom the land was purchased.

## 13. Stock Plans

We have a stock option plan for certain officers and key employees. Options are granted by a Committee appointed by the Board of Directors. The exercise price of all stock options must be at least equal to the fair market value of the underlying shares on the date of the grant. Options granted prior to May 14, 1998 vest in three equal installments on the first, second and third anniversaries of the date of the grant. Options granted on or after May 14, 1998 vest in four equal installments on the third, fourth, fifth and sixth anniversaries of the date of the grant. Certain Southeast Region associates were granted and held options to purchase their stock prior to the January 23, 2001 acquisition. These options vest in three installments: 25% on the first and second anniversary, and 50% on the third anniversary of the date of the grant. In connection with the acquisition (see Note 18) the options were exchanged for options to purchase the Company's Class A Common Stock. All options expire ten years after the date of the grant. During the year ended October 31, 2002 each of the four outside directors of the Company were granted options to purchase 7,500 shares. All shares granted to the outside directors were issued at the same price and terms as those granted to officers and key employees. Stock option transactions are summarized as follows:

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	October 31, 2003	Weighted Average Fair Value <sup>(1)</sup> And Exercise Price	October 31, 2002	Weighted Average Fair Value <sup>(1)</sup> And Exercise Price	October 31, 2001	Weighted Average Fair Value <sup>(1)</sup> And Exercise Price
Options outstanding at beginning of period	2,477,162	\$ 9.69	2,280,657	\$ 7.52	1,980,500	\$7.55
Granted	480,500	\$33.03	583,670	\$15.03	1,058,785	\$5.81
Exercised	513,996	\$ 9.54	357,165	\$ 6.28	519,673	\$4.29
Forfeited	1,875	\$ 7.50	30,000	\$ 7.72	238,955	\$7.67
Options outstanding at end of period	2,441,791	\$14.32	2,477,162	\$ 9.69	2,280,657	\$7.52
Options exercisable at end of period	822,999		1,089,513		1,451,718	
Price range of options outstanding	\$ 2.66- \$ 63.00		\$ 2.66- \$ 34.75		\$ 2.66- \$ 15.08	
Weighted-average remaining contractual life	6.4 yrs.		6.0 yrs.		6.0 yrs.	

<sup>(1)</sup> Fair value of options at grant date approximate exercise price.

The following table summarizes the exercise price range and related number of options outstanding at October 31, 2003:

\$ 2.66 – \$ 5.00	99,375
\$ 5.00 – \$10.00	1,067,250
\$10.01 – \$15.00	590,000
\$15.01 – \$20.00	41,000
\$20.01 – \$25.00	66,666
\$25.01 – \$30.00	62,000
\$30.01 – \$63.00	515,500
	<u>2,441,791</u>

During the year ended October 31, 1999, we modified our bonus plan for certain associates. A portion of their bonus is paid by issuing a deferred right to receive our Class A Common Stock. The number of shares is calculated by dividing the portion of the bonus subject to the deferred right award by our stock price on the date the bonus is earned. 25% of the deferred right award will vest and shares will be issued one year after the year end and then 25% a year for the next three years. During the years ended October 31, 2003 and 2002, we issued 88,579 and 63,815 shares under the plan. During the years ended October 31, 2003 and 2002 10,034 and 8,328 shares were forfeited under this plan, respectively. For the years ended October 31, 2003, 2002, and 2001, approximately 251,000, 278,000, and 368,000 deferred rights were awarded in lieu of \$11.9 million, \$7.2 million, and \$4.3 million of bonus payments, respectively.

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#### 14. Warranty Costs

We provide a warranty accrual for repair costs over \$1,000 to homes, community amenities, and land development infrastructure. We accrue for warranty costs at the time each home is closed and title and possession have been transferred to the homebuyer as part of cost of sales. In addition, we accrue for warranty costs under our \$150,000 per occurrence general liability insurance deductible as part of selling, general and administration costs. Warranty accruals are based upon historical experience. Charges in the warranty accrual and general liability accrual for the year ended October 31, 2003 are as follows:

	Year Ended October 31, 2003
Balance, beginning of year	\$22,392,000
Company acquisitions during year	2,524,000
Additions during year	24,336,000
Charges incurred during year	(9,720,000)
Balance, end of year	<u>\$39,532,000</u>

#### 15. Commitments and Contingent Liabilities

We are involved in litigation arising in the ordinary course of business, none of which is expected to have a material adverse effect on us.

#### 16. Performance Letters of Credit

As of October 31, 2003 and 2002, respectively, we are obligated under various performance letters of credit amounting to \$130.3 million and \$100 million. (see Note 5).

#### 17. Variable Interest Entities

In January 2003, the FASB issued FIN 46. A Variable Interest Entity ("VIE") is created when (i) the equity investment at risk is not sufficient to permit the entity from financing its activities without additional subordinated financial support from other parties or (ii) equity holders either (a) lack direct or indirect ability to make decisions about the entity, (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur. If an entity is deemed to be a VIE, pursuant to FIN 46, an enterprise that absorbs a majority of the expected losses of the VIE is considered the primary beneficiary and must consolidate the VIE. FIN 46 is effective immediately for VIE's created after January 31, 2003. Pursuant to FASB revision to FIN 46 ("FSP46-6"), a public entity need not apply the provisions of FIN 46 to an interest held in a variable interest entity or potential variable interest entity until the end of the first interim or annual period ending after March 15, 2004, if the VIE was created before February 1,

2003, and the public entity has not issued financial statements reporting that VIE in accordance with FIN 46. We have elected to defer the application of FIN 46 to its interests in potential variable interest entities created prior to February 1, 2003 pursuant to FSP 46-6.

Based on the provisions of FIN 46, we have concluded that whenever we option land or lots from an entity and pay a non-refundable deposit, a VIE is created under condition (ii) (b) and (c) of the previous paragraph. We have been deemed to have provided subordinated financial support, which refers to variable interests that will absorb some or all of an entity's expected theoretical losses if they occur. For each VIE created with a significant nonrefundable option fee, we will compute expected losses and residual returns based on the probability of future cash flows as outlined in FIN 46. If we are deemed to be the primary beneficiary of the VIE we will consolidate it on our balance sheet. The fair value of the VIE's inventory will be reported as "Consolidated Inventory Not Owned – Variable Interest Entities".

Management believes FIN 46 was not clearly thought out for application in the homebuilding industry for land and lot options. Under FIN 46, we can have an option and put down a small deposit as a percentage of the purchase price and still have to consolidate the entity. Our exposure to loss as a result of our involvement with the VIE is only the deposit,

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not its total assets consolidated on the balance sheet. In certain cases we will have to place inventory on our balance sheet the VIE has optioned to other developers. In addition, if the VIE has creditors, its debt will be placed on our balance sheet even though the creditors have no recourse against our Company. Based on these observations we believe consolidating VIE's based on land and lot option deposits does not reflect the economic realities or risks of owning and developing land.

At October 31, 2003, we consolidated VIE's created from February 1, 2003 to October 31, 2003 as a result of our option to purchase land or lots from the selling entities. We paid cash or issued letters of credit deposits to these eleven VIE's totaling \$13 million. Our option deposits represent our maximum exposure to loss. The fair value of the property owned by the VIE's was \$100.3 million of which \$6.2 million was not optioned to our Company. Since we could not get the remainder of the selling entities to provide us with any financial information, the fair value of the optioned property less our cash deposits and liabilities from inventory not owned, which totaled \$90.3 million, was reported on the balance sheet as "Minority interest from inventory not owned". Creditors of these VIE's have no recourse against our Company.

We will continue to secure land and lots using options. Including the deposits with the eleven VIE's above, at October 31, 2003 we have total cash and letters of credit deposits amounting to approximately \$168.6 million to purchase land and lots with a total purchase price of \$2.3 billion. Not all our deposits are with VIE's. The maximum exposure to loss is limited to the deposits although some deposits are refundable at our request or refundable if certain conditions are not met.

## 18. Acquisitions

On January 23, 2001, we acquired a Southeast Region homebuilder for a total purchase price of \$87.4 million, of which \$38.5 million was paid in cash and 6,352,900 shares of our Class A Common Stock valued at \$44.9 million were issued and option issued to their employees with an intrinsic value of \$3.4 million were converted to 738,785 of our options. At the date of acquisition we paid off approximately \$57.0 million of their third party debt.

On January 10, 2002, we acquired a California homebuilder for a total purchase price of \$196.5 million, of which \$151.6 million was paid in cash and 2,208,738 shares of Class A Common Stock were issued. At the date of acquisition we also paid off approximately \$88.0 million of their third party debt. During the second quarter ended April 30, 2003, we exercised the right to retire at no cost 749,359 Class A Common Stock shares that were held by the selling principal under the terms of the acquisition. The total purchase price amounted to \$90.4 million over book value, of which \$22.8 million was added to inventory to reflect fair value, \$18.5 million was paid for two option agreements, a two year consultant's agreement, and a three year right of first refusal agreement, and the balance recorded as a tradename, which is recorded as an indefinite life intangible asset.

A condensed balance sheet (including the effects of purchase accounting adjustments) as of the acquisition date is as follows (dollars in thousands):

	January 10, 2002
Cash and cash equivalents	\$ 10,209
Inventories	220,110
Tradename intangible	49,107
Prepays and other assets	20,676
Total Assets	<u>\$300,102</u>
Accounts payable and other liabilities	\$ 35,028
Revolving credit agreement	219,574
Stockholders' equity	45,500
Total Liabilities and Stockholders' Equity	<u>\$300,102</u>

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Our Southeast and California acquisitions were accounted for as purchases with the results of operations of these entities included in our Consolidated Financial Statements as of the date of the acquisitions. The purchase price was allocated based on estimated fair value of the assets and liabilities at the date of the acquisitions. An intangible asset equal to the excess purchase price over the fair value of the net assets of \$12.8 million and \$49.8 million for our Southeast Region and California acquisitions, respectively, were recorded as goodwill and a tradename, which is an indefinite life intangible asset on the Consolidated Balance Sheet. The goodwill from our Southeast Region acquisition was being amortized on a straight line basis over a period of ten years during fiscal 2001. On November 1, 2001 we adopted Statement of Financial Accounting Standards (SFAS) No. 142, "Goodwill and Other Intangible Assets". Indefinite life intangible assets are not amortized. As a result of adopting SFAS No. 142, we no longer amortize goodwill or indefinite life intangibles, but instead assess them periodically for impairment. We performed a fair value analysis as of October 31, 2003 and 2002 and determined that no impairment of goodwill or intangibles existed.

The following unaudited pro forma financial data for the years ended October 31, 2002 and 2001 has been prepared as if the acquisition of the Southeast Region homebuilder on January 23, 2001 and the acquisition of a California homebuilder on January 10, 2002 had occurred on November 1, 2000. Unaudited pro forma financial data is presented for information purposes only and may not be indicative of the actual amounts had the events occurred on the dates listed above, nor does it purport to represent future periods.

<i>(In Thousands Except Per Share)</i>	Year Ended October 31,	
	2002	2003
Revenues	\$2,615,455	\$2,308,130
Expenses	2,384,361	2,145,759
Income Taxes	90,132	64,387
Net Income	\$ 140,962	\$ 97,984
Diluted Net Income Per Common Share	\$ 4.33	\$ 3.12

On November 1, 2002, and December 31, 2002, we acquired two Houston homebuilding companies. On April 9, 2003, we acquired a build-on-your-own lot homebuilder in Ohio, and on August 8, 2003, we acquired a homebuilder in Phoenix, Arizona. Our aggregate net cash purchase price, including payment of third party debt, for our fiscal 2003 acquisitions was approximately \$186.4 million. In connection with the December 31, 2002 and April 9, 2003 acquisitions, we have definite life intangible assets equal to the excess purchase price over the fair value of the net assets of \$65.4 million. It is our policy to obtain appraisals of acquisition intangibles. We have received the appraisal for the December 31, 2002 acquisition and are awaiting the appraisal for the April 9, 2003 acquisition. Until appraisals are received we estimate intangible values for amortization calculations. We are amortizing our definite life intangibles over a period of three to seven years (see Note 2). All 2003 acquisitions provide for other payments to be made, generally dependent upon achievement of certain future operating and return objectives.

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## 19. Unaudited Summarized Consolidated Quarterly Information

Summarized quarterly financial information for the years ended October 31, 2003 and 2002 is as follows:

<i>(In Thousands Except Per Share Data)</i>	Three Months Ended			
	October 31, 2003	July 31, 2003	April 30, 2003	January 31, 2003
Revenues	\$1,045,588	\$848,817	\$679,817	\$627,635
Expenses	\$ 899,442	\$739,009	\$595,389	\$556,499
Income before income taxes	\$ 146,146	\$109,808	\$ 84,428	\$ 71,136
State and Federal income tax	\$ 54,897	\$ 41,006	\$ 31,860	\$ 26,375
Net Income	\$ 91,249	\$ 68,802	\$ 52,568	\$ 44,761
Per Share Data:				
Basic:				
Net Income	\$ 2.97	\$ 2.25	\$ 1.69	\$ 1.43
Weighted average number of common shares outstanding	30,709	30,630	31,143	31,371
Assuming Dilution:				
Net Income	\$ 2.79	\$ 2.11	\$ 1.60	\$ 1.35
Weighted average number of common shares outstanding	32,659	32,543	32,761	33,080

<i>(In Thousands Except Per Share Data)</i>	Three Months Ended			
	October 31, 2002	July 31, 2002	April 30, 2002	January 31, 2002
Revenues	\$831,410	\$704,636	\$560,998	\$454,062
Expenses	\$739,011	\$642,675	\$519,425	\$424,265



Income before income taxes	\$ 92,399	\$ 61,961	\$ 41,573	\$ 29,797
State and Federal income tax	\$ 37,961	22,774	\$ 15,663	\$ 11,636
Net Income	\$ 54,438	\$ 39,187	\$ 25,910	\$ 18,161
Per Share Data:				
<b>Basic:</b>				
Net Income	\$ 1.75	\$ 1.27	\$ 0.84	\$ 0.63
Weighted average number of common shares outstanding	31,089	30,877	30,736	28,965
Assuming Dilution:				
Net Income	\$ 1.66	\$ 1.20	\$ 0.80	\$ 0.60
Weighted average number of common shares outstanding	32,886	32,703	32,570	30,456

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## 20. Financial Information of Subsidiary Issuer and Subsidiary Guarantors

Hovnanian Enterprises, Inc., the parent company (the "Parent") is the issuer of publicly traded common stock. One of its wholly-owned subsidiaries, K. Hovnanian Enterprises, Inc., (the "Subsidiary Issuer") acts as a finance entity that as of October 31, 2003 had issued and outstanding approximately \$300 million Senior Subordinated Notes, \$390 million face value Senior Notes, a Term Loan with an outstanding balance of \$115 million, and a Revolving Credit Agreement with no outstanding balance. The Senior Subordinated Notes, Senior Notes, the Revolving Credit Agreement, and the Term Loan are fully and unconditionally guaranteed by the Parent.

In addition to the Parent, each of the wholly-owned subsidiaries of the Parent other than the Subsidiary Issuer (collectively the "Guarantor Subsidiaries"), with the exception of various subsidiaries formerly engaged in the issuance of collateralized mortgage obligations, a mortgage lending subsidiary, a subsidiary engaged in homebuilding activity in Poland, our Title subsidiaries, and joint ventures (collectively the "Non-guarantor Subsidiaries"), have guaranteed fully and unconditionally, on a joint and several basis, the obligation of the Subsidiary Issuer to pay principal and interest under the Senior Notes, Senior Subordinated Notes, the Term Loan and the Agreement.

In lieu of providing separate audited financial statements for the Guarantor Subsidiaries we have included the accompanying consolidated condensed financial statements. Management does not believe that separate financial statements of the Guarantor Subsidiaries are material to investors. Therefore, separate financial statements and other disclosures concerning the Guarantor Subsidiaries are not presented.

The following consolidating condensed financial information presents the results of operations, financial position and cash flows of (i) the Parent (ii) the Subsidiary Issuer (iii) the Guarantor Subsidiaries of the Parent (iv) the Non-guarantor Subsidiaries of the Parent and (v) the eliminations to arrive at the information for Hovnanian Enterprises, Inc. on a consolidated basis.

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*Hovnanian Enterprises, Inc. and Subsidiaries*

## Consolidating Condensed Balance Sheet October 31, 2003

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Eliminations	Consolidated
<b>Assets</b>						
Homebuilding	\$ (279)	\$151,050	\$1,910,484	\$ 35,632	\$	\$2,096,887
Financial Services			(252)	234,557		234,305
Income Taxes (Payable) Receivable	18,713	(1,241)	(15,656)	(637)		1,179
Investments in and amounts due to and from consolidated subsidiaries	801,278	690,971	(851,398)	(56,837)	(584,014)	
Total Assets	\$819,712	\$840,780	\$1,043,178	\$212,715	\$(584,014)	\$2,332,371
<b>Liabilities</b>						
Homebuilding	\$	\$	\$ 425,847	\$ 1,800	\$	\$ 427,647
Financial Services			(35)	172,663		172,628
Notes Payable		816,960	(2,984)	3,865		817,841
Income Taxes Payable (Receivable)						
Minority Interest			90,252	4,291		94,543
Stockholders' Equity	819,712	23,820	530,098	30,096	(584,014)	819,712
Total Liabilities and Stockholders'	\$819,712	\$840,780	\$1,043,178	\$212,715	\$(584,014)	\$2,332,371



Hovnanian Enterprises, Inc. and Subsidiaries

### Consolidating Condensed Balance Sheet

October 31, 2002

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non- Guarantor Subsidiaries	Eliminations	Consolidated
<b>Assets</b>						
Homebuilding	\$ 1,501	\$261,107	\$1,269,514	\$ 36,014	\$	\$1,568,136
Financial Services			111	109,881		109,992
Investments in and amounts due to and from consolidated subsidiaries	584,103	432,130	(630,186)	(32,376)	(353,671)	
<b>Total Assets</b>	<b>\$585,604</b>	<b>\$693,237</b>	<b>\$ 639,439</b>	<b>\$113,519</b>	<b>\$(353,671)</b>	<b>\$1,678,128</b>
<b>Liabilities</b>						
Homebuilding	\$	\$ 35,736	\$ 312,231	\$ 3,595	\$	\$ 351,562
Financial Services				90,355		90,355
Notes Payable		661,390	2,345	7,210		670,945
Income Taxes Payable (Receivable)	23,055	(3,147)	(18,184)	(947)		777
Minority Interest				1,940		1,940
Stockholders' Equity	562,549	(742)	343,047	11,366	(353,671)	562,549
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$585,604</b>	<b>\$693,237</b>	<b>\$ 639,439</b>	<b>\$113,519</b>	<b>\$(353,671)</b>	<b>\$1,678,128</b>

Hovnanian Enterprises, Inc. and Subsidiaries

### Consolidating Condensed Statement of Income

Twelve Months Ended October 31, 2003

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non- Guarantor Subsidiaries	Eliminations	Consolidated
<b>Revenues:</b>						
Homebuilding	\$	\$ 620	\$3,129,090	\$20,843	\$ 19	\$3,150,572
Financial Services			6,707	44,578		51,285
Intercompany Charges		38,610	90,674		(129,284)	
Equity In Pretax Income of Consolidated Subsidiaries	411,518				(411,518)	
<b>Total Revenues</b>	<b>411,518</b>	<b>39,230</b>	<b>3,226,471</b>	<b>65,421</b>	<b>(540,783)</b>	<b>3,201,857</b>
<b>Expenses:</b>						
Homebuilding		2,978	2,869,413	14,998	(125,465)	2,761,924
Financial Services			2,555	26,344	(484)	28,415
<b>Total Expenses</b>	<b>—</b>	<b>2,978</b>	<b>2,871,968</b>	<b>41,342</b>	<b>(125,949)</b>	<b>2,790,339</b>
<b>Income (Loss) Before Income Taxes</b>	<b>411,518</b>	<b>36,252</b>	<b>354,503</b>	<b>24,079</b>	<b>(414,834)</b>	<b>411,518</b>
State and Federal Income Taxes	154,138	12,688	133,929	8,682	(155,299)	154,138
<b>Net Income (Loss)</b>	<b>\$257,380</b>	<b>\$23,564</b>	<b>\$ 220,574</b>	<b>\$15,397</b>	<b>\$(259,535)</b>	<b>\$ 257,380</b>

Hovnanian Enterprises, Inc. and Subsidiaries

### Consolidating Condensed Statement of Income

Twelve Months Ended October 31, 2002

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Eliminations	Consolidated
<b>Revenues:</b>						
Homebuilding	\$	\$ 1,059	\$2,523,632	\$14,093	\$ (28,448)	\$2,510,336
Financial Services			7,153	33,617		40,770
Intercompany Charges		139,502	21,183		(160,685)	
Equity In Pretax Income of Consolidated Subsidiaries	225,730				(225,730)	
Total Revenues	225,730	140,561	2,551,968	47,710	(414,863)	2,551,106
<b>Expenses:</b>						
Homebuilding		140,561	2,313,094	18,165	(168,987)	2,302,833
Financial Services			2,397	20,324	(178)	22,543
Total Expenses		140,561	2,315,491	38,489	(169,165)	2,325,376
Income (Loss) Before Income Taxes	225,730		236,477	9,221	(245,698)	225,730
State and Federal Income Taxes	88,034	(195)	89,530	5,797	(95,132)	88,034
Net Income (Loss)	\$137,696	\$ 195	146,947	\$ 3,424	\$(150,566)	\$ 137,696

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*Hovnanian Enterprises, Inc. and Subsidiaries*

### Consolidating Condensed Statement of Income

Twelve Months Ended October 31, 2001

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Eliminations	Consolidated
<b>Revenues:</b>						
Homebuilding	\$	\$ 431	\$1,701,421	\$46,190	\$ (37,480)	\$1,710,562
Financial Services			10,391	21,037		31,428
Intercompany Charges		96,368	30,480		(126,848)	
Equity In Pretax Income of Consolidated Subsidiaries	106,354				(106,354)	
Total Revenues	106,354	96,799	1,742,292	67,227	(270,682)	1,741,990
<b>Expenses:</b>						
Homebuilding		96,799	1,637,265	8,935	(128,806)	1,614,193
Financial Services			5,748	15,821	(126)	21,443
Total Expenses		96,799	1,643,013	24,756	(128,932)	1,635,636
Income (Loss) Before Income Taxes	106,354		99,279	42,471	(141,750)	106,354
State and Federal Income Taxes	42,668	109	39,278	16,448	(55,835)	42,668
Net Income (Loss)	\$ 63,686	\$ (109)	\$ 60,001	\$26,023	\$ (85,915)	\$ 63,686

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*Hovnanian Enterprises, Inc. and Subsidiaries*

### Consolidating Condensed Statement of Cash Flows

Twelve Months Ended October 31, 2003

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Eliminations	Consolidated
<b>Cash Flows From Operating Activities:</b>						
Net Income	\$ 257,380	\$ 23,564	\$ 220,574	\$ 15,397	\$(259,535)	\$ 257,380
Adjustments to reconcile net income to net cash provided by (used in) operating activities	(26,791)	11,503	(577,511)	(118,625)	259,535	(451,889)
Net Cash Provided By (Used In) Operating Activities	230,589	35,067	(356,937)	(103,228)		(194,509)
Net Cash Provided By (Used In) Investing Activities	(10,821)		(186,603)	(331)		(197,755)
Net Cash Provided By (Used In) Financing	(10,978)	140,776	40,374	80,323		250,495

Activities						
Intercompany Investing and Financing Activities – Net	(208,785)	(258,841)	445,105	22,521		
Net Increase (Decrease)	5	(82,998)	(58,061)	(715)		(141,769)
In Cash and Cash Equivalents Balance, Beginning of Period	10	218,844	43,689	7,447		269,990
Cash and Cash Equivalents Balance, End of Period	\$ 15	\$ 135,846	\$ (14,372)	\$ 6,732	\$	\$ 128,221

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### Consolidating Condensed Statement of Cash Flows

Twelve Months Ended October 31, 2002

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Eliminations	Consolidated
<b>Cash Flows From Operating Activities:</b>						
Net Income	\$ 137,696	\$ (387)	\$ 147,841	\$ 3,425	\$(150,879)	\$ 137,696
Adjustments to reconcile net income to net cash provided by (used in) operating activities	122,389	23,716	(217,049)	30,909	150,879	110,844
Net Cash Provided By (Used In) Operating Activities	260,085	23,329	(69,208)	34,334		248,540
Net Cash Provided By (Used In) Investing Activities	(48,775)	(6,875)	(104,202)	166		(159,686)
Net Cash Provided By (Used In) Financing Activities	(2,948)	264,846	(83,298)	(13,613)		164,987
Intercompany Investing and Financing Activities – Net	(208,362)	(56,616)	284,781	(19,803)		
Net Increase (Decrease)		224,684	28,073	1,084		253,841
In Cash and Cash Equivalents Balance, Beginning of Period	10	(5,840)	15,616	6,363		16,149
Cash and Cash Equivalents Balance, End of Period	\$ 10	\$ 218,844	\$ 43,689	\$ 7,447	\$ —	\$ 269,990

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*Hovnanian Enterprises, Inc. and Subsidiaries*

### Consolidating Condensed Statement of Cash Flows

Twelve Months Ended October 31, 2001

<i>(Thousands of Dollars)</i>	Parent	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Eliminations	Consolidated
<b>Cash Flows From Operating Activities:</b>						
Net Income	\$ 63,686	\$ (109)	\$ 60,001	\$ 26,023	\$(85,915)	\$ 63,686
Adjustments to reconcile net income to net cash provided by (used in) operating activities	102,908	99,063	(264,122)	(50,381)	85,915	(26,617)
Net Cash Provided By (Used In) Operating Activities	166,594	98,954	(204,121)	(24,358)		37,069
Net Cash Provided By (Used In) Investing Activities	(49,622)	(3,770)	13,393	264		(39,735)
Net Cash Provided By (Used In) Financing Activities	(6,215)	114	(59,549)	41,212		(24,438)
Intercompany Investing and Financing Activities – Net	(110,684)	(118,767)	243,387	(13,936)		
Net Increase (Decrease)	73	(23,469)	(6,890)	3,182		(27,104)
In Cash and Cash Equivalents Balance, Beginning of Period	(63)	17,629	22,506	3,181		43,253
Cash and Cash Equivalents Balance, End of Period	\$ 10	\$ (5,840)	\$ 15,616	\$ 6,363	\$ —	\$ 16,149

**21. Subsequent Event**

During November 2003, we purchased a Florida based homebuilder.

MEMORANDUM

TO:  
 FROM: Kevork S. Hovnanian  
 DATE: May 4, 1993  
 SUBJECT: Bonus Compensation Plan

We have established a bonus program for corporate level personnel. The maximum amount of such bonus will be based on how the corporate fares in its return on equity (ROE). ROE will be calculated as follows: net income as reported to the public (with no adjustments) divided by average shareholders' equity for the period. Average shareholders' equity for any fiscal year will be determined by averaging shareholder equity of five quarter endings beginning with the end of the prior fiscal year and ending with the current fiscal year.

The Bonus available for payment to you will be a percentage of your base salary as per the ROE scale following in the text of this plan. The overall bonus will be divided into two parts. The first part will be 60% of the available bonus based on actual ROE performance as outlined in the first paragraph.

The remaining 40% is discretionary. The actual amount paid to you will be determined on your individual efforts in meeting specific objectives by you and for your functional area and how you fostered a spirit of teamwork, excellence, and integrity. Your actual performance will be compared to your specific objectives and will be used, in part, to determine your individual discretionary bonus payment. This discretionary portion does not mean that if you did an "average" job you should expect a payment of the full 40%. The role of a corporate officer is one of leadership, teambuilding, and working for the good of the entire corporate entity. Your personal goals should foster this spirit.

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Your potential bonus will be based on ROE and a percentage of your base pay as follows:

Return on Equity	Percentage of Base Pay Potential
0.00 – 5.00	
5.01 – 7.50	
7.51 – 10.00	
10.01 – 12.50	
12.51 – 15.00	
15.01 – 17.50	
17.51 – 20.00	
20.01 – 22.50	
22.51 – 25.00	
25.01 +	

Both portions of the bonus awards will be paid in one installment on May 13, 1994. If your employment is terminated prior to March 1, 1994, any and all rights to the bonus payment outlined above will be cancelled. If you voluntarily terminate your employment after February 28, 1994, any unpaid portion of the portion of the bonus outlined above will be forfeited.

Please sign in the space below acknowledging your understanding of the bonus program. This plan applies to fiscal 1993/94 results but may be extended to subsequent fiscal years.

ACKNOWLEDGED: \_\_\_\_\_ DATE: \_\_\_\_\_



## MANAGEMENT AGREEMENT

Agreement made this 15th day of December 1985, by and between Claire Road Associates, a New Jersey limited partnership (the "Owner"), and K. Hovnanian Investment Properties, Inc., a New Jersey corporation (the "Manager"), each having an address of 10 Highway 35, P.O. Box 500, Red Bank, New Jersey 07701.

The parties agree as follows:

1. *Engagement.* Owner hereby engages Manager as the exclusive manager of the property commonly known as HOVPARK Mini Storage, East Brunswick, New Jersey which is described on Exhibit A attached (the "Property"). Manager accepts the engagement.
  
2. *Term.* The term of this agreement (the "Term") shall commence upon the date of this Agreement and continue and remain in full force and effect until terminated by either party by giving the other party 30 days' written notice thereof. Notwithstanding the foregoing, if the Manager fails to perform any of its obligations under this Agreement, unreasonably interferes with Owner's business, fails to discharge any of Owner's obligations under any use agreement with a user or for other good cause, Owner may terminate this Agreement if, after giving Manager notice of such failure, interference or other good cause, Manager fails to cure same within ten working days of receipt of such notice. Additionally, this Agreement shall terminate immediately if any action is taken or suffered by Manager under any insolvency or bankruptcy act, if a receiver is appointed to take possession of Manager's assets, or if Manager makes an assignment for the benefit of creditors. Manager shall indemnify and hold Owner harmless from and against all claims, costs and other charges arising out of or in connection with any cause for termination described in the preceding two sentences.
  
3. *Manager's Compensation.* In consideration of the performance of its management duties under this Agreement, Manager shall be entitled to receive and Owner shall pay to Manager a fee equal to three percent of the Gross Rents (as defined below) actually collected by Manager for Owner's account during the term of this Agreement. Each month manager will submit an invoice to Owner itemizing Manager's compensation due. The fee shall be payable on a monthly basis within 15 days after the end of each calendar month, based upon the Gross Rents collected during such calendar month. "Gross Rents" shall mean fixed rental payments actually collected from users of the Property, exclusive of (a) security deposits, advance user fees and amounts paid by reasons of the breach of any user agreement, license, concession or similar agreement (unless and until such deposits or payments shall have been applied to the payment of current or past-due fixed rent), (b) late fees and lock sales (c) reimbursable charges and expenses for extra services furnished to a tenant or occupant, whether or not any of the excluded payments are characterized as use fees or additional fees under the applicable use agreements or other agreements.
  
4. *Duties of Manager.* Manager shall, on behalf of and at the expense of Owner (except as otherwise provided in clause (a) below), perform any and all services required in connection with the operation of the Property, subject at all times to Owner's general supervision and control. Without limiting the generality of the foregoing, Manager's duties shall include the following:
  - (a) On or before December 1 of each year during the Term, Manager shall submit to owner for its approval a proposed operating budget for the Property, setting forth all estimated receipts and disbursements relating to the Property for the ensuing calendar year. Upon executing this Agreement, Manager shall promptly prepare and submit to Owner for its approval a proposed operating budget for the balance of the current calendar year. For purposes of this Agreement, an operating budget shall be deemed an "Approved Budget" once it has been approved in writing by Owner. Except as otherwise provided in this Agreement, or except as approved in writing by Owner, Manager shall incur no expenses in connection with the Property in addition to or in excess of those provided for in the Approved Budget plus a ten percent variance factor. In the event that a submitted budget is rejected by Owner, Manager shall operate under the last Approved Budget on an item by item basis until a revised budget is approved in writing by Owner except in the case of the initial approved budget.
  
  - (b) Manager shall advertise available space in the Property for use through customary media. (Yellow pages, local newspapers, etc.) Any major advertising campaign will be reviewed with Owner.
  
  - (c) Manager shall use its best efforts to rent space now or hereafter becoming vacant to desirable users on terms and conditions satisfactory to Owner.

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  - (d) Manager shall collect all use fees and other income payable with respect to the Property and notify Owner on a monthly basis all occupancies, vacancies and delinquencies.
  
  - (e) Manager shall perform Owner's obligations under any and all use agreements for space at the Property and take necessary and appropriate action upon complaints and requests of users.
  
  - (f) Manager shall provide recommendations to Owner with respect to Property alterations.
  
  - (g) Manager shall, when necessary, institute legal actions, public sales or other necessary proceedings for the collection of delinquent use fees and other income from the Property, provided Manager shall employ counsel only as directed by Owner.
  
  - (h) Manager shall make or cause to be made all necessary repairs to the Property, purchase all necessary supplies and materials, and do all other things necessary to maintain the Property in a clean, safe and orderly condition and to ensure compliance with all federal, state and local statutes, ordinances, rules and regulations applicable to the operation of the Property. Manager shall immediately notify Owner of any violations of any such statutes, ordinances, rules and regulations and of any damage or destruction to any of the Property. Unless otherwise specifically provided for in the Approved Budget for the then current year, Manager shall not expend more than \$2,500.00 for any single repair or purchase without prior written authorization by Owner, except in the case of emergency, in which case Manager shall promptly notify Owner of the repair or purchase made to meet the emergency. Manager shall use its best efforts to make all repairs and to obtain all materials, supplies and services at the lowest available cost, yet consistent with Owner's standard for the Property. Manager shall remit to Owner any rebate, commission or discount allowed in connection with foregoing.
  
  - (i) Manager shall contract for electricity, gas, water, telephone, window and such other utilities and services as shall be necessary and advisable for the proper operation of the Property.

(j) Manager shall perform all other services necessary for the care, protection, maintenance and operation of the Property and the prevention of waste, damage or injury to the Property.

(k) Manager or its agent shall hire, discharge and supervise all persons employed to carry out Manager's duties under this Agreement. Manager agrees to use reasonable care in the selection of such employees and not to pay salaries or benefits to employees in excess of those specified in the Approved Budget for each category of employee, without Owner's prior written consent. Upon owner's request, Manager shall obtain fidelity bonds for such employees from reputable bonding companies in amounts satisfactory to Owner. It is expressly understood and agreed that all employees shall be employees of Manager, as an independent contractor, and not employees of Owner.

(l) Manager or its agent shall prepare and file all forms for unemployment insurance, withholding taxes, social security taxes, workmen's compensation and other forms required by federal, state or municipal authorities in connection with employees employed in the operation of the Property.

(m) Manager shall establish and maintain complete and orderly files containing correspondence, rent records, payroll records, insurance policies, leases, receipts, unpaid bills, vouchers and all other documents and papers pertaining to the Property and the management and operation thereof, all of which shall be and remain the property of the Owner and shall be available to Owner and its representatives for inspection at any time during regular business hours.

(n) Manager shall establish and maintain accurate and complete books of account with proper entries of all receipts, income and disbursements pertaining to the Property in accordance with generally accepted accounting principles, consistently applied. Such books of account shall be and remain the property of Owner and shall be available to Owner and its representatives for inspection at any time during regular business hours.

(o) Manager shall review all bills and statements received for services, work, supplies and other expenditures incurred by or on behalf of Owner in connection with the maintenance, operation and ownership of the Property and to pay or cause to be paid in a timely fashion all expenses specified in the Approved Budget and all other expenses approved by owner.

(p) Manager shall review periodically all hazard, liability and other insurance carried for the benefit of Owner in connection with the Property and maintain in force and effect such insurance coverage as Manager reasonably

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deems necessary to protect Owner's interests, but not less than the coverage and limits of liability specified in the Approved Budget.

(q) Manager shall cooperate and coordinate its activities with all other persons performing work on the Property for owner and shall furnish advice and recommendations to owner regarding changes and improvements considered desirable and necessary by Manager to improve and further develop the Property. At Owner's request, Manager shall supervise and coordinate any construction in connection with remodeling of existing space. Manager will supervise and coordinate construction at cost plus 15%.

(r) Manager shall advise owner immediately of the service upon Manager of any summons, subpoena or other similar legal document, including, without limitation, any notices, letters or other communications setting forth or claiming any actual or alleged potential liability of Owner or the Property, or of the receipt by Manager of any notice, demand, request or other communication from any user of the Property or any mortgagee, deed of trust beneficiary, ground lessor or insurer.

(s) Manager shall prepare and furnish financial reports and statements in accordance with the provisions of Paragraph 9 below.

5. *Operating Reserve Account.* The operating reserve account and monies necessary to meet the shortfall for start-up costs of \$450,000.00 shall be used for any shortfall of expenses inclusive of debt service. These monies will be available until operating income sufficiently covers all expenses inclusive of debt service. At that point, if there is still a positive balance in the reserve account, these monies shall be due to the Manager as an incentive fee. If this reserve does not adequately meet said shortfall, the monies necessary to meet the shortfall will be provided for by the Manager.

6. *Receipts by Manager.* All monies received by Manager for or on behalf of Owner shall be and remain the property of Owner and shall not be commingled with Manager's own funds or funds held on account for other parties. Manager shall promptly deposit all such monies in a bank account designated by Owner over which Manager shall have no right or power by way of withdrawal, set off, claim or otherwise.

7. *Disbursements by Manager.* Subject to the limitations contained in clause (a) and (h) of Section 4 above, Manager shall make all necessary disbursements for expenses incurred by it pursuant to any of the provisions of this Agreement. Accordingly, Owner shall establish and maintain a bank account (the "Expense Account") which shall be funded from time to time by owner with amounts necessary to pay expenses of the Properties on a timely basis. Manager shall provide Owner with adequate notice of the amounts required in the Expense Account. Owner shall reimburse Manager promptly for any disbursements which Manager may elect to advance for the account of Owner which are made in accordance in the terms of this Agreement.

10. *Indemnities.* Owner shall indemnify and hold Manager harmless from and against all claims, damages, costs and other charges (including reasonable attorneys fees and court costs) arising out of or in connection with the management and operation of the Property, except for acts of Manager which are outside the scope of this Agreement or are acts or omissions in violation of this Agreement or law or amount to gross negligence or acts of willful or reckless misconduct (collectively "Unauthorized Acts"). Manager shall indemnify and hold Owner harmless from and against any and all claims, damages, costs (including reasonable attorney's fees and court costs)

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and other charges arising out of or in connection with Unauthorized Acts. The indemnities set forth above shall not apply to any claim with respect to which the indemnified party is covered by insurance, provided that this exclusion does not invalidate the indemnified party's insurance coverage. Each party shall endeavor to procure from its insurers waivers of subrogation with respect to claims against *the* other party under policies in which the other party is not a named insured, and shall promptly notify the other party in the event that any such waiver is unobtainable or is obtainable only upon payment of an additional premium. If such waiver is obtainable only upon payment of an additional premium, the other party shall have the right to pay such additional premium.

11. *Liability Insurance.* Owner shall at all times during the term of this Agreement carry public liability insurance. Such insurance may be procured under an umbrella policy. The limits of liability under the public liability insurance shall be no less than \$1,000,000 for each occurrence. Owner shall name the Manager as an insured under the public liability insurance policy.

12. *Termination.* Upon termination of this Agreement for any reason whatsoever, Manager shall:

(a) immediately deliver to Owner any balance or monies of Owner or tenants, security deposits, or both, held by Manager with respect to the Property;

(b) immediately deliver to Owner all records, contracts, leases, receipts for deposits, unpaid bills and any other papers or documents which pertain to the Property; and

(c) within 30 days following the termination of this Agreement, deliver to Owner a final accounting, reflecting the balance of the income and expenses for the Property as of the date of termination, including, but not limited to a statement as described in clause (c) of Section 9 above for the portion of the calendar year elapsed through the termination.

13. *Notices.* All notices referred to in this Agreement shall be deemed properly given if in writing and sent by United States registered mail, return receipt requested, to the Owner or Manager, at the addresses set forth above or such other address as either party may from time to time designate by written notice.

14. *Entire Agreement.* This Agreement contains the entire understanding of the parties and it may not be changed or modified other than by written instrument signed by authorized officers of both parties to this Agreement.

15. *Assignment.* This Agreement may not be assigned in whole or part by Manager and any attempted assignment by Manager shall at Owner's election terminate this Agreement without any liability for further payment under this Agreement.

16. *Recordings.* This Agreement may not be recorded by either party, any such attempted recording shall constitute a material breach of and default under this Agreement.

17. *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

Owner and Manager have duly executed this Agreement.

Claire Road Associates, A New Jersey Limited Partnership

By: /s/ Ara K. Hovnanian  
Ara K. Hovnanian, General Partner

K. Hovnanian Investment Properties, Inc.

By: /s/ Edward Krisinski, Jr.  
Edward Krisinski, Jr.  
Vice President — Construction



## INTRODUCTION

The K. Hovnanian Enterprises, Inc. Executive Incentive and Excess Benefits Plan has been established by K. Hovnanian Enterprises, Inc, a New Jersey Corporation, for the benefit of certain select executives and their beneficiaries. It is to be maintained according to the terms of this instrument. The Committee has the authority to manage the administration of this Plan. Assets may be accumulated at the convenience of the Company and segregated in a Trust Fund or Trust Funds maintained by a Trustee in accordance with the terms of a Trust Agreement established contemporaneously herewith, or otherwise identified by the Company as a convenient source of funds for discharge of Company obligations that may arise under this Plan from time to time, and in that event references to any such Trust Agreement contained in this Plan shall refer to such Trust Agreement. Except as may be provided in the Trust Agreement, the Trustee has the exclusive authority to manage and control the assets of this Plan.

## ARTICLE I DEFINITIONS AND CONSTRUCTION

1.1 *Definitions.* The following words and phrases, when used in this Plan shall have the following meanings:

*Beneficiary* means a person or persons (natural or otherwise) designated by a Participant to receive any death benefit that shall be payable under this Plan, in accordance with the provisions of Section 6.7.

*Board of Directors*, or *Board* means the Board of Directors of K. Hovnanian Enterprises, Inc.

*Code* means the Internal Revenue Code of 1986, as it may be amended, and includes any regulations issued thereunder.

*Committee* means the individuals appointed under Section 8.1 to administer the Plan.

*Company* means K. Hovnanian Enterprises, Inc., a New Jersey Corporation, successor or successors, and any affiliates, that with the approval of the Board of Directors, has adopted this Plan.

*Compensation* means the total of all remuneration paid during a Plan Year to a Participant by the Company for personal services, including overtime pay, bonuses and commissions, and unless specifically excluded hereunder, Pre-Tax Contributions, if any, authorized by a Participant under this Plan or any Plan qualified under Section 401(a) of the Code. Excluded are reimbursement for business, travel, or entertainment expenses incurred by the Participant and not reported to IRS as wages.

Notwithstanding any provisions in the Plan to the contrary, for purposes of determining the amount equivalent to any Pre-Tax Contributions credits for a Participant under this Plan, Compensation shall include such individual's Compensation beginning at a date determined by the Board of Directors.

*Disability* means a physical or mental condition for which a Participant shall be eligible to receive benefits under the disability insurance provisions of the Social Security Act. The Committee shall require evidence that the application for such benefits has been approved by the Social Security Administration. The final determination shall be made by the Committee on the basis of such evidence.

*Effective Date* means January 1, 1988, the date the provisions of this Plan became effective.

*Eligible Employee* means each Executive who has met the requirements for participation in the Plan as of each Entry Date.

*Employer Contribution Account* means the account comprised of a Participant's Excess Pre-Tax Contribution Account equivalent credits and Excess Matching Contribution Account equivalent credits under this Plan as provided under 4.1.

*Entry Date* means the day designated by the Board of Directors, that an Executive may participate in the Plan.

*Erisa* means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any regulations promulgated thereunder.

*Excess Matching Contributions* means the equivalent credits of the Participant as provided under Section 4.1(b), and adjustments relating thereto.

*Excess Pre-Tax Contributions* means the equivalent credits made by the Company on a Participant's behalf pursuant to Section 4.1(a).

*Executive* means an individual who is a member of a select group of shareholders, officers, managerial and highly compensated employees of the Company on a salaried basis, as may be designated by the Board of Directors from time to time, with respect to whom the Company is required to withhold taxes from remuneration paid to him by the Company for personal services rendered to the Company. This includes any officer or director who shall so qualify, but excludes (i) any individual whose employment with the Company is governed by a collective bargaining agreement that does not provide for participation in this Plan, and (ii), any individual who is a "leased employee" as defined in Section 414(n) of the Code.

*Forfeitures* means the amount of a Participant's Employer Contribution Account that is forfeited upon Termination of employment, due to the operation of Section 6.3 and Section 6.6 of this Plan.

*Former Participant* means any former Employee who has credits in his Employer Contribution Account or Employee Contribution Account at the close of any Plan Year.

*Income* means the net gain or loss of the Trust Fund from investments, as reflected by interest payments, dividends, realized and unrealized gains and losses on securities, other investment transactions, and expenses paid from the Trust Fund. In determining the Income of the Trust Fund for any period, assets

shall be valued on the basis of their fair market value.

*Investment Manager* means an investment advisor, bank or insurance company that meets the requirements of Section 3(38) of ERISA, and that is appointed by the Company to manage the Plan's assets in accordance with the Trust Agreement.

*Limitation Year* means the Plan Year.

*Normal Retirement Date* means the date on which a Participant attains age 60, if separation has occurred. If there has been no separation of Service, any distribution will be at the sole discretion of the Committee.

*Participant* means an Executive participating in the Plan in accordance with the provisions of Section 3.1.

*Plan* means the K. Hovnanian Enterprises, Inc. Executive Incentive and Excess Benefits Plan.

*Plan Year* means the 12 consecutive month period commencing January 1st and ending December 31st.

*Qualified Plan* means the Hovnanian Savings and Investment Retirement Plan.

*Retirement* means Termination of employment with the Company at or after Normal Retirement Date.

*Spouse or Surviving Spouse* means the spouse or surviving spouse of the Participant or Former Participant.

*Terminated or Termination* means a termination of employment with the company or with an affiliate for any reason other than a transfer of employment from the Company to an affiliate or from an affiliate to another affiliate.

*Trust or Trust Fund* means the fund or funds known as the K. Hovnanian Enterprises, Inc. Executive Incentive and Excess Benefits Plan Trust, as may be established by the Company for its convenience in implementing this Plan from time to time, and the Trust that may be established contemporaneous with this Plan Document.

*Trustee or Trustees* means any corporation or individuals appointed by the Board of Directors of the Company to administer the Trust.

*Valuation Date* means the last business day of each Plan Year or more frequently, as the Trustee shall determine.

## ARTICLE II

2.1 *Construction.* The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. Titles of Sections are inserted for convenience and shall not affect the meaning or construction of the Plan.

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## ARTICLE III PARTICIPATION AND SERVICE

3.1 *Eligibility to Participate.* Any Executive who is actively employed and who is designated by the Board of Directors to be a Participant in this Plan shall be eligible to participate. Each Executive so designated who determines to become a Participant pursuant to such designation shall execute an individual Election form signifying his willingness to participate. Such Election shall be duly signed and filed with the Plan Administrator at least one day prior to commencement of Eligibility for entitlement to any Excess Pre-Tax Contributions Credits, Excess Matching Contribution Credits, or any other credits to be made under Article IV.

3.2 *Commencement of Participation.* Each Executive who has satisfied the requirements of Section 3.1 shall commence participation in the Plan on the Entry Date that coincides with or that follows the date on which he satisfies such requirements.

3.3 *Cessation of Participation.* An Executive shall cease to be a Participant upon the earliest of (i) the date on which he retires under the Retirement provisions of the Plan; (ii) the date on which his employment with the Company terminates for any reason, including death or Disability; or (iii) the date on which he becomes a "leased employee" as defined in Section 414(n) of the Code, or covered by a Collective Bargaining Agreement.

3.4 *Participation.* If the reemployed Executive was not a Participant in the Plan during his prior period of employment, he must meet the requirements of Section 3.1 for Participation in the Plan after reemployment, as if he were a newly designated employee.

3.5 *Transfers to Affiliates and Change in Status.* A Participant's status as such under the Plan shall be modified upon and after the date that a Participant is transferred to an affiliate, or becomes a leased employee as defined in Section 414(n) of the Code, in the manner set forth below:

The Participant shall share in excess Company contributions only to the extent of his Compensation up to the time such transfer or change in status occurs. He shall not share thereafter unless he later transfers back to the Company or again becomes an Executive who is eligible under the terms of the Plan to share in such allocations. However, he shall share in Income allocations pursuant to Section 5.2(a).

## ARTICLE IV CONTRIBUTIONS

4.1 *Executive Contribution.*

(a) *Excess Pre-Tax Contributions Credits.* Each Participant shall have the annual option to authorize the Company, in writing and in accordance with procedures established by the Committee, to credit amounts to an account established for him under this Plan for a Plan Year, such amounts to be equivalent to any percentage of his Compensation [as determined without regard to this Section 4.1(b)] for such Plan Year. In turn the Company, for its convenience, may contribute equivalent funds to a segregated Grantor Trust or Trusts established for such purpose, in order to meet future obligations under this Plan in accordance with procedures established by the Committee. Such authorization shall be in the form of an election by the Participant to have his salary and/or bonus, or portion thereof deferred and withheld by the Company.

(b) *Excess Matching Contributions.* The Company's prior year matching contributions to the Hovnanian Savings and Investment Retirement Plan have been reduced because of reductions mandated by operation of the Actual Deferral Percentage Test under Section 401(a) or by the Aggregate Contributions Percentage Test under Section 401(m) of the Code, or by the maximum 401(k) contribution dollar limitation. As determined by the Board of Directors, the Company shall credit an amount, equal to the amount of such reductions, to the Executives' Employer Contribution Account. Such amounts designated as Excess Matching Contributions, shall be based on, without limitation, the total of prior year Hovnanian Savings and Investment Retirement Plan employee contributions plus current calendar year excess Pre-tax Contributions. The current year Excess Matching Contributions will be adjusted based on Hovnanian Savings and Investment Retirement Plan vesting schedule, but such adjustments will be contributed in future years based on additional years of service.

4.2 *Time and Manner of Company Credits.* An equivalent amount of all Company funding credits under this Plan annually shall be set aside by the Company for its convenience by transfer to a Trustee under a Grantor Trust established contemporaneously with adoption of this Plan, styled the K. Hovnanian Enterprises, Inc. Trust

Agreement. Company funding made to that Grantor Trust for any Plan Year shall be made at times and in amounts determined to be reasonable by the Committee or the Company.

## **ARTICLE V ALLOCATIONS TO PARTICIPANTS' ACCOUNTS**

5.1 *Individual Accounts.* The Committee shall create and maintain adequate records to disclose the interest of each Executive under this Plan. Such accounts shall identify Participant credits under this Plan that are equivalent to certain disallowed employer contributions under the Hovnanian Savings & Investment Retirement Plan due to operation of Sections 401(k) and 401(m) including Excess Matching Contributions and adjustments otherwise made thereto, and also if applicable such accounts shall separately identify credits equivalent to any incentive bonus or other incentive awards made by the Company under this Plan under any valid participant Elections to defer current payment of such amounts.

The maintenance of individual accounts is for accounting purposes only, and any and all distributions to and withdrawals by any Participant made pursuant to this Plan shall be identified by equivalent charges to that Participant's Plan account as of the date paid or distributed.

5.2 *Account Adjustments.* The equivalent credits of Participants, Former Participants and Beneficiaries shall be adjusted in accordance with the following:

(a) *Income Credits.* Amounts equivalent to an allocable portion of Income earned by the Trust Fund shall be credited to accounts of individual Participants, Former Participants and Beneficiaries who have unpaid account balances as of each Valuation Date. Such amounts of Income to be credited shall be allocated in proportion to the amount of each such account balance as it bears to the total of all account balances under this plan on the immediately preceding Valuation Date to the Valuation Date in question, any individual account balance having first been reduced by any amounts distributed or withdrawn from such account during the interim period.

If during the Plan Year, a Participant, Former Participant or Beneficiary becomes entitled to a distribution under this Plan, the Committee shall instruct the Trustee to pay an amount from the Trust to the Participant that is an equivalent sum to the Participant's account as of the immediately prior Valuation Date, but increased for an amount of notional Income equivalent to the *pro rata* amount of Trust Income earned since the immediately prior Valuation Date up to the date that the distribution becomes payable.

For purposes of this Subsection, to the extent that the Participant was eligible for and requested direct expression of preference as to the management of Trust Funds equivalent to his account balance under this Plan pursuant to Section 7.2, then the amount of notional Income with respect to his directed account shall be separately determined with reference to such directed investment performance for the applicable period of time.

(b) *Company Funding Credits.* Amounts equivalent to the Employee's designated Excess Pre-Tax Contributions and the Company's disallowed Excess matching Contribution Accounts under the Hovnanian Savings & Investment Retirement Plan shall be credited each year to eligible Participants' accounts for that Plan Year, and cash or property contributions equivalent in amount shall be made by the Company for its convenience to any Trust Fund it establishes for that purpose or to any such Trust Fund established contemporaneously with this Plan. Further, if appropriate, amounts equivalent to incentive awards covered by applicable Elections or designations under other Company Executive incentive plans shall be separately identified and credited to covered Participants' individual accounts as provided herein, and payments equivalent in amount shall likewise be made to any Trust Fund established by the Company for that purpose.

(c) *Deemed Date of Allocation.* All credits or deductions made under this Article to Participants' accounts shall be deemed to have been made no later than the last day of the Plan Year though actually determined thereafter.

5.3 *No Rights Created by Allocation.* Any allocation made and credited to the account of a Participant, Former Participant or Beneficiary under this Article shall not cause such Participant, Former Participant or Beneficiary to have any right, title or interest in or to any assets of the Trust Fund except at the time or times, and under the terms and conditions expressly provided in this Plan.

## **ARTICLE VI PAYMENT OF BENEFITS**

6.1 *Normal Retirement or Disability.* If a Participant's employment is Terminated by reason of his Normal Retirement or Disability, then such Participant shall be entitled to receive the entire amount credited to his Employer

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Contribution Accounts only in the manner and at the time or times provided in Section 6.5 and 6.6. No Participant shall have a non-forfeitable right to any benefits payable under this Plan section until the date of his Normal Retirement Date or if earlier disability.

6.2 *Death.* In the event that the Participant's Termination of employment is caused by death, or in the event that a Participant or Former Participant who is entitled to receive distributions pursuant to Section 6.1 or 6.3 dies prior to receiving the full amount of such distributions, the entire amount credited to his Employer Contribution Accounts shall be paid to his Beneficiary in the manner and at the time provided in the Section 6.5 and 6.6, but only after receipt by the Committee of acceptable proof of death.

6.3 *Other Termination of Employment.* If a Participant's employment is Terminated by reason of resignation or discharge of employment before his Normal Retirement Date for any reason other than Disability or Death, then such Participant shall be entitled to receive the entire amount credited to his individual account under 6.5 and 6.6 that is not otherwise forfeitable under this Plan. No Participant shall have any non-forfeitable rights to any benefits under this Plan except in the year or years actually paid, as determined and directed by the Committee pursuant to Sections 6.5 and 6.6.

6.4 *Time of Payment of Plan Benefits.* Distributions equivalent in amount to any Participant's Account credit balance under this Plan that may become payable on account of Retirement pursuant to Section 6.1, to be made by the Company from any Trust Fund or other source, shall be made only at the time or times or in the year or years determined by the Committee under Section 6.5 below.

6.5 *Mode of Payment of Benefits.* All undistributed Plan account credit balances are forfeitable by the Participant or Former Participant until and unless paid or distributed by the Company as provided herein. Any and all unpaid account balances shall be forfeited in the determination of the Committee hereunder if any of the following occurs (except subsection 6.5(3) at which time undistributed plan account credit balances become general obligations of the Company):

- (1) The Participant or Former Participant is convicted of felonious conduct against the Company.
- (2) the Participant or Former Participant engages in direct competition with the Company after Termination or Retirement;
- (3) the Company becomes bankrupt or unable to meet obligations to its creditors under any State or Federal laws.

Scheduled payments or distributions of funds equivalent to non-forfeited amounts credited to accounts under this Plan are to be determined by the Committee at the time events under 6.1, 6.2 and 6.3 occurs. The Committee may in its discretion honor any Expression of Preference in the form of an election or form of distribution or in the form of Beneficiary Designation under 6.7 as to the form or forms or time or times of payment that may be made by the Participant or Former Participant, or that may be made by any Beneficiary as provided hereunder, but need not do so, and the Committee may determine for itself the manner and timing of distributions of funds equivalent to any unpaid account balances under this Plan so long as it does not act in an unreasonable manner. Distributions of funds equivalent to unpaid account balances may be made in accordance with one or a combination of the following modes of settlement:

If a Participant dies before his benefits commence to be paid to him, any amount to which a Beneficiary shall become entitled to hereunder shall be distributed to him in the discretion of the Committee, which will not unreasonably differ from the expression of preference contained in any applicable Beneficiary Designation or Beneficiary Election, made in accordance with one or a combination of the following modes of settlement:

- (a) in a lump sum,
- (b) in substantially equal periodic installments over a period not to exceed life expectancy of the Beneficiary.

If the Participant, Terminated Participant or Beneficiary expresses a preference for distribution by means of installment payments under either of Subparagraphs (b) above, then the equivalent Trust Funds attributable thereto shall, at the Committee's discretion and after consultation with the Participant or Beneficiary, either (i) be paid at the Company's direction from amounts in the Trust Fund described above and shall be accreted by amounts equivalent to the Income of the Trust Fund but not by any subsequent Company contributions equivalents or (ii)

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such unpaid amounts may be held in a segregated investment account and may be credited by the Company only with amounts equivalent to actual earnings thereon.

If a Participant or Terminated Participant dies after benefits have commenced to be paid to him, his Beneficiary will receive amounts equivalent to any unpaid account balance of the Participant as benefits under 6.2 paid in the Committee's discretion if possible consistent with any expression of preference for mode of payment previously requested by the Participant.

6.6 *Designation of Beneficiary.* Each Participant and Former Participant from time to time may designate any person or persons (who may be designated contingently or successively and who may be an entity other than a natural person) as his Beneficiary or Beneficiaries to whom his Plan benefits are to be paid if he dies before receipt of all such benefits. Each Beneficiary designation shall be made on a form prescribed by the Committee and will be effective only when the form is filed with the Committee during the Participant's or Former Participant's lifetime. Each Beneficiary designation filed with the Committee will cancel all Beneficiary designations previously filed with it by that Participant or Former Participant. The revocation of a beneficiary designation, no matter how effected, shall not require the consent of any designated Beneficiary.

If any Participant or Former Participant fails to designate a Beneficiary in the manner provided above, or if the Beneficiary designated dies before such Participant's or Former Participant's death or before complete distribution of the Participant's or Former Participant's benefits, such Participant's or Former Participant's benefits shall be paid in the Committee's total and complete discretion according to the following order of priority: First, to the Participants or Former Participants Surviving Spouse, if any; second to the Participant's surviving children, if any, in equal shares; third, to the estate of the last to die of such Participant or Former Participant and his Beneficiary or Beneficiaries.

Notwithstanding, the Surviving Spouse of a Participant or Former Participant shall be deemed to be the Participant's or Former Participant's designated Beneficiary, and in the Committee's total and complete discretion shall usually be entitled to receive any distribution on account of the Participant's or Former Participant's death in a lump sum.

**6.7 Information Required From Beneficiary.** If, during or after the time a benefit is payable to any Beneficiary, the Committee, upon request of the Trustee or at the Committee's own instance, delivers by registered or certified mail to the Beneficiary at the Beneficiary's last known address a written demand for his current address, or for satisfactory evidence of his continued life, or both, and, if the Beneficiary fails to furnish the information to the Committee within one year from the mailing of the demand, then the Committee shall distribute to the party next entitled thereto under Section 6.7 above as if the Beneficiary were then deceased.

## **ARTICLE VII TRUST FUND**

**7.1 Investment Directions by Participants.** A Participant may direct the investment of amounts held under his Employer contribution Account, subject to the approval of the Committee and in accordance with the terms, conditions and procedures established by the Committee. Notwithstanding Sections 5.2(a) and 8.5, amounts equivalent to all earnings and expenses, including commissions and transfer taxes, realized or incurred in connection with any investments experienced by the Trustee when following or honoring a Participant's expression of preference for direct investment shall be charged or credited to the Participant's Plan account periodically.

**7.2 Ownership.** All contributions paid by the Employer and assets of the Trust will at all times be a general asset of the Employer. No Participant under this Plan shall have any ownership rights whatsoever in any Fund or Funds maintained by the Employer/Company solely for its convenience until and unless actual payment(s) are directed by the Committee as provided in Article VI.

## **ARTICLE VIII ADMINISTRATION**

### **8.1 Duties and Responsibilities of the Company for Plan and Trust Administration.**

In general, the Company, by action of its Board of Directors, shall have the sole responsibility for establishing any Fund or for accumulating Funds in any Trust or Trusts for its convenience provided for under

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Section 4.1. It shall also have the sole authority to appoint and remove any Trustees, the members of the Committee, and any Investment Manager that may be provided for under any Trust Agreement established in conjunction with this Plan, and to amend or terminate, in whole or in part, this Plan or any Trust so established.

The Committee shall have the sole responsibility for the administration of this Plan, as described in this Plan and as may be established in any Trust Agreement. The Committee also shall have the right to designate investment and funding policies if any, under which any Trustee shall act.

As provided in any Trust Agreement and within the scope of any funding and investment policies designated by the Committee, any designated or appointed Trustee, shall have the sole responsibility for the administration of the Trust and the management of the assets held under the Trust.

**8.2 Allocation of Duties and Responsibilities.** The Committee, by written instrument signed by any of its members, may designate persons other than the Committee to carry out any of its duties and responsibilities. Any duties and responsibilities thus allocated must be described in the written instrument if any person other than an Employee of the Company is so designated, such person must acknowledge in writing his acceptance of the duties and responsibilities thus allocated to him. All such instruments shall be attached to, and shall be made a part of, the Plan.

**8.3 The Committee.** The Committee shall be comprised of at least three persons who shall be appointed by the Company's Board of Directors. The Committee members shall serve without compensation; any member may resign by giving written notice addressed to the Board of Directors of the Company.

**8.4 Voting and Meetings.** The Committee shall act by a majority vote of its members at a meeting, or by written consent of all of its members without a meeting. The Committee shall schedule regular meetings, although any member may call a special meeting by giving reasonable notice to the other members.

**8.5 Expenses.** The Company shall pay all expenses authorized and incurred by the Committee in the administration of the Plan, except to the extent that such expenses are paid from the Trust.

**8.6 Other Powers and Duties.** The Committee shall have such duties and powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:

(a) To construe and interpret the Plan, to decide all questions of eligibility, and to determine the amount, manner and time of payment of any benefits hereunder;

(b) To prescribe procedures to be followed by Participants, Former Participants or Beneficiaries filing applications for benefits;

(c) To prepare and distribute information explaining the Plan;

(d) To receive from the Company and from Participants, Former Participants and Beneficiaries such information as shall be necessary for the proper administration of the Plan;

(e) To furnish the Company, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;

(f) To receive, review and keep on file (as it deems convenient or proper) reports of the financial condition (and of the receipts and disbursements) of the Trust Fund from the Trustees; and

(g) To appoint or employ advisors (including legal and actuarial counsel) to render advice with regard to any responsibility of the Committee under the Plan, or to assist in the administration of the Plan.

The Committee shall have no power to add to, subtract from or modify any of the terms of the Plan; or to change or add to any benefits provided by the Plan; or to waive or fail to apply any requirements of eligibility for a benefit under the Plan.

**8.7 Rules and Decisions.** The Committee may adopt such rules as it deems necessary, desirable or appropriate. All rules and decisions of the Committee shall be applied uniformly and consistently to all Participants in similar circumstances. When making a determination or calculation, the committee shall be entitled to rely upon information furnished by a Participant, Former Participant or Beneficiary; the Company, the legal counsel of the Company or the Trustee.

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**8.8 Authorization of Benefit Payment.** The Committee shall issue proper directions to the Trustee concerning all Plan benefits the equivalents of which are to be paid from any Trust Fund or from any other source designated by the Company pursuant to the provisions of the Plan.

**8.9 Application and Forms for Benefits.** The Committee may require a Participant, Former Participant or Beneficiary to complete and file with it an application for a benefit, and to furnish all pertinent information requested. The Committee may rely upon all such information so furnished to it, including the Participant's, Former Participant or Beneficiary's current mailing address.

**8.10 Facility of Payment.** Whenever, in the Committee's opinion, a person entitled to receive any payment of a benefit or installment thereof hereunder is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Committee may direct the Trustee to make payments to such person or to his legal representative or to a relative or friend of such person for his benefit or to apply the payment for the benefit of such person in such manner as it considers advisable.

**8.11 Liabilities.** The committee and each person to whom duties and responsibilities have been allocated pursuant to Section 8.2, may be identified and held harmless by the Company to the maximum extent permitted by law and in each case as determined by the Company's Board of Directors with respect to any breach of alleged responsibilities performed or to be performed hereunder.

## **ARTICLE IX MISCELLANEOUS**

**9.1 Nonguarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Company and any Executive, or as a right of any Executive to be continued in the employment of the Company, or as a limitation of the right of the Company to discharge any of its Executives, with or without cause.

**9.2 Rights to Trust Assets.** No Executive or Beneficiary shall have any right to, or interest in, any assets of any Trust or Trust Fund established for the Company's convenience related or not to this Plan upon Termination of his employment or otherwise, and then only to the extent of the benefits payable under the Plan to such Executive or Beneficiary as provided or directed by the Committee in discharge of the Company's obligations under this Plan.

**9.3 Nonalienation of Benefits.** Except as may be permitted by law, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former Spouse, or for any other relative of the Executive, prior to actually being received by the person entitled to the benefit under the terms of the Plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder shall be void. Neither the Company nor any Trust or Trust Fund shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

## **ARTICLE X AMENDMENTS AND ACTION BY COMPANY**

**10.1 Amendments Generally.** The Company reserves the right to make from time to time any amendments to this Plan and any Trust established for the Company's convenience in discharging any obligations under it.

No amendment to the Plan shall be made that would effect a decrease in any Participant's individual account balance except as provided by Section 6.5.

**10.2 Action by Company.** Any action by the Company under this Plan shall be by a duly adoption resolution of its Board of Directors, or by any person or persons authorized by a duly adopted resolution of that Board to take such action.

## **ARTICLE XI SUCCESSOR EMPLOYER AND MERGER OR CONSOLIDATION OF PLANS**

11.1 *Successor Employer.* In the event of the dissolution, merger, consolidation, or reorganization of the Company, provision may be made by which the Plan and Trust will be continued by the successor. In that event, such successor shall be substituted for the Company under the Plan. The substitution of the successor shall constitute

an assumption of Plan liabilities by the successor, and the successor shall have all of the powers, duties and responsibilities of the Company under the Plan.

11.2 *Plan Assets.* The assets shall be always the general assets of the Employer and the Participant will have no ownership of any assets until any benefit prescribed under this program is payable to him under this Plan.

**ARTICLE XII  
PLAN TERMINATION**

12.1 *Right to Terminate.* In accordance with the procedures set forth herein, the Company may terminate the Plan at any time in whole or in part. To the extent permitted by the Code and regulations thereunder, in the event of the dissolution, merger, consolidation or reorganization of the Company, the Plan is continued by a successor to the Company in accordance with Section 11.1.

IN WITNESS WHEREOF, the corporation has caused this instrument to be executed this 1st day of December 1988.

(Corporate Seal)

K. HOVNANIAN ENTERPRISES, INC.  
By: /s/ Ara K. Hovnanian  
Ara K. Hovnanian  
President

/s/ Timothy P. Mason  
Witness  
Timothy P. Mason  
V.P.

**EXHIBIT 21**  
**SUBSIDIARY LISTING**

K. Hovnanian Equities, Inc.  
EXC, Inc.  
K. Hovnanian Companies of North Carolina, Inc.  
KHL, Inc.  
Hovnanian Texas, Inc.  
Hovnanian Georgia, Inc.  
Hovnanian Financial Services III, Inc.  
K. Hovnanian Mortgage USA, Inc.  
Hovnanian Financial Services IV, Inc.  
K. Hovnanian Developments of New Jersey, Inc.  
KHE Finance, Inc.  
K. Hov International, Inc.  
Hovnanian Financial Services II, Inc.  
New Fortis Investment  
Hovnanian Financial Services I, Inc.  
K. Hovnanian Enterprises, Inc.  
Hovnanian Pennsylvania, Inc.  
Recreational Development Corp., Inc.  
K. Hovnanian Marine, Inc.  
K. Hovnanian Aviation, Inc.  
K. Hovnanian Companies of North Jersey, Inc.  
K. Hovnanian at Montville, Inc.  
K. Hovnanian at Wayne, Inc.  
K. Hovnanian at Mahwah IV, Inc.  
K. Hovnanian at Morris II, Inc.  
K. Hovnanian at Mahwah II, Inc.  
K. Hovnanian at Mahwah III, Inc.  
K. Hovnanian at Northern Westchester, Inc.  
K. Hovnanian at Hanover, Inc.  
K. Hovnanian at Montville II, Inc.  
K. Hovnanian at Newark Urban Renewal Corp.I, Inc.  
K. Hovnanian at Newark I, Inc.  
K. Hovnanian at Newark Urban Renewal Corp.II, Inc.  
Jersey City Danforth CSO, Inc.  
K. Hovnanian at Newark Urban Renewal Corp.III, Inc.  
K. Hovnanian at Newark Urban Renewal Corp. IV, Inc.  
K. Hovnanian at Newark Urban Renewal Corp. V, Inc.  
K. Hovnanian at Jersey City I, Inc.  
K. Hovnanian at Jersey City II, Inc.(Phase 2A)  
K. Hovnanian at Jersey City III, Inc.  
K. Hovnanian at Mahwah VI, Inc.  
K. Hovnanian at Jersey City II, Inc.(Phase 2B)  
K. Hovnanian at Mahwah VII, Inc.  
K. Hovnanian at Montclair, New Jersey, Inc.  
K. Hovnanian at Horizon Heights, Inc.  
K. Hovnanian at Reservoir Ridge, Inc.  
K. Hovnanian at Mahwah V, Inc.  
K. Hovnanian at Mahwah VIII, Inc.  
K. Hovnanian of North Jersey, Inc. (Hudson River)  
Montego Bay I Acquisition Corp., Inc.  
Montego Bay Associates Limited I, LP (MBAI)  
Montego Bay II Acquisition Corp., Inc.  
Montego Bay Associates Limited II, LP (MBAII)  
0515 Co., Inc.  
K. Hovnanian at North Brunswick IV, Inc.  
K. Hovnanian Properties of North Brunswick IV, Inc.  
Arrow Properties, Inc.

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KHIPE, Inc.  
Pine Brook Company, Inc.  
K. Hovnanian Properties of North Brunswick II, Inc.  
K. Hovnanian Properties of Galloway, Inc.  
K. Hovnanian at Cedar Grove I, Inc.  
K. Hovnanian at Cedar Grove II, Inc.  
K. Hovnanian Properties of Piscataway, Inc.  
K. Hovnanian Properties of North Brunswick I, Inc.  
Molly Pitcher Renovations, Inc.  
K. Hovnanian Properties of East Brunswick II, Inc.  
K. Hovnanian Investment Properties of N.J., Inc.  
K. Hovnanian Investment Properties, Inc.  
Hovnanian Properties of Atlantic County, Inc.  
K. Hovnanian Properties of Newark Urban Renewal Corporation, Inc.



K. Hovnanian Properties of Hamilton, Inc.  
K. Hovnanian Properties of Franklin, Inc.  
K. Hovnanian Properties of North Brunswick III, Inc.  
K. Hovnanian Properties of Franklin II, Inc.  
K. Hovnanian at Jacksonville, Inc.  
K. Hovnanian Properties of North Brunswick V, Inc.  
K. Hovnanian Properties of Wall, Inc.  
K. Hovnanian at Pompano Beach, Inc.  
Hovnanian Properties of Lake Worth, Inc.  
Landarama, Inc.  
K. Hovnanian Companies Northeast, Inc.  
Parthenon Group  
Minerva Group  
K. Hovnanian Companies of Central Jersey, Inc.  
K. Hovnanian Real Estate Investment, Inc.  
K. Hovnanian at Princeton, Inc.  
K. Hovnanian at South Brunswick III, Inc.  
K. Hovnanian at South Brunswick IV, Inc.  
K. Hovnanian at Plainsboro I, Inc.  
K. Hovnanian at Plainsboro II, Inc.  
K. Hovnanian at Klockner Farms, Inc.  
K. Hovnanian at South Brunswick II, Inc.  
K. Hovnanian at Hopewell III, Inc.  
K. Hovnanian at Hopewell I, Inc.  
K. Hovnanian at South Brunswick, Inc.  
K. Hovnanian at East Windsor I, Inc.  
K. Hovnanian at North Brunswick II, Inc.  
K. Hovnanian at North Brunswick III, Inc.  
K. Hovnanian at Hopewell II, Inc.  
K. Hovnanian at Somerset VIII, Inc.  
K. Hovnanian at Lawrence Square, Inc.  
Dryer Associates, Inc.  
K. Hovnanian at East Brunswick V, Inc.  
K. Hovnanian at Bernards II, Inc.  
K. Hovnanian at Bridgewater III, Inc.  
K. Hovnanian at Plainsboro III, Inc.  
K. Hovnanian at Somerset V, Inc.  
K. Hovnanian at Somerset VI, Inc.  
Eastern Title Agency, Inc.  
K. Hovnanian Mortgage, Inc.  
Governors Abstract  
Eastern National Title Insurance Agency, Inc.  
Founders Title Agency, Inc.  
K. Hovnanian Companies North Central Jersey, Inc.  
K. Hovnanian at Bedminster, Inc.  
K. Hovnanian at Bridgewater IV, Inc.  
K. Hovnanian at Branchburg III, Inc.

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K. Hovnanian at Spring Ridge, Inc.  
K. Hovnanian at Bridgewater V, Inc.  
K. Hovnanian at Readington, Inc.  
K. Hovnanian at Branchburg II, Inc.  
K. Hovnanian at Bridgewater II, Inc.  
K. Hovnanian at Branchburg I, Inc.  
K. Hovnanian Companies Jersey Shore, Inc.  
K. Hovnanian at Wall Township, Inc.  
K. Hovnanian at Galloway VIII, Inc.  
K. Hovnanian at Dover Township, Inc.  
K. Hovnanian at Galloway VII, Inc.  
K. Hovnanian at Tinton Falls II, Inc.  
K. Hovnanian at Ocean Township, Inc.  
K. Hovnanian at Wall Township II, Inc.  
K. Hovnanian at Wall Township III, Inc.  
K. Hovnanian at Holmdel Township, Inc.  
K. Hovnanian at Wall Township IV, Inc.  
K. Hovnanian at Wall Township V, Inc.  
K. Hovnanian at Atlantic City, Inc.  
K. Hovnanian at Ocean Township II, Inc.  
K. Hovnanian at Ocean Township, Inc.  
K. Hovnanian at Marlboro Township, Inc.  
K. Hovnanian at Howell Township, Inc.  
K. Hovnanian at Howell Township II, Inc.  
K. Hovnanian at Woodbury Oaks, Inc.  
K. Hovnanian at Freehold Township, Inc.  
K. Hovnanian at Lakewood, Inc.

K. Hovnanian Companies of the Delaware Valley, Inc.  
K. Hovnanian Co. of Delaware Valley, Inc. Brokerage Company  
K. Hovnanian at Lower Saucon, Inc  
K. Hovnanian at Perkiomen I, Inc.  
K. Hovnanian at Montgomery I, Inc.  
K. Hovnanian at Upper Merion, Inc.  
K. Hovnanian at Perkiomen II, Inc.  
K. Hovnanian Companies of South Jersey, Inc.  
K. Hovnanian at Valleybrook, Inc.  
Kings Grant Evesham Corp.  
K. Hovnanian at Burlington, Inc.  
K. Hovnanian at Medford I, Inc.  
K. Hovnanian at The Reserve @ Medford, Inc  
K. Hovnanian at Kings Grant I, Inc.  
K. Hovnanian at Valleybrook II, Inc.  
K. Hovnanian Real Estate of Florida, Inc.  
Hovnanian Developments of Florida, Inc.  
K. Hovnanian Companies of Florida, Inc.  
Hovnanian of Palm Beach II, Inc.  
Hovnanian of Palm Beach III, Inc.  
Hovnanian of Palm Beach IV, Inc.  
Hovnanian of Palm Beach V, Inc.  
Hovnanian of Palm Beach VI, Inc.  
Hovnanian of Palm Beach VII, Inc.  
Hovnanian of Palm Beach VIII, Inc.  
Hovnanian of Palm Beach IX, Inc.  
Hovnanian at Tarpon Lakes I, Inc.  
Hovnanian at Tarpon Lakes II, Inc.  
Hovnanian at Tarpon Lakes III, Inc.  
K. Hovnanian at Pasco I, Inc.  
K. Hovnanian at Ft. Myers I, Inc.  
K. Hovnanian at Palm Beach XI, Inc.  
K. Hovnanian at Jensen Beach, Inc.  
Hovnanian of Palm Beach X, Inc.

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K. Hovnanian at Martin Downs I, Inc.  
K. Hovnanian at Jacksonville I, Inc.  
K. Hovnanian at Ft. Myers II, Inc.  
K. Hovnanian at Lawrence Grove, Inc.  
K. Hovnanian at Jacksonville II, Inc.  
K. Hovnanian of Palm Beach XIII, Inc.  
Hovnanian of Palm Beach, Inc.  
K. Hovnanian at Half Moon Bay, Inc.  
K. Hovnanian at Woodridge Estates, Inc.  
Pike Utilities, Inc.  
Tropical Service Builders, Inc.  
K. Hovnanian at Embassy Lakes, Inc.  
K. Hovnanian at Delray Beach II, Inc.  
K. Hovnanian at Orlando I, Inc.  
K. Hovnanian at Orlando II, Inc.  
K. Hovnanian at Orlando III, Inc.  
K. Hovnanian at Martin Downs II, Inc.  
K. Hovnanian at Orlando IV, Inc.  
K. Hovnanian Properties of Orlando, Inc.  
K. Hovnanian at Delray Beach I, Inc.  
K. Hovnanian at Pasco II, Inc.  
K. Hovnanian at Port St. Lucie I, Inc.  
K. Hovnanian at Delray Beach, Inc.  
Eastern National Title Insurance Agency, Inc.  
K. Hovnanian Mortgage of Florida, Inc.  
South Florida Residential Title Agency, Inc.  
Eastern National Title Insurance Agency I, Inc.  
Western Financial Services, Inc.  
r. e. Scott Mortgage co. of Florida, Inc.  
New K. Hovnanian Developments of Florida, Inc.  
New K. Hovnanian Companies of Florida, Inc.  
K. Hovnanian at Fairway Views, Inc.  
K. Hovnanian at Lake Charleston, Inc.  
K. Hovnanian at Carolina Country Club I, Inc.  
K. Hovnanian at Chapel Trail, Inc.  
K. Hovnanian at Winston Trails, Inc.  
K. Hovnanian at Lakes of Boca Raton, Inc.  
K. Hovnanian at Lake Charleston II, Inc.  
K. Hovnanian at Lake Charleston III, Inc.  
K. Hovnanian at Carolina Country Club II, Inc.

K. Hovnanian at Winston Trails, Inc.  
K. Hovnanian at Pembroke Isles, Inc.  
K. Hovnanian at Carolina Country Club III, Inc.  
K. Hovnanian at Coconut Creek, Inc.  
K. Hovnanian at Polo Trace, Inc.  
K. Hovnanian Companies of New York, Inc.  
K. Hovnanian at Westchester, Inc.  
K. Hovnanian at Peekskill, Inc.  
K. Hovnanian at Washingtonville, Inc.  
K. Hovnanian at Mahopac, Inc.  
K. Hovnanian at Carmel, Inc.  
K. Hovnanian Developments of New York, Inc.  
Cedar Hill Water Corporation  
Cedar Hill Sewer Corporation  
R.C.K. Community Management Co., Inc.  
K. Hovnanian Companies of Massachusetts, Inc.  
K. Hovnanian at Merrimack, Inc.  
K. Hovnanian at Merrimack II, Inc.  
K. Hovnanian at Taunton, Inc.  
New England Community Management Co., Inc.  
K. Hovnanian Cos. of Metro Washington, Inc.

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K. Hovnanian at Ashburn Village, Inc.  
K. Hovnanian at Woodmont, Inc.  
K. Hovnanian at Sully Station, Inc.  
K. Hovnanian at Bull Run, Inc.  
K. Hovnanian at Montclair, Inc.  
K. Hovnanian at River Oaks, Inc.  
K. Hovnanian at Holly Crest, Inc.  
K. Hovnanian at Woodmont, Inc.  
K. Hovnanian at Montclair, Inc.(Montclair Condos)  
K. Hovnanian at Fair Lakes, Inc.  
K. Hovnanian at Ashburn Village, Inc.  
K. Hovnanian at Park Ridge, Inc.  
K. Hovnanian at Belmont, Inc.  
K. Hovnanian at Fair Lakes Glen, Inc.  
K. Hovnanian Developments of Metro Washington, Inc.  
K. Hovnanian at River Oaks, Inc.  
K. Hovnanian at Montclair, Inc. (Montclair Laing)  
K. Hovnanian Companies of California, Inc.  
K. Hovnanian at Clarkstown, Inc.  
K. Hovnanian at West Orange, Inc.  
K. Hovnanian at Wayne III, Inc.  
K. Hovnanian at Wayne IV, Inc.  
K. Hovnanian at Wayne V, Inc.  
K. Hovnanian at Hackettstown, Inc.  
K. Hovnanian at Spring Mountain, Inc.  
K. Hovnaian at East Windsor II, Inc.  
K. Hovnanian Treasure Coast, Inc.  
K. Hovnanian at La Terraza, Inc.  
K. Hovnanian at Highland Vineyards, Inc.  
K. Hovnanian Companies of Southern California II, Inc.  
K. Hovnanian at Vail Ranch, Inc.  
K. Hovnanian at Carmel Del Mar, Inc.  
K. Hovnanian at Calabria, Inc.  
K. Hovnanian Developments of California, Inc.  
K. Hovnanian at Ballantrae, Inc.  
Ballantrae Home Sales, Inc.  
K. Hovnanian at Hunter Estates, Inc.  
K. Hovnanian Developments of Maryland, Inc.  
K. Hovnanian Companies of Maryland, Inc.  
K. Hovnanian at Seneca Crossing, Inc.  
K. Hovnanian at Exeter Hills, Inc.  
K. Hovnanian Southeast Florida, Inc.  
K. Hovnanian Florida Region, Inc.  
K. Hovnanian at East Brunswick VI, Inc.  
K. Hovnanian at Berlin, Inc.  
K. Hovnanian at Bedminster II, Inc.  
K. Hovnanian at Marlboro Township II, Inc.  
K. Hovnanian at Inverrary I, Inc.  
K. Hovnanian at Mahwah IX, Inc.  
K. Hovnanian at Hopewell IV, Inc.  
K. Hovnanian at Northlake, Inc.  
K. Hovnanian at Castile, Inc.  
K. Hovnanian at Tierrasanta, Inc.

K. Hovnnaian at Bridgewater VI, Inc.  
K. Hovnanian at Preston, Inc.  
K. Hovnanian at Bernards III, Inc.  
K. Hovnanian at Wayne VI, Inc.  
K. Hovnanian at Rancho Cristianitos, Inc.  
K. Hovnanian at La Trovata, Inc.  
K. Hovnanian at Watchung Reserve, Inc.  
K. Hovnanian at Windsong East Brunswick, Inc.

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K. Hovnanian at South Brunswick V, Inc.  
K. Hovnanian at Wall Township III, Inc.  
K. Hovnanian at Tannery Hill, Inc.  
K. Hovnanian at Upper Freehold Township I, Inc.  
K. Hovnanian at Jefferson, Inc.  
K. Hovnanian at Hershey's Mill, Inc.  
K. Hovnanian at Bernards VI, Inc.  
K. Hovnanian at Port Imperial North, Inc.  
K. Hovnanian at Hopewell V, Inc.  
K. Hovnanian at Hopewell VI, Inc.  
K. Hovnanian at Manalapan II, Inc.  
K. Hovnanian at Union Township, Inc.  
K. Hovnanian at Wayne VII, Inc.  
K. Hovnanian at Scotch Plains II, Inc.  
K. Hovnanian at Thornbury, Inc.  
K. Hovnanian at Cameron Chase, Inc.  
K. Hovnanian at Marlboro Township IV, Inc.  
K. Hovnanian at Port Imperial Urban Renewal, Inc.  
K. Hovnanian at East Whiteland, Inc.  
K. Hovnanian at Stonegate, Inc.  
K. Hovnanian Companies of Southern California, Inc.  
K. Hovnanian at Crestline, Inc.  
K. Hovnanian at Sycamore, Inc.  
K. Hovnanian at Saratoga, Inc.  
K. Hovnanian at Stone Canyon, Inc.  
K. Hovnanian at Chaparral, Inc.  
K. Hovnanian at Ocean Walk, Inc.  
K. Hovnanian at Maplewood, Inc.  
K. Hovnanian at Tuxedo, Inc.  
K. Hovnanian at Bridgeport, Inc.  
K. Hovnanian at Stonegate, Inc. (California)  
K. Hovnanian at Lower Saucon II, Inc.  
K. Hovnanian at Barrington, Inc.  
K. Hovnanian at The Glen, Inc.  
K. Hovnanian at Hampton Oaks, Inc.  
K. Hovnanian at Summerwood, Inc.  
K. Hovnanian at Chester I, LLC  
K. Hovnanian at West Windsor, LLC  
K. Hovnanian at Bernards V, LLC  
K. Hovnanian's Four Seasons of the Palm Beaches, Inc.  
K. Hovnanian at Menifee, LLC  
K. Hovnaian at Rowland Heights, LLC  
K. Hovnanian at Winchester, LLC  
K. Hovnanian at Carmel Village, LLC  
K. Hovnanian's Four Seasons, LLC  
K. Hovnanian at North Brunswick VI, LLC  
K. Hovnanian at Lawrence V, LLC  
K. Hovnanian at Jackson, LLC  
K. Hovnanian at Blue Heron Pines, LLC  
K. Hovnanian at Middletown, LLC  
K. Hovnanian at Berkeley, LLC  
K. Hovnanian at Guttenberg, LLC  
K. Hovnanian at Prince William, LLC  
K. Hovnanian at Lake Terrapin, LLC  
K. Hovnanian at King Farm, LLC  
K. Hovnanian at South Bank, LLC  
K. Hovnanian at Clifton, LLC  
K. Hovnanian at Jersey City IV, LLC  
K. Hovnanian at Lafayette Estates, LLC  
K. Hovnanian at Upper Freehold II, LLC  
K. Hovnanian at Kincaid, LLC

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K. Hovnanian at Linwood, LLC  
K. Hovnanian at South Amboy, LLC

K. Hovnanian at Upper Freehold Township III, LLC  
K. Hovnanian at Brenbrooke, LLC  
K. Hovnanian at Blooms Crossing, LLC  
K. Hovnanian at Spring Hill Road, LLC  
K. Hovnanian at St. Margarets, LLC  
K. Hovnanian at Paramus, LLC  
K. Hovnanian Developments of Texas, Inc.  
The Matzel & Mumford Organization, Inc.  
Matzel & Mumford of Delaware, Inc.  
K. Hovnanian at Kent Island, LLC  
K. Hovnanian at Northfield, LLC  
K. Hovnanian at Willow Brook, LLC  
K. Hovnanian at South Brunswick II, Inc.  
K. Hovnanian at Rancho Santa Margarita, LLC  
K. Hovnanian at Arbor Heights, LLC  
K. Hovnanian at the Gables, LLC  
K. Hovnanian at Riverbend, LLC  
K. Hovnanian at Encinitas Ranch, LLC  
K. Hovnanian at Sunsets, LLC  
K. Hovnanian at Pacific Bluffs, LLC  
K. Hovnanian at Park Lane, LLC  
K. Hovnanian at West Milford, LLC  
K. Hovnanian at Washington, LLC  
K. Hovnanian at Roderick, LLC  
K. Hovnanian at Columbia Town Center, LLC  
K. Hovnanian at North Haledon, LLC  
K. Hovnanian at Curries Woods, LLC  
K. Hovnanian at Lake Ridge Crossing, LLC  
K. Hovnanian at Lower Moreland I, LLC  
K. Hovnanian at Lower Moreland II, LLC  
K. Hovnanian at Northampton, LLC  
K. Hovnanian at Marlboro VII, LLC  
K. Hovnanian at Marlboro VI, LLC  
K. Hovnanian at Little Egg Harbor, LLC  
K. Hovnanian at Barnegat I, LLC  
K. Hovnanian at Cranbury, LLC  
K. Hovnanian at Hamburg Contractors, LLC  
K. Hovnanian at Little Egg Harbor Contractors, LLC  
K. Hovnanian at Mt. Olive, LLC  
K. Hovnanian at Sayreville, LLC  
K. Hovnanian at Cedar Grove III, LLC  
K. Hovnanian at Woolwich I, LLC  
K. Hovnanian at Wayne IX, LLC  
K. Hovnanian at Woodhill Estates, LLC  
K. Hovnanian Forecast, LLC  
Westminster Homes of South Carolina, LLC  
K. Hovnanian Developments of South Carolina, Inc.  
K. Hovnanian at South Brunswick, LLC  
K. Hovnanian at 4S Ranch, LLC  
K. Hovnanian at Manalapan II, LLC  
K. Hovnanian at Denvile, LLC  
K. Hovnanian at Randolph I, LLC  
K. Hovnanian at Middletown II, LLC  
K. Hovnanian at Four Seasons at Historic Virginia, LLC  
K. Hovnanian Companies of Maryland, Inc.  
K. Hovnanian Venture I, LLC  
K. Hovnanian Eastern Pennsylvania, LLC  
K. Hovnanian Southern New Jersey, LLC  
K. Hovnanian at Clifton II, LLC

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K. Hovnanian at Forest Meadows, LLC  
K. Hovnanian at Jackson I, LLC  
K. Hovnanian at Lower Macungie Township I, LLC  
K. Hovnanian at Middle Township, LLC  
K. Hovnanian at Old Bridge, LLC  
K. Hovnanian Federal Mortgage, LLC  
K. Hovnanian Northeast Services, LLC  
Washington Homes of Maryland I, LLC  
K. Hovnanian at Mansfield I, LLC  
K. Hovnanian at Mansfield II, LLC  
K. Hovnanian at Trail Ridge, LLC  
K. Hovnanian at Wayne VIII, LLC  
K. Hovnanian Companies, LLC  
K. Hovnanian Four Seasons at Gold Hill, LLC  
K. Hovnanian Holdings NJ, LLC

K. Hovnanian Northeast Services, LLC  
K. Hovnanian Pennsylvania Acquisition, LLC  
K. Hovnanian at Private Home Portfolio, LLC  
Ridgemore Utility Co.  
Woodland Lakes Condos at Bowie Newtown, LLC  
K. Hovnanian at Bridgewater I, LLC  
K. Hovnanian at Cortez Hill, LLC  
K. Hovnanian at Eastlake, LLC  
K. Hovnanian at Edgewater, LLC  
K. Hovnanian at Egg Harbor Township, LLC  
K. Hovnanian at La Costa, LLC  
K. Hovnanian at La Habra Knolls, LLC  
K. Hovnanian at Skye Isle, LLC  
K. Hovnanian Great Western Building Company, LLC  
K. Hovnanian Great Western Homes, LLC  
K. Hovnanian Ohio Realty, LLC  
K. Hovnanian Summit Holdings, LLC  
K. Hovnanian Summit Homes, LLC  
K. Hovnanian Summit Homes of Michigan, LLC  
K. Hovnanian Summit Homes of West Virginia, LLC  
K. Hovnanian's Four Seasons at Beaumont, LLC  
K. Hovnanian's Four Seasons at Vint Hill, LLC  
K. Hovnanian at Upper Uwchlan II, LLC  
K. Hovnanian at Port Imperial Urban Renewal II, LLC  
K. Hovnanian at Port Imperial Urban Renewal III, LLC  
K. Hovnanian at Old Orchard, LLC  
K. Hovnanian at North Wildwood, LLC

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**CERTIFICATIONS**  
**Exhibit 31(a)**

I, Ara K. Hovnanian, President & Chief Executive Officer of Hovnanian Enterprises, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Hovnanian Enterprises, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 21, 2004

\_\_\_\_\_  
/s/ ARA K. HOVNANIAN

\_\_\_\_\_  
Ara K. Hovnanian  
President and Chief Executive Officer

**CERTIFICATIONS**  
**Exhibit 31(b)**

I, J. Larry Sorsby, Executive Vice President & Chief Financial Officer of Hovnanian Enterprises, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Hovnanian Enterprises, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 21, 2004

\_\_\_\_\_  
/s/ LARRY SORSBY

\_\_\_\_\_  
J. Larry Sorsby  
Executive Vice President and Chief Financial Officer



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Hovnanian Enterprises, Inc. (the "Company") on Form 10-K for the period ended October 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ara K. Hovnanian, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: /s/ January 21, 2004

\_\_\_\_\_

/s/ ARA K. HOVNANIAN

\_\_\_\_\_

Ara K. Hovnanian  
President and Chief Executive Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

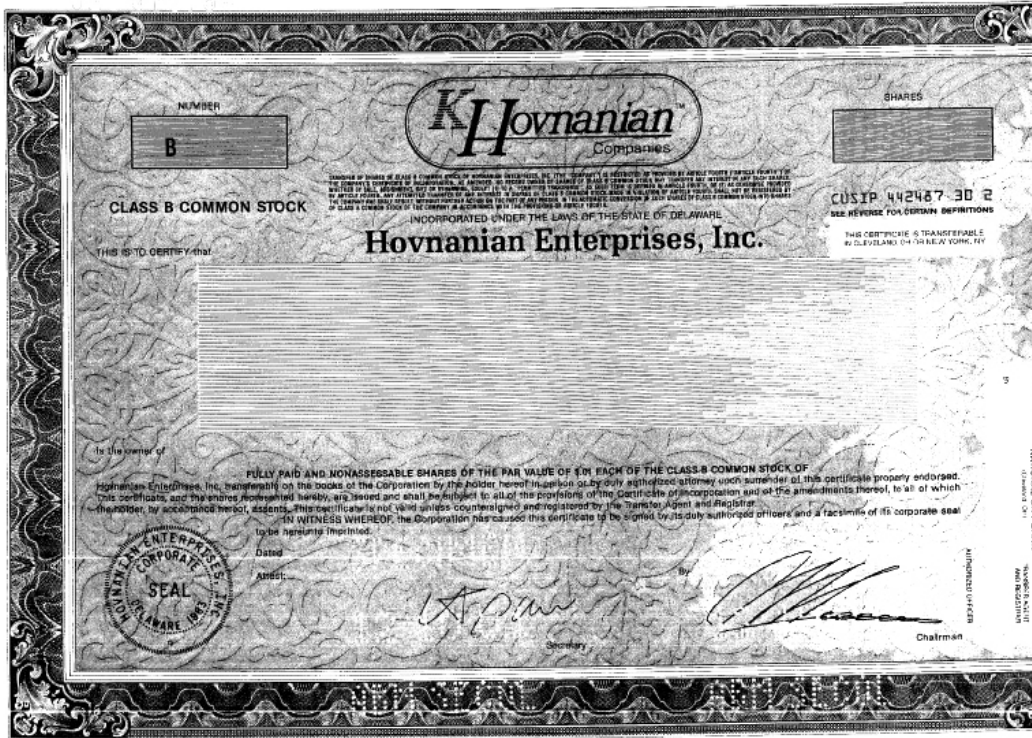
In connection with the Annual Report of Hovnanian Enterprises, Inc. (the "Company") on Form 10-K for the period ended October 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, J. Larry Sorsby, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: January 21, 2004

\_\_\_\_\_  
/s/ LARRY SORSBY

\_\_\_\_\_  
J. Larry Sorsby  
Executive Vice President and Chief Financial Officer



The Company will furnish to any stockholder, upon request to its principal office or to any of its transfer offices and without charge, a full statement of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock of the Company, or series thereof, and the qualifications, limitations or restrictions of such preferences and/or rights.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

- |         |  |                   |   |
|---------|--|-------------------|---|
| TEN COM | — as tenants in common   | UNIF GIFT MIN ACT | — ..... Custodian .....                 |
| TEN ENT | — as tenants by the entireties   |                   | (Cust) (Minor)                          |
| JT TEN  | — as joint tenants with right of survivorship and not as tenants in common |                   | under Uniform Gifts to Minors Act ..... |
|         |  |                   | (State)                                 |

Additional abbreviations may also be used though not in the above list.

For value received, ..... hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

.....  
 Please print or typewrite name and address including postal zip code of assignee  
 .....  
 .....

..... Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises.

Dated, .....

.....

NOTICE: The signature of this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

---

**K. HOVNIANIAN ENTERPRISES, INC.****AND****FIRST UNION NATIONAL BANK,  
as Trustee****Indenture****Dated as of May 4, 1999****CROSS REFERENCE SHEET\***

Provisions of Trust Indenture Act of 1939 and Indenture to be dated as of May 4, 1999 between K. HOVNIANIAN ENTERPRISES, INC. and FIRST UNION NATIONAL BANK, as Trustee:

<u>Section of the Act</u>	<u>Section of Indenture</u>
310(a)(1), (2) and (5)	6.9
310(a)(3) and (4)	Inapplicable
310(b)	6.8 and 6.10(a), (b) and (d)
310(c)	Inapplicable
311(a)	6.13
311(b)	6.13
311(c)	Inapplicable
312(a)	4.1 and 4.2(a)
312(b)	4.2(a) and (b)(i) and (ii)
312(c)	4.2(c)
313(a)	4.4(a)(i), (ii), (iii), (iv), (v), (vi) and (vii)
313(a)(5)	Inapplicable
313(b)(1)	Inapplicable
313(b)(2)	4.4(b)
313(c)	4.4(c)
313(d)	4.4(d)
314(a)	4.3
314(b)	Inapplicable
314(c)(1) and (2)	11.5
314(c)(3)	Inapplicable
314(d)	Inapplicable
314(e)	11.5
314(f)	Inapplicable
315(a), (c) and (d)	6.1
315(b)	5.8
315(e)	5.9
316(a)(1)	5.7
316(a)(2)	Not required
316(a) (last sentence)	7.4
316(b)	5.4
317(a)	5.2
317(b)	3.5(a)
318(a)	11.7

\*This Cross Reference Sheet is not part of the Indenture.

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## INDENTURE

INDENTURE, dated as of May 4, 1999 among K. Hovnanian Enterprises, Inc., a New Jersey corporation (the "Issuer"), and FIRST UNION NATIONAL BANK, as trustee (the "Trustee").

## WITNESSETH

WHEREAS, the Issuer has duly authorized the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness to be issued in one or more series (the "Securities") up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture;

WHEREAS, the Issuer has duly authorized the execution and delivery of this Indenture to provide, among other things, for the authentication, delivery and administration of the Securities; and

WHEREAS, all things necessary to make this Indenture a valid indenture and agreement according to its terms have been undertaken and completed;

NOW, THEREFORE:

In consideration of the premises and the purchases of the Securities by the Holders (as hereinafter defined) thereof, the Issuer and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective Holders from time to time of the Securities as follows:

## Article 1.

### ARTICLE ONE DEFINITIONS

SECTION 1.1 *Definitions.* For all purposes of this Indenture and of any indenture supplemental hereto the following terms shall have the respective meanings specified in this Section 1.1 (except as otherwise expressly provided herein or in any indenture supplemental hereto or unless the context otherwise clearly requires). All other terms used in this Indenture that are defined in the Trust Indenture Act of 1939, including terms defined therein by reference to the Securities Act of 1933, as amended (the "Securities Act"), shall have the meanings assigned to such terms in said Trust Indenture Act of 1939 and in said Securities Act as in force at the date of this Indenture (except as herein otherwise expressly provided herein or in any indenture supplemental hereto or unless the context otherwise clearly requires).

All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with generally accepted accounting principles, and the term "*generally accepted accounting principles*" means such accounting principles as are generally accepted on the date of this Indenture.

The words "*herein*", "*hereof*" and "*hereunder*" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The expressions "*date of this Indenture*", "*date hereof*", "*date as of which this Indenture is dated*" and "*date of execution and delivery of this Indenture*" and other expressions of similar import refer to the effective date of the original execution and delivery of this Indenture, viz. as of May 4, 1999.

The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "*controlling*" and "*controlled*" have meanings correlative to the foregoing.

"*Authenticating Agent*" shall have the meaning set forth in Section 6.14.

"*Bankruptcy Code*" means the United States Bankruptcy Code, 11 United States Code §§ 101 et seq., or any successor statute thereto.

"*Board of Directors*" means either the Board of Directors of the Issuer or any committee of such Board duly authorized to act on its behalf.

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"*Board Resolution*" means one or more resolutions, certified by the secretary or an assistant secretary of the Issuer to have been duly adopted or consented to by the Board of Directors and to be in full force and effect, and delivered to the Trustee.

"*Business Day*" means, with respect to any Security, unless otherwise specified in a Board Resolution and an Officers' Certificate with respect to a particular series of Securities, a day that (a) in the Place of Payment (or in any of the Places of Payment, if more than one) in which amounts are payable, as specified in the form of such Security, and (b) in the city in which the Corporate Trust Office is located, is not a day on which banking institutions are authorized or required by law or regulation to close.

"*Commission*" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, as amended, or, if at any time after the execution and delivery of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act of 1939, then the body performing such duties on such date.

"*Consolidated Net Tangible Assets*" means the aggregate amount of assets included on the most recent consolidated balance sheet of the Issuer and its Restricted Subsidiaries, less applicable reserves and other properly deductible items and after deducting there from (a) all current liabilities and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all in accordance with generally accepted accounting principles consistently applied.

"*Corporate Trust Office*" means the office of the Trustee of a series of Securities at which the trust created by this Indenture shall, at any particular time, be principally administered, which office is, at the date as of which this Indenture is dated, located at 21 South Street, Morristown, New Jersey 07960.

"*Depository*" means, with respect to the Securities of any series issuable or issued in the form of one or more Global Securities, the Person designated as Depository by the Issuer pursuant to Section 2.3 until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depository" shall mean or include each Person who is then a Depository hereunder, and, if at any time there is more than one such Person, "Depository" as used with respect to the Securities of any such series shall mean the Depository with respect to the Global Securities of such series.

"*Dollars*" and the sign "\$" means the coin and currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

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

"*Event of Default*" means any event or condition specified as such in Section 5.1.



“*Global Security*” means a Security evidencing all or a part of a series of Securities issued to the Depository for such series in accordance with Section 2.3 and bearing the legend prescribed in Section 2.4,

“*Holder*”, “*Holder of Securities*”, “*Securityholder*” or other similar terms mean, in the case of any Security, the Person in whose name such Security is registered in the security register kept by the Issuer for that purpose in accordance with the terms hereof.

“*Indebtedness*” with respect to any Person means, without duplication:

(a) (i) the principal of and premium, if any, and interest, if any, on indebtedness for money borrowed of such Person, indebtedness of such Person evidenced by bonds, notes, debentures or similar obligations, and any guaranty by such Person of any indebtedness for money borrowed or indebtedness evidenced by bonds, notes, debentures or similar obligations of any other Person, whether any such indebtedness or guaranty is outstanding on the date of this Indenture or is thereafter created, assumed or incurred, (ii) obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (iii) the principal of and premium, if any, and interest, if any, on indebtedness incurred, assumed or guaranteed by such Person in connection with the acquisition by it or any of its subsidiaries of any other businesses, properties or other assets; (iv) lease obligations which such Person capitalizes in accordance with Statement of Financial Accounting Standards No. 13 promulgated by the Financial Accounting Standards Board or such other generally accepted accounting principles as may be from time to time in effect; (v) any indebtedness of such Person representing the balance deferred and unpaid of the purchase price of any property or interest therein (except any such balance that constitutes an accrued expense or trade payable) and any guaranty, endorsement or other contingent obligation of

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such Person in respect of any indebtedness of another that is outstanding on the date of this Indenture or is thereafter created, assumed or incurred by such Person; and (vi) obligations of such Person under interest rate, commodity or currency swaps, caps, collars, options and similar arrangements; and

(b) any amendments, modifications, refundings, renewals or extensions of any indebtedness or obligation described as Indebtedness in clause (a) above.

“*Indenture*” means this instrument as originally executed and delivered or, if amended or supplemented as herein provided, as so amended or supplemented or both, including, for all purposes of this instrument and any such supplement, the provisions of the Trust Indenture Act of 1939 that are deemed to be a part of and govern this instrument and any such supplement, respectively, and shall include the forms and terms of particular series of Securities established as contemplated hereunder.

“*Interest*” means, when used with respect to non-interest bearing Securities (including, without limitation, any Original Issue Discount Security that by its terms bears interest only after maturity or upon default in any other payment due on such Security), interest payable after maturity (whether at stated maturity, upon acceleration or redemption or otherwise) or after the date, if any, on which the Issuer becomes obligated to acquire a Security, whether upon conversion, by purchase or otherwise.

“*Issuer*” means K. Hovnanian Enterprises, Inc., a New Jersey corporation, and, subject to Article Nine, its successors and assigns.

“*Issuer Order*” means a written statement, request or order of the Issuer which is signed in its name by the chairman of the Board of Directors, the president or any vice president of the Issuer, and delivered to the Trustee.

“*Officers’ Certificate*”, when used with respect to the Issuer, means a certificate signed by the chairman of the Board of Directors, the president, or any vice president and by the treasurer, any assistant treasurer, the controller, any assistant controller, the secretary or any assistant secretary of the Issuer. Each such certificate shall include the statements provided for in Section 11.5 if and to the extent required by the provisions of such Section 11.5. One of the officers signing an Officers’ Certificate given pursuant to Section 4.3 shall be the principal executive, financial or accounting officer of the Issuer.

“*Opinion of Counsel*” means an opinion in writing signed by the chief counsel of the Issuer or by such other legal counsel who may be an employee of or counsel to the Issuer and who shall be reasonably satisfactory to the Trustee. Each such opinion shall include the statements provided for in Section 11.5, if and to the extent required by the provisions of such Section 11.5.

“*Original Issue Date*” of any Security (or portion thereof) means the earlier of (a) the date of such Security or (b) the date of any Security (or portion thereof) for which such Security was issued (directly or indirectly) on registration of transfer, exchange or substitution.

“*Original Issue Discount*” of any debt security, including any Original Issue Discount Security, means the difference between the principal amount of such debt security and the initial issue price of such debt security (as set forth in the case of an Original Issue Discount Security on the face of such Security).

“*Original Issue Discount Security*” means any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Article Five.

“*Outstanding*” when used with reference to Securities, shall, subject to the provisions of Section 7.4, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

(a) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Securities (other than Securities of any series as to which the provisions of Article Ten hereof shall not be applicable), or portions thereof, for the payment or redemption of which moneys or U.S. Government Obligations (as provided for in Section 10.1) in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Issuer) or shall have been set aside, segregated and held in trust by the Issuer for the Holders of such Securities (if the Issuer shall act as its own paying agent), provided that, if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption

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shall have been given as herein provided, or provision satisfactory to the Trustee shall have been made for giving such notice; and

(c) Securities which shall have been paid or in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.9 (except with respect to any such Security as to which proof satisfactory to the Trustee is presented that such Security is held by a Person in whose hands such Security is a legal, valid and binding obligation of the Issuer).

In determining whether the Holders of the requisite aggregate principal amount of Outstanding Securities of any or all series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding for such purposes shall be the portion of the principal amount thereof that would be due and payable as of the date of such determination (as certified by the Issuer to the Trustee) upon a declaration of acceleration of the maturity thereof pursuant to Article Five.

“*Periodic Offering*” means an offering of Securities of a series from time to time, the specific terms of which Securities, including, without limitation, the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Issuer or its agents upon the issuance of such Securities.

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

“*Place of Payment*”, when used with respect to the Securities of any series, means the place or places where the principal of and interest, if any, on the Securities of such series are payable as determined in accordance with Section 2.3.

“*Principal*” of a debt security, including any Security, means the amount (including, without limitation, if and to the extent applicable, any premium and, in the case of an Original Issue Discount Security, any accrued original issue discount, but excluding interest) that is payable with respect to such debt security as of any date and for any purpose (including, without limitation, in connection with any sinking fund, if any, upon any redemption at the option of the Issuer, upon any purchase or exchange at the option of the Issuer or the holder of such debt security and upon any acceleration of the maturity of such debt security).

“*Principal Amount*” of a debt security, including any Security, means the principal amount as set forth on the face of such debt security.

“*Record Date*” shall have the meaning set forth in Section 2.7.

“*Responsible Officer*”, when used with respect to the Trustee of a series of Securities, means any officer of the Trustee with direct responsibility for the administration of the trust created by this Indenture.

“*Restricted Subsidiary*” means (a) any Subsidiary of the Issuer other than an Unrestricted Subsidiary, and (b) any Subsidiary of the Issuer which was an Unrestricted Subsidiary but which, subsequent to the date hereof, is designated by the Issuer (by Board Resolution) to be a Restricted Subsidiary; *provided, however*, that the Issuer may not designate any such Subsidiary to be a Restricted Subsidiary if the Issuer would thereby breach any covenant or agreement herein contained (on the assumptions that any outstanding Indebtedness of such Subsidiary was incurred at the time of such designation).

“*Securities Act*” shall have the meaning set forth in Section 1.1.

“*Security*” or “*Securities*” has the meaning stated in the first recital of this Indenture or, as the case may be, Securities that have been authenticated and delivered pursuant to this Indenture.

“*Significant Subsidiary*” means any Subsidiary which is a “significant subsidiary” of the Issuer within the meaning of Rule 1.02(w) of Regulation S-K promulgated by the Commission as in effect on the date of this Indenture.

“*Subsidiary*” of any specified Person means any corporation of which such Person, or such Person and one or more Subsidiaries of such Person, or any one or more Subsidiaries of such Person, directly or indirectly own voting securities entitling any one or more of such Persons and its Subsidiaries to elect a majority of the directors,

either at all times or, so long as there is no default or contingency which permits the holders of any other class or classes of securities to vote for the election of one or more directors.

“*Trust Indenture Act of 1939*” (except as otherwise provided in Sections 8.1 and 8.2) means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, as in force at the date as of which this Indenture is originally executed.

“*Trustee*” means the Person identified as “Trustee” in the first paragraph hereof and, subject to the provisions of Article Six, shall also include any successor trustee. “Trustee” shall also mean or include each Person who is then a trustee hereunder and, if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean the trustee with respect to the Securities of such series.

“*Unrestricted Subsidiary*” means (a) any Subsidiary of the Issuer acquired or organized after the date hereof, *provided, however*, that such Subsidiary shall not be a successor, directly or indirectly, to any Restricted Subsidiary, and (b) any Subsidiary of the Issuer substantially all the assets of which consist of stock or other securities of a Subsidiary or Subsidiaries of the character described in clause (a) of this paragraph, unless and until such Subsidiary shall have been designated to be a Restricted Subsidiary pursuant to clause (b) of the definition of “*Restricted Subsidiary*”.

“U.S. Government Obligations” shall have the meaning set forth in Section 10.1(B).

“Vice President,” when used with respect to the Issuer or the Trustee, means any vice president, regardless of whether designated by a number or a word or words added before or after the title “vice president.”

“Yield to Maturity” means the yield to maturity on a series of Securities, calculated at the time of issuance of such series, or, if applicable, at the most recent redetermination of interest on such series, and calculated in accordance with generally accepted financial practice or as otherwise provided in the terms of such series of Securities.

## Article 2.

### ARTICLE TWO SECURITIES

SECTION 2.1 *Forms Generally.* The Securities of each series shall be substantially in such form (not inconsistent with this Indenture) as shall be established by or pursuant to one or more Board Resolutions (as set forth in a Board Resolution or, to the extent established pursuant to rather than set forth in a Board Resolution, an Officers’ Certificate detailing such establishment) or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officers executing such Securities, as evidenced by their execution of such Securities.

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities as evidenced by their execution of such Securities.

SECTION 2.2 *Form of Trustee’s Certificate of Authentication.* The Trustee’s certificate of authentication on all Securities shall be substantially as follows:

This is one of the Securities of the series designated herein referred to in the within mentioned Indenture.

\_\_\_\_\_, as Trustee

By \_\_\_\_\_  
Authorized Signatory

If at any time there shall be an Authenticating Agent appointed with respect to any series of Securities, then the Securities of such series shall bear, in addition to the Trustee’s certificate of authentication, an alternate Certificate of Authentication which shall be substantially as follows:

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This is one of the Securities of the series designated herein referred to in the within mentioned Indenture.

\_\_\_\_\_ as Trustee

By \_\_\_\_\_  
as Authenticating Agent

By \_\_\_\_\_  
Authorized Signatory

SECTION 2.3 *Amount Unlimited, Issuable in Series.* The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series and the Securities of each such series shall rank equally and *pari passu* with the Securities of each other series and with all other unsecured and unsubordinated debt of the Issuer. There shall be established in or pursuant to one or more Board Resolutions (and, to the extent established pursuant to rather than set forth in a Board Resolution, in an Officers’ Certificate detailing such establishment) or established in one or more indentures supplemental hereto, prior to the initial issuance of Securities of any series:

(1) the designation of the Securities of the series, which shall distinguish the Securities of such series from the Securities of all other series;

(2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.8, 2.9, 2.11, 8.5 or 12.3);

(3) the date or dates on which the principal of the Securities of the series is payable;

(4) the rate or rates at which the Securities of the series shall bear interest, if any, the date or dates from which any such interest shall accrue, on which any such interest shall be payable and on which a record shall be taken for the determination of Holders to whom any such interest is payable or the method by which such rate or rates or date or dates shall be determined or both;

(5) the place or places where and the manner in which the principal of, premium, if any, and interest, if any, on Securities of the series shall be payable (if other than as provided in Section 3.2) and the office or agency for the Securities of the series maintained by the Issuer pursuant to Section 3.2;

(6) the right, if any, of the Issuer to redeem, purchase or repay Securities of the series, in whole or in part, at its option and the period or periods within which, the price or prices (or the method by which such price or prices shall be determined or both) at which, the form or method of payment therefore if other than in cash and any terms and conditions upon which and the manner in which (if different from the provisions of Article Twelve) Securities of the series may be so redeemed, purchased or repaid, in whole or in part, pursuant to any sinking fund or otherwise;

(7) the obligation, if any, of the Issuer to redeem, purchase or repay Securities of the series in whole or in part pursuant to any mandatory redemption, sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which the price or prices (or the method by which such price or prices shall be determined or both) at which, the form or method of payment therefor if other than in cash and any terms and conditions upon which and the manner in which (if different from the provisions of Article Twelve) Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(8) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(9) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon acceleration of the maturity thereof;

(10) whether Securities of the series will be issuable as Global Securities;

(11) if the Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

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(12) any trustees, depositaries, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the Securities of such series;

(13) any deleted, modified or additional events of default or remedies or any deleted, modified or additional covenants with respect to the Securities of such series;

(14) whether the provisions of Section 10.1(C) will be applicable to Securities of such series;

(15) any provision relating to the issuance of Securities of such series at an original issue discount (including, without limitation, the issue price thereof, the rate or rates at which such original issue discount shall accrete, if any, and the date or dates from or to which or period or periods during which such original issue discount shall accrete at such rate or rates);

(16) if other than Dollars, the foreign currency in which payment of the principal of, premium, if any, and interest, if any, on the Securities of such series shall be payable;

(17) if other than First Union National Bank is to act as Trustee for the Securities of such series, the name and Corporate Trust Office of such Trustee;

(18) if the amounts of payments of principal of, premium, if any, and interest, if any, on the Securities of such series are to be determined with reference to an index, the manner in which such amounts shall be determined;

(19) the terms for conversion or exchange, if any, with respect to the Securities of such series; and

(20) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series shall be substantially identical, except as to denomination and except as may otherwise be provided by or pursuant to the Board Resolution or Officers' Certificate referred to above or as set forth in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to such Board Resolution, such Officers' Certificate or in any such indenture supplemental hereto.

Any such Board Resolution or Officers' Certificate referred to above with respect to Securities of any series filed with the Trustee on or before the initial issuance of the Securities of such series shall be incorporated herein by reference with respect to Securities of such series and shall thereafter be deemed to be a part of the Indenture for all purposes relating to Securities of such series as fully as if such Board Resolution or Officers' Certificate were set forth herein in full.

**SECTION 2.4 Authentication and Delivery of Securities.** The Issuer may deliver Securities of any series executed by the Issuer to the Trustee for authentication together with the applicable documents referred to below in this Section 2.4, and the Trustee shall thereupon authenticate and deliver such Securities to, or upon the order of, the Issuer (contained in the Issuer Order referred to below in this Section 2.4) or pursuant to such procedures acceptable to the Trustee and to such recipients as may be specified from time to time by an Issuer Order. The maturity date, original issue date, interest rate, if any, and any other terms of the Securities of such series shall be determined by or pursuant to such Issuer Order and procedures. If provided for in such procedures and agreed to by the Trustee, such Issuer Order may authorize authentication and delivery pursuant to oral instructions from the Issuer or its duly authorized agent, which

instructions shall be promptly confirmed in writing. In authenticating the Securities of such series and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive (in the case of subparagraphs (2), (3) and (4) below only at or before the time of the first request of the Issuer to the Trustee to authenticate Securities of such series) and (subject to Section 6.1) shall be fully protected in relying upon, unless and until such documents have been superseded or revoked:

(1) an Issuer Order requesting such authentication and setting forth delivery instructions provided that, with respect to Securities of a series subject to a Periodic Offering, (a) such Issuer Order may be delivered by the Issuer to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount established for such series, pursuant to an Issuer Order or pursuant to procedures acceptable to the Trustee as may be specified from time to time by an Issuer Order,

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(c) the maturity date or dates, original issue date or dates, interest rate or rates, if any, and any other terms of Securities of such series shall be determined by an Issuer Order or pursuant to such procedures, (d) if provided for in such procedures, such Issuer Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Issuer or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing and (e) after the original issuance of the first Security of such series to be issued, any separate request by the Issuer that the Trustee authenticate Securities of such series for original issuance will be deemed to be a certification by the Issuer that it is in compliance with all conditions precedent provided for in this Indenture relating to the authentication and delivery of such Securities;

(2) the Board Resolution, Officers' Certificate or executed supplemental indenture referred to in Sections 2.1 and 2.3 by or pursuant to which the forms and terms of the Securities of such series were established;

(3) an Officers' Certificate setting forth the form or forms and terms of the Securities stating that the form or forms and terms of the Securities have been established pursuant to Sections 2.1 and 2.3 and comply with this Indenture and covering such other matters as the Trustee may reasonably request; and

(4) at the option of the Issuer, either an Opinion of Counsel, or a letter from legal counsel addressed to the Trustee permitting it to rely on an Opinion of Counsel, substantially to the effect that:

(a) the form or forms of the Securities of such series have been duly authorized and established in conformity with the provisions of this Indenture;

(b) in the case of an underwritten offering, the terms of the Securities of such series have been duly authorized and established in conformity with the provisions of this Indenture, and, in the case of an offering that is not underwritten, certain terms of the Securities of such series have been established pursuant to a Board Resolution, an Officers' Certificate or a supplemental indenture in accordance with this Indenture, and when such other terms as are to be established pursuant to procedures set forth in an Issuer Order shall have been established, all such terms will have been duly authorized by the Issuer and will have been established in conformity with the provisions of this Indenture;

(c) when the Securities of such series have been executed by the Issuer and authenticated by the Trustee in accordance with the provisions of this Indenture and delivered to and duly paid for by the purchasers thereof, they will have been duly issued under this Indenture and will be valid and legally binding obligations of the Issuer, enforceable in accordance with their respective terms, and will be entitled to the benefits of this Indenture; and

(d) the execution and delivery by the Issuer of, and the performance by the Issuer of its obligations under, the Securities of such series will not contravene any provision of applicable law or the articles of incorporation or bylaws of the Issuer or any agreement or other instrument binding upon the Issuer or any of its Subsidiaries that is material to the Issuer and its Subsidiaries, considered as one enterprise, or, to such counsel's knowledge after the inquiry indicated therein, any judgment, order or decree of any governmental agency or any court having jurisdiction over the Issuer or any Subsidiary of the Issuer, and no consent, approval or authorization of any governmental body or agency is required for the performance by the Issuer of its obligations under the Securities, except such as are specified and have been obtained and such as may be required by the securities or blue sky laws of the various states in connection with the offer and sale of the Securities.

In addition, if the authentication and delivery relates to a new series of Securities created by an indenture supplemental hereto, such Opinion of Counsel shall also state that all laws and requirements with respect to the form and execution by the Issuer of the supplemental indenture with respect to the series of Securities have been complied with, the Issuer has corporate power to execute and deliver any such supplemental indenture and has taken all necessary corporate action for those purposes and any such supplemental indenture has been executed and delivered and constitutes the legal, valid and binding obligation of the Issuer enforceable in accordance with its terms.

In rendering such opinions, such counsel may qualify any opinions as to enforceability by stating that such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium and other similar laws affecting the rights and remedies of creditors and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Such counsel may rely, as to all matters governed by the laws of jurisdictions other than the State of New Jersey and the federal law of the United States,

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upon opinions of other counsel (copies of which shall be delivered to the Trustee), who shall be counsel reasonably satisfactory to the Trustee, in which case the opinion shall state that such counsel believes that both such counsel and the Trustee are entitled so to rely. Such counsel may also state that, insofar as such opinion involves factual matters, such counsel has relied, to the extent such counsel deems proper, upon certificates of officers of the Issuer and its Subsidiaries and certificates of public officials.

The Trustee shall have the right to decline to authenticate and deliver any Securities of any series under this Section 2.4 if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Issuer or if the Trustee in good faith by its board of directors or board of trustees, executive committee or a trust committee of directors or trustees or Responsible Officers shall determine that such action would expose the Trustee to personal liability to existing Holders or would adversely affect the Trustee's own rights, duties or immunities under the Securities, this Indenture or otherwise.

If the Issuer shall establish pursuant to Section 2.3 that the Securities of a series are to be issued in the form of one or more Global Securities, then the Issuer shall execute and the Trustee shall, in accordance with this Section 2.4 and the Issuer Order with respect to such series, authenticate and deliver one or more Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of all of the Securities of such series to be issued in the form of Global Securities and not yet cancelled, (ii) shall be registered in the name of the Depository for such Global Security or Securities or the nominee of such Depository, (iii) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instructions, and (iv) shall bear a legend substantially to the following effect: "Unless and until it is exchanged in whole or in part for Securities in definitive registered form, this Security may not be transferred except as a whole by the Depository to the nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository."

Each Depository designated pursuant to Section 2.3 must, at the time of its designation and at all times while it serves as Depository, be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and any other applicable statute or regulation.

**SECTION 2.5 Execution of Securities.** The Securities shall be signed on behalf of the Issuer by the chairman of the Board of Directors, the president, any vice president or the treasurer of the Issuer, under its corporate seal which may, but need not, be attested by its secretary or one of its assistant secretaries. Such signatures may be the manual or facsimile signatures of the present or any future such officers. The seal of the Issuer may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Securities. Typographical and other minor errors or defects in any such reproduction of a seal or any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

In case any officer of the Issuer who shall have signed any of the Securities shall cease to be such officer before the Security so signed shall be authenticated and delivered by the Trustee or disposed of by the Issuer, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed such Security had not ceased to be such officer of the Issuer; and any Security may be signed on behalf of the Issuer by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Issuer, although at the date of the execution and delivery of this Indenture any such person was not such an officer.

**SECTION 2.6 Certificate of Authentication.** Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee by the manual signature of one of its authorized signatories, or its Authenticating Agent, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. The execution of such certificate by the Trustee or its Authenticating Agent upon any Security executed by the Issuer shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture. Each reference in this Indenture to authentication by the Trustee includes authentication by an agent appointed pursuant to Section 6.14.

**SECTION 2.7 Denomination and Date of Securities; Payments of Interest.** The Securities of each series shall be issuable in registered form in denominations established as contemplated by Section 2.3 or, with respect to the Securities of any series, if not so established, in denominations of \$1,000 and any integral multiple thereof. The Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Issuer executing the same may determine with the approval of the Trustee, as evidenced by the execution and authentication thereof.

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Each Security shall be dated the date of its authentication. The Securities of each series shall bear interest, if any, from the date, and such interest, if any, shall be payable on the dates, established as contemplated by Section 2.3.

The Person in whose name any Security of any series is registered at the close of business on any record date applicable to a particular series with respect to any interest payment date for such series shall be entitled to receive the interest, if any, payable on such interest payment date notwithstanding any transfer or exchange of such Security subsequent to the record date and prior to such interest payment date, except if and to the extent the Issuer shall default in the payment of the interest due on such interest payment date for such series, in which case such defaulted interest shall be paid to the Persons in whose names Outstanding Securities for such series are registered (a) at the close of business on a subsequent record date (which shall be not less than five Business Days prior to the date of payment of such defaulted interest) established by notice given by mail by or on behalf of the Issuer to the Holders of Securities not less than 15 days preceding such subsequent record date or (b) as determined by such other procedure as is mutually acceptable to the Issuer and the Trustee. The term "record date" as used with respect to any interest payment date (except a date for payment of defaulted interest) for the Securities of any series shall mean the date specified as such in the terms of the Securities of such series established as contemplated by Section 2.3, or, if no such date is so established, if such interest payment date is the first day of a calendar month, the fifteenth day of the next preceding calendar month or, if such interest payment date is the fifteenth day of a calendar month, the first day of such calendar month, whether or not such record date is a Business Day.

**SECTION 2.8 Registration, Transfer and Exchange.** The Issuer will keep at each office or agency to be maintained for the purpose as provided in Section 3.2 for each series of Securities a register or registers in which, subject to such reasonable regulations as it may prescribe, it will provide for the registration of Securities of each series and the registration of transfer of Securities of such series. Each such register shall be in written form in the English language or in any other form capable of being converted into such form within a reasonable time. At all reasonable times such register or registers shall be open for inspection and available for copying by the Trustee.

Upon due presentation for registration of transfer of any Security of any series at any such office or agency to be maintained for the purpose as provided in Section 3.2, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Security or Securities of the same series, maturity date, interest rate, if any, and original issue date in authorized denominations for a like aggregate principal amount.

All Securities presented for registration of transfer shall (if so required by the Issuer or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder or his attorney duly authorized in writing.

At the option of the Holder thereof, Securities of any series (other than a Global Security, except as set forth below) may be exchanged for a Security or Securities of such series having authorized denominations and an equal aggregate principal amount, upon surrender of such Securities to be exchanged at the agency of the Issuer that shall be maintained for such purpose in accordance with Section 3.2.

The Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of Securities. No service charge shall be made for any such transaction or for any exchange of Securities of any series as contemplated by the immediately preceding paragraph.

The Issuer shall not be required to exchange or register a transfer of (a) any Securities of any series for a period of 15 days next preceding the first mailing or publication of notice of redemption of Securities of such series to be redeemed, (b) any Securities selected, called or being called for redemption, in whole or in part, except, in the case of any Security to be redeemed in part, the portion thereof not so to be redeemed or (c) any Security if the Holder thereof has exercised his right, if any, to require the Issuer to repurchase such Security in whole or in part, except the portion of such Security not required to be repurchased.

Notwithstanding any other provision of this Section 2.8, unless and until it is exchanged in whole or in part for Securities in definitive registered form, a Global Security representing all or a part of the Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

If at any time the Depository for any Securities of a series represented by one or more Global Securities notifies the Issuer that it is unwilling or unable to continue as Depository for such Securities or if at any time the Depository

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for such Securities shall no longer be eligible under Section 2.4, the Issuer shall appoint a successor Depository with respect to such Securities. If a successor Depository for such Securities is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer's election pursuant to Section 2.3 that such Securities be represented by one or more Global Securities shall no longer be effective and the Issuer shall execute, and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of definitive Securities of such series, will authenticate and deliver Securities of such series in definitive registered form, in any authorized denominations, in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such Securities in exchange for such Global Security or Securities.

The Issuer may at any time and in its sole discretion determine that the Securities of any series issued in the form of one or more Global Securities shall no longer be represented by a Global Security or Securities. In such event, the Issuer shall execute, and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of definitive Securities of such series, shall authenticate and deliver, Securities of such series in definitive registered form, in any authorized denominations, in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such Securities, in exchange for such Global Security or Securities.

If specified by the Issuer pursuant to Section 2.3 with respect to Securities represented by a Global Security, the Depository for such Global Security may surrender such Global Security in exchange in whole or in part for Securities of the same series in definitive registered form on such terms as are acceptable to the Issuer and such Depository. Thereupon, the Issuer shall execute, and the Trustee shall authenticate and deliver, without service charge,

(i) to the Person specified by such Depository, a new Security or Securities of the same series, of any authorized denominations as requested by such Person, in an aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security; and

(ii) to such Depository a new Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Securities authenticated and delivered pursuant to clause (i) above.

Upon the exchange of a Global Security for Securities in definitive registered form in authorized denominations, such Global Security shall be cancelled by the Trustee or an agent of the Trustee. Securities in definitive registered form issued in exchange for a Global Security pursuant to this Section 2.8 shall be registered in such names and in such authorized denominations as the Depository for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or an agent of the Trustee or the Issuer or an agent of the Issuer. The Trustee or such agent shall deliver at its office such Securities to or as directed by the Persons in whose names such Securities are so registered.

All Securities issued upon any registration of transfer or exchange of Securities shall be valid and legally binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

**SECTION 2.9 Mutilated, Defaced, Destroyed, Lost and Stolen Securities.** In case any temporary or definitive Security shall become mutilated or defaced or be destroyed, lost or stolen, the Issuer in its discretion may execute, and upon the written request of the Issuer, the Trustee shall authenticate and deliver a new Security of the same series, maturity date, interest rate, if any, and original issue date, bearing a number or other distinguishing symbol not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substitute Security shall furnish to the Issuer and to the Trustee and any agent of the Issuer or the Trustee such security or indemnity as may be required by the Trustee or the Issuer or any such agent to indemnify and defend and to save each of the Trustee and the Issuer and any such agent harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof and in the case of mutilation or defacement, shall surrender the Security to the Trustee or such agent.

Upon the issuance of any substitute Security, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee or its agent) connected therewith. In case any Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Issuer may instead of issuing a substitute Security, pay or authorize the payment of the same

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(without surrender thereof except in the case of a mutilated or defaced Security), if the applicant for such payment shall furnish to the Issuer and to the Trustee and any agent of the Issuer or the Trustee such security or indemnity as any of them may require to hold each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Issuer and the Trustee and any agent of the Issuer or the Trustee evidence to the Trustee's satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

Every substitute Security of any series issued pursuant to the provisions of this Section by virtue of the fact that any such Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) this Indenture equally and proportionately with any and all other Securities of such series duly authenticated and delivered hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

**SECTION 2.10 Cancellation of Securities; Disposition Thereof.** All Securities surrendered for payment, redemption, registration of transfer or exchange, or for credit against any payment in respect of a sinking or analogous fund, if surrendered to the Issuer or any agent of the Issuer or the Trustee or any agent of the Trustee, shall be delivered to the Trustee or its agent for cancellation or, if surrendered to the Trustee, shall be cancelled by it; and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of all cancelled Securities in accordance with its standard procedures and shall deliver a certificate of such disposition to the Company. If the Issuer or its agent shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee or its agent for cancellation.

**SECTION 2.11 Temporary Securities.** Pending the preparation of definitive Securities for any series, the Issuer may execute and the Trustee shall authenticate and deliver temporary Securities for such series (printed, lithographed, typewritten or otherwise reproduced, in each case in form satisfactory to the Trustee). Temporary Securities of any series shall be issuable in any authorized denomination, and substantially in the form of the definitive Securities of such series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Issuer with the concurrence of the Trustee as evidenced by the execution and authentication thereof. Temporary Securities may contain such references to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Issuer and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. Without unreasonable delay the Issuer shall execute and shall furnish definitive Securities of such series and thereupon temporary Securities of such series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Issuer for that purpose pursuant to Section 3.2 and the Trustee shall authenticate and deliver in exchange for such temporary Securities of such series an equal aggregate principal amount of definitive Securities of the same series having authorized denominations. Until so exchanged, the temporary Securities of any series shall be entitled to the same benefits under this Indenture as definitive Securities of such series, unless otherwise established pursuant to Section 2.3.

**SECTION 2.12 CUSIP Numbers.** The Issuer in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

### Article 3.

## ARTICLE THREE COVENANTS OF THE ISSUER

**SECTION 3.1 Payment of Principal and Interest.** The Issuer covenants and agrees that it will duly and punctually pay or cause to be paid the principal of, premium, if any, and interest, if any, on each of the Securities at the place, at the respective times and in the manner provided in the Securities.

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**SECTION 3.2 Offices for Notices and Payments, etc.** So long as any of the Securities are Outstanding, the Issuer will maintain in each Place of Payment, an office or agency where the Securities may be presented for payment, an office or agency where the Securities may be presented for registration of transfer and for exchange as provided in this Indenture, and an office or agency where notices and demands to or upon the Issuer in respect of the Securities or of this Indenture may be served. In case the Issuer shall at any time fail to maintain any such office or agency, or shall fail to give notice to the Trustee of any change in the location thereof, presentation may be made and notice and demand may be served in respect of the Securities or of this Indenture at the Corporate Trust Office. The Issuer hereby initially designates the Corporate Trust Office for each such purpose and appoints the Trustee as registrar and paying agent and as the agent upon whom notices and demands may be served with respect to the Securities.

**SECTION 3.3 No Interest Extension.** In order to prevent any accumulation of claims for interest after maturity thereof, the Issuer will not directly or indirectly extend or consent to the extension of the time for the payment of any claim for interest on any of the Securities and will not directly or indirectly be a party to or approve any such arrangement by the purchase or funding of said claims or in any other manner; *provided, however*, that this Section 3.3 shall not apply in any case where an extension shall be made pursuant to a plan proposed by the Issuer to the Holders of all Securities of any series then Outstanding.

**SECTION 3.4 Appointments to Fill Vacancies in Trustee's Office.** The Issuer, whenever necessary to avoid or fill a vacancy in the office of the Trustee, will appoint, in the manner provided in Section 6.10, a Trustee, so that there shall at all times be a Trustee hereunder.

**SECTION 3.5 Provision as to Paying Agent.** (a) If the Issuer shall appoint a paying agent other than the Trustee, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee, subject to the provisions of this Section 3.5,



(1) that it will hold all sums held by it as such paying agent for the payment of the principal of or interest, if any, on the Securities (whether such sums have been paid to it by the Issuer or by any other obligor on the Securities) in trust for the benefit of the Holders of the Securities and the Trustee; and

(2) that it will give the Trustee notice of any failure by the Issuer (or by any other obligor on the Securities) to make any payment of the principal of, premium, if any, or interest, if any, on the Securities when the same shall be due and payable; and

(3) that it will, at any time during the continuance of any such failure, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

(b) If the Issuer shall act as its own paying agent, it will, on or before each due date of the principal of or interest, if any, on the Securities, set aside, segregate and hold in trust for the benefit of the Holders of the Securities a sum sufficient to pay such principal, premium, if any, or interest, if any, so becoming due and will notify the Trustee of any failure to take such action and of any failure by the Issuer (or by any other obligor under the Securities) to make any payment of the principal or, premium, if any, or interest, if any, on the Securities when the same shall become due and payable.

(c) Anything in this Section 3.5 to the contrary notwithstanding, the Issuer may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by it, or any paying agent hereunder, as required by this Section 3.5, such sums to be held by the Trustee on the trusts herein contained.

(d) Anything in this Section 3.5 to the contrary notwithstanding, any agreement of the Trustee or any paying agent to hold sums in trust as provided in this Section 3.5 is subject to Sections 10.3 and 10.4.

(e) Whenever the Issuer shall have one or more paying agents, it will, on or before each due date of the principal of or interest, if any, on any Securities, deposit with a paying agent a sum sufficient to pay the principal, premium, if any, or interest, if any, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium, if any, or interest, if any, and (unless such paying agent is the Trustee) the Issuer will promptly notify the Trustee of its action or failure so to act.

**SECTION 3.6 *Limitation on Liens.*** So long as any of the Securities are Outstanding, the Issuer will not, and will not permit any Restricted Subsidiary to, pledge, mortgage, hypothecate or grant a security interest in, or

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permit any mortgage, pledge, security interest or other lien upon, any property or assets owned by the Issuer or any Restricted Subsidiary to secure any Indebtedness, without making effective provision whereby the Securities then Outstanding shall (so long as such other Indebtedness shall be so secured) be equally and ratably secured with any and all such other Indebtedness and any other indebtedness similarly entitled to be equally and ratably secured; *provided, however,* that this restriction shall not apply to nor prevent the creation or existence of:

(a) any mortgage, pledge, security interest, lien or encumbrance upon any property or assets created at the time of the acquisition of such property or assets by the Issuer or any Restricted Subsidiary or within one year after such time to secure all or a portion of the purchase price for such property or assets;

(b) any mortgage, pledge, security interest, lien or encumbrance upon any property or assets existing thereon at the time of the acquisition thereof by the Issuer or any Restricted Subsidiary (whether or not the obligations secured thereby are assumed by the Issuer or any Subsidiary of the Issuer);

(c) any mortgage, pledge, security interest, lien or encumbrance upon any property or assets, whenever acquired, of any corporation or other entity that becomes a Restricted Subsidiary after the date hereof, provided that (i) the instrument creating such mortgage, pledge, security interest, lien or encumbrance shall be in effect prior to the time such corporation or other entity becomes a Restricted Subsidiary and (ii) such mortgage, pledge, security interest, lien or encumbrance shall only apply to properties or assets owned by such corporation or other entity at the time it becomes a Restricted Subsidiary or thereafter acquired by it from sources other than the Issuer or another Restricted Subsidiary;

(d) any mortgage, pledge, security interest, lien or encumbrance in favor of the Issuer or any wholly-owned Subsidiary of the Issuer;

(e) any mortgage, pledge, security interest, lien or encumbrance created or assumed by the Issuer or a Restricted Subsidiary in connection with the issuance of debt securities to interest on which is excludable from gross income of the holder of such security pursuant to the Internal Revenue Code of 1986, as amended, for the purpose of financing, in whole or in part, the acquisition or construction of property or assets to be used by the Issuer or a Subsidiary;

(f) any extension, renewal or refunding of any mortgage, pledge, security interest, lien or encumbrance permitted by the foregoing subparagraphs (a) through (e) above on substantially the same property or assets theretofore subject thereto;

(g) any mortgage, pledge, security interest, lien or encumbrance securing any Indebtedness in an amount which, together with all other Indebtedness secured by a mortgage, pledge, security interest, lien or encumbrance that is not otherwise permitted by the provisions of this Section 3.6, does not at the time of the incurrence of the Indebtedness so secured exceed 20% of Consolidated Net Tangible Assets;

(h) deposits or pledges to secure the payment of workmen's compensation, unemployment insurance or other social security benefits or obligations, or to secure the performance of trade contracts, leases, public or statutory obligations, surety or appeal bonds or other obligations of a like general nature incurred in the ordinary course of business;

(i) mechanics', materialmen's, warehousemen's, carriers' or other like liens arising in the ordinary course of business securing obligations which are not overdue for a period longer than 30 days or which are being contested in good faith by appropriate proceedings;

(j) liens for taxes, assessments or other governmental charges not yet payable or being contested in good faith and as to which adequate reserves shall have been established in accordance with generally accepted accounting principles;

(k) non-recourse mortgages on Income Producing Properties securing Indebtedness;

(l) liens on assets of a Mortgage Subsidiary to secure only a Warehouse Line of Credit provided to such Subsidiary;

(m) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business; or

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(n) liens in connection with capital leases or sale leaseback transactions not securing any other indebtedness.

In case the Issuer or any Restricted Subsidiary shall propose to pledge, mortgage, hypothecate or grant a security interest in any property or assets owned by the Issuer or any Restricted Subsidiary to secure any Indebtedness, other than as permitted by subdivisions (a) to (n), inclusive, of this Section 3.6, the Issuer will prior thereto give written notice thereof to the Trustee, and the Issuer will, or will cause such Restricted Subsidiary to, prior to or simultaneously with such pledge, mortgage, hypothecation or grant of security interest, by supplemental indenture executed to the Trustee (or to the extent legally necessary to another trustee or additional or separate trustee), in form satisfactory to the Trustee, effectively secure (for so long as such other Indebtedness shall be so secured) all the Securities equally and ratably with such Indebtedness and with any other indebtedness similarly entitled to be equally and ratably secured. Such supplemental indenture shall contain the provisions concerning the possession, control, release and substitution of mortgaged and pledged property and securities and other appropriate matters which are required by the Trust Indenture Act of 1939 (as in effect at the date of execution of such supplemental indenture) to be included in a secured indenture qualified under the Trust Indenture Act of 1939, and may also contain such additional and amendatory provisions permitted by the Trust Indenture Act of 1939 as the Issuer and the Trustee shall deem advisable or appropriate or as the Trustee shall deem necessary in connection with such pledge, mortgage, hypothecation or grant of security interest.

For purpose of this Section 3.6, "security interest" shall include the interest of the lessor under a lease with a term of three years or more that should be, in accordance with generally accepted accounting principles, recorded as a capital lease, and any such lease of property or assets not acquired from the Issuer or any Restricted Subsidiary in contemplation of such lease shall be treated as though the lessee had purchased such property or assets from the lessor.

#### Article 4.

### ARTICLE FOUR SECURITYHOLDERS LISTS AND REPORTS BY THE ISSUER AND THE TRUSTEE

SECTION 4.1 *Issuer to Furnish Trustee Information as to Names and Addresses of Securityholders.* The Issuer and any other obligor on the Securities covenant and agree that they will furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of the Securities of each series:

(a) semiannually and not more than 15 days after each January 1 and July 1, and

(b) at such other times as the Trustee may request in writing, within 15 days after receipt by the Issuer of any such request,

*provided* that if and so long as the Trustee shall be the registrar for such series, such list shall not be required to be furnished.

SECTION 4.2 *Preservation and Disclosure of Securityholders Lists.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of each series of Securities (i) contained in the most recent list furnished to it as provided in Section 4.1, and (ii) received by it in the capacity of registrar or paying agent for such series, if so acting. The Trustee may destroy any list furnished to it as provided in Section 4.1 upon receipt of a new list so furnished.

(b) In case three or more Holders of Securities (hereinafter referred to as "applicants") apply in writing to the Trustee and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of a particular series (in which case the applicants must all hold Securities of such series) or with Holders of all Securities with respect to their rights under this Indenture or under such Securities and such application is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either

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(i) afford to such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.2, or

(ii) inform such applicants as to the approximate number of Holders of Securities of such series or of all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee, in accordance with the provisions of subsection (a) of this Section 4.2, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford to such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Securityholder of such series or all Holders of Securities, as the case may be, whose name and address appears in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.2 a copy of the form of proxy or other communication which is specified in such

request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such series or of all Securities, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met, and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Each and every Holder of Securities, by receiving and holding the same, agrees with the Issuer and the Trustee that neither the Issuer nor the Trustee nor any agent of the Issuer or the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with the provisions of subsection (b) of this Section 4.2, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under such subsection (b).

**SECTION 4.3 Reports by the Issuer.** The Issuer covenants:

(a) to file with the Trustee, within 15 days after the Issuer is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Issuer may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Issuer is not required to file information, documents or reports pursuant to either of such Sections, then to file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act, in respect of a debt security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) to file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Issuer with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations;

(c) to transmit by mail to the Holders of Securities within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 4.4(c), such summaries of any information, documents and reports required to be filed by the Issuer pursuant to subsections (a) and (b) of this Section 4.3 as may be required to be transmitted to such Holders by rules and regulations prescribed from time to time by the Commission; and

(d) to furnish to the Trustee, not less than annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his knowledge of the Issuer's compliance with all conditions and covenants under this Indenture. For purposes of this subsection (d), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

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**SECTION 4.4 Reports by the Trustee.** (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act of 1939 at the times and in the manner provided pursuant thereto. To the extent that any such report is required by the Trust Indenture Act of 1939 with respect to any 12 month period, such report shall cover the 12 month period ending July 15 and shall be transmitted by the next succeeding September 15.

(b) A copy of each such report shall, at the time of such transmission to Securityholders, be furnished to the Issuer and be filed by the Trustee with each stock exchange upon which the Securities of any applicable series are listed and also with the Commission. The Issuer agrees to promptly notify the Trustee with respect to any series when and as the Securities of such series become admitted to trading on any national securities exchange.

**Article 5.**

**ARTICLE FIVE  
REMEDIES OF THE TRUSTEE AND SECURITY HOLDERS ON EVENT OF DEFAULT**

**SECTION 5.1 Events of Default.** "Event of Default", wherever used herein with respect to Securities of any series, means any one or more of the following events (whatever the reason for such Event of Default), unless it is either inapplicable to a particular series or it is specifically deleted or modified in or pursuant to the Board Resolution or supplemental indenture establishing such series of Securities or in the form of Security, for such series:

(a) default on the payment of the principal of or premium, if any, of the Securities of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise; or

(b) default in the payment of any installment of interest on any of the Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(c) default in the payment or satisfaction of any sinking fund or other purchase obligation with respect to Securities of such series, as and when such obligation shall become due and payable; or

(d) failure on the part of the Issuer duly to observe or perform any other of the covenants or agreements on the part of the Issuer in the Securities of such series or in this Indenture continued for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given by certified or registered mail to the Issuer by the Trustee, or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of the Securities of such series then Outstanding; or

(e) without the consent of the Issuer a court having jurisdiction shall enter an order for relief with respect to the Issuer or any of its Significant Subsidiaries under any applicable bankruptcy, insolvency or other similar law of the United States of America, any state thereof or the District of Columbia, or without the consent of the Issuer a court having jurisdiction shall enter a judgment, order or decree adjudging the Issuer or any of its Significant Subsidiaries bankrupt or insolvent, or enter an order for relief for reorganization, arrangement, adjustment or composition of or in respect of the Issuer or any of its Significant Subsidiaries under any applicable bankruptcy, insolvency or other similar law of the United States of America, any state thereof or the District of Columbia, and the continuance of any such judgment, order or decree is unstayed and in effect for a period of 60 consecutive days; or

(f) the Issuer or any of its Significant Subsidiaries shall institute proceedings for entry of an order for relief with respect to the Issuer or any of its Significant Subsidiaries under any applicable bankruptcy, insolvency or other similar law of the United States of America, any state thereof or the District of Columbia, or for an adjudication of insolvency, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition seeking, or seek or consent to reorganization, arrangement, composition or relief under any applicable bankruptcy, insolvency or other similar law of the United States of America, any state thereof or the District of Columbia, or shall consent to the filing of such petition or to the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator or similar official of the Issuer or of substantially all of its property, or the Issuer or any of its Significant Subsidiaries shall make a general assignment for the benefit of creditors as recognized under any applicable bankruptcy, insolvency or other similar law of the United States of America, any state thereof or the District of Columbia; or

(g) any other Event of Default provided with respect to the Securities of such series.

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If an Event of Default with respect to Securities of any series then Outstanding occurs and is continuing, then and in each and every such case, unless the principal of all of the Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of such series then Outstanding, by notice in writing to the Issuer (and to the Trustee if given by Securityholders), may declare the principal (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of all the Securities of such series and the interest, if any, accrued thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, notwithstanding anything to the contrary contained in this Indenture or in the Securities of such series. This provision, however, is subject to the condition that, if at any time after the unpaid principal amount (or such specified amount) of the Securities of such series shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter *provided*, the Issuer shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest, if any, upon all of the Securities of such series and the principal of any and all Securities of such series which shall have become due otherwise than by acceleration (with interest on overdue installments of interest, if any, to the extent that payment of such interest is enforceable under applicable law and on such principal at the rate borne by the Securities of such series to the date of such payment or deposit) and the reasonable compensation, disbursements, expenses and advances of the Trustee and all other amounts due the Trustee under Section 6.6, and any and all defaults under this Indenture, other than the nonpayment of such portion of the principal amount of and accrued interest, if any, on Securities of such series which shall have become due by acceleration, shall have been cured or shall have been waived in accordance with Section 5.7 or provision deemed by the Trustee to be adequate shall have been made therefor, then and in every such case the Holders of a majority in aggregate principal amount of the Securities of such series then Outstanding, by written notice to the Issuer and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon. Notwithstanding the previous sentence, no waiver shall be effective against any Holder for any Event of Default or event which with notice or lapse of time or both would be an Event of Default with respect to any covenant or provision which cannot be modified or amended without the consent of the Holder of each outstanding Security affected thereby, unless all such affected Holders agree, in writing, to waive such Event of Default or other event.

If any Event of Default specified in Section 5.1(e) or 5.1(f) occurs with respect to the Issuer, all unpaid principal amount (or, if the Securities of any series then Outstanding are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of each such series) and accrued interest on all Securities of each series then Outstanding shall *ipso facto* become and be immediately due and payable without any declaration or other act by the Trustee or any Securityholder.

If the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Issuer, the Trustee and the Securityholders shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Issuer, the Trustee and the Securityholders shall continue as though no such proceeding had been taken.

Except with respect to an Event of Default pursuant to Section 5.1 (a), (b) or (c), the Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to a Responsible Officer by the Issuer, a paying agent or any Securityholder.

**SECTION 5.2 *Payment of Securities on Default; Suit Therefor.*** The Issuer covenants that (a) if default shall be made in the payment of any installment of interest upon any of the Securities of any series then Outstanding as and when the same shall become due and payable, and such default shall have continued for a period of 30 days, or (b) if default shall be made in the payment of the principal of any of the Securities of such series as and when the same shall have become due and payable, whether at maturity of the Securities of such series or upon redemption or by declaration or otherwise, then, upon demand of the Trustee, the Issuer will pay to the Trustee, for the benefit of the Holders of the Securities, the whole amount that then shall have become due and payable on all such Securities of such series for principal or interest, if any, or both, as the case may be, with interest upon the overdue principal and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of interest, if any, at the rate borne by the Securities of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith.

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If the Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or

proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Issuer or any other obligor on the Securities of such series and collect in the manner provided by law out of the property of the Issuer or any other obligor on the Securities of such series, wherever situated, the moneys adjudged or decreed to be payable.

If there shall be pending proceedings for the bankruptcy or for the reorganization of the Issuer or any other obligor on the Securities of any series then Outstanding under any bankruptcy, insolvency or other similar law now or hereafter in effect, or if a receiver or trustee or similar official shall have been appointed for the property of the Issuer or such other obligor, or in the case of any other similar judicial proceedings relative to the Issuer or other obligor upon the Securities of such series, or to the creditors or property of the Issuer or such other obligor, the Trustee, irrespective of whether the principal of the Securities of such series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.2, shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim or claims for the whole amount of principal and interest, if any, owing and unpaid in respect of the Securities of such series, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Securityholders allowed in such judicial proceedings relative to the Issuer or any other obligor on the Securities of such series, its or their creditors, or its or their property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses, and any receiver, assignee or trustee or similar official in bankruptcy or reorganization is hereby authorized by each of the Securityholders to make such payments to the Trustee, and, if the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due it for compensation and expenses or otherwise pursuant to Section 6.6, including counsel fees and expenses incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses and counsel fees and expenses out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the Holders of the Securities of such series may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

All rights of action and of asserting claims under this Indenture, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders of the Securities of the series in respect of which such judgment has been recovered.

**SECTION 5.3 *Application of Moneys Collected by Trustee.*** Any moneys collected by the Trustee pursuant to Section 5.2 with respect to Securities of any series then Outstanding shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Securities of such series, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

**FIRST:** To the payment of costs and expenses of collection and reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all other expenses and liabilities incurred, and all advances made, by the Trustee pursuant to Section 6.6 except as a result of its negligence or bad faith;

**SECOND:** If the principal of the Outstanding Securities of such series shall not have become due and be unpaid, to the payment of interest, if any, on the Securities of such series, in the order of the maturity of the installments of such interest, if any, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest, if any, at the rate borne by the Securities of such series, such payment to be made ratably to the Persons entitled thereto;

**THIRD:** If the principal of the Outstanding Securities of such series shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon the Securities of such series for principal and interest, if any, with interest on the overdue principal and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest, if any, at the rate borne by the Securities of such series; and in case such moneys shall be insufficient to pay in full the whole amounts so due and unpaid upon the Securities of such series, then to the payment of such principal and interest, if any, without preference or priority

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of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Security over any other Security, ratably to the aggregate of such principal and accrued and unpaid interest; and

**FOURTH:** To the payment of any surplus then remaining to the Issuer, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

No claim for interest which in any manner at or after maturity shall have been transferred or pledged separate or apart from the Securities to which it relates, or which in any manner shall have been kept alive after maturity by an extension (otherwise than pursuant to an extension made pursuant to a plan proposed by the Issuer to the Holders of all Securities of any series then Outstanding), purchase, funding or otherwise by or on behalf or with the consent or approval of the Issuer shall be entitled, in case of a default hereunder, to any benefit of this Indenture, except after prior payment in full of the principal of all Securities of any series then Outstanding and of all claims for interest not so transferred, pledged, kept alive, extended, purchased or funded.

**SECTION 5.4 *Proceedings by Securityholders.*** No Holder of any Securities of any series then Outstanding shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee or similar official, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore *provided*, and unless the Holders of not less than 25% in aggregate principal amount of the Securities of such series then Outstanding shall have made written request to the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding, it being understood and intended, and being expressly covenanted by the Holder of every Security of such series with every other Holder and the Trustee, that no one or more Holders of Securities of such series shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture or of the Securities to affect, disturb or prejudice the rights of any other Holder of such Securities of such series, or to obtain or seek to obtain priority over or preference as to any other such Holder, or to enforce any right under this Indenture or the Securities, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Securities of such series.

Notwithstanding any other provisions in this Indenture, however, the right of any Holder of any Security to receive payment of the principal of, premium, if any, and interest, if any, on such Security, on or after the respective due dates expressed in such Security, or to institute suit for the enforcement of any such payment on or after such respective dates shall not be impaired or affected without the consent of such Holder.

**SECTION 5.5 *Proceedings by Trustee.*** In case of an Event of Default hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceedings in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

**SECTION 5.6 *Remedies Cumulative and Continuing.*** All powers and remedies given by this Article Five to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Securityholders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Securityholder to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 5.4, every power and remedy given by this Article Five or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

**SECTION 5.7 *Direction of Proceedings; Waiver of Defaults by Majority of Securityholders.*** The Holders of a majority in aggregate principal amount of the Securities of any series then Outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or

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exercising any trust or power conferred on the Trustee with respect to Securities of such series; *provided, however*, that (subject to the provisions of Section 6.1) the Trustee shall have the right to decline to follow any such direction if the Trustee shall determine upon advice of counsel that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors, its executive committee, or a trust committee of directors or Responsible Officers or both shall determine that the action or proceeding so directed would involve the Trustee in personal liability. The Holders of a majority in aggregate principal amount of the Securities of any series then Outstanding may on behalf of the Holders of all of the Securities of such series waive any past default or Event of Default hereunder and its consequences except a default in the payment of interest, if any, on, or the principal of, the Securities of such series. Upon any such waiver the Issuer, the Trustee and the Holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 5.7, said default or Event of Default shall for all purposes of the Securities and this Indenture be deemed to have been cured and to be not continuing.

**SECTION 5.8 *Notice of Defaults.*** The Trustee shall, within 90 days after the occurrence of a default, with respect to Securities of any series then Outstanding, mail to all Holders of Securities of such series, as the names and the addresses of such Holders appear upon the Securities register, notice of all defaults known to the Trustee with respect to such series, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purpose of this Section 5.8 being hereby defined to be the events specified in clauses (a), (b), (c), (d), (e), (f) and (g) of Section 5.1, not including periods of grace, if any, provided for therein and irrespective of the giving of the written notice specified in said clause (d) but in the case of any default of the character specified in said clause (d) no such notice to Securityholders shall be given until at least 60 days after the giving of written notice thereof to the Issuer pursuant to said clause (d)); *provided, however*, that, except in the case of default in the payment of the principal of or interest, if any, on any of the Securities, or in the payment or satisfaction of any sinking fund or other purchase obligation, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or Responsible Officers or both of the Trustee in good faith determines that the withholding of such notice is in the best interests of the Securityholders.

**SECTION 5.9 *Undertaking to Pay Costs.*** All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any

action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the cost of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.9 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in principal amount of the Securities of any series then Outstanding, or to any suit instituted by any Securityholders for the enforcement of the payment of the principal of or interest, if any, on any Security against the Issuer on or after the due date expressed in such Security.

## **Article 6.**

### **ARTICLE SIX CONCERNING THE TRUSTEE**

**SECTION 6.1 *Duties and Responsibilities of the Trustee; During Default; Prior to Default.*** In case an Event of Default with respect to the Securities of a series has occurred (which has not been cured or waived) the Trustee shall exercise with respect to such series of Securities such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default with respect to the Securities of any series and after the curing or waiving of all such Events of Default with respect to such series which may have occurred:

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(i) the duties and obligations of the Trustee with respect to the Securities of any series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any statements, certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such statements, certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to Section 5.7 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

SECTION 6.2 *Certain Rights of the Trustee.* Subject to Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, Officers' Certificate or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by an Officers' Certificate or Issuer Order (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a Board Resolution;

(c) the Trustee may consult with counsel of its selection and any advice of such counsel promptly confirmed in writing shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in reliance thereon in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders pursuant to the provisions of this Indenture (including, without limitation, pursuant to Section 5.7), unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby;

(e) the Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Indenture;

(f) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all Events of Default, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Securities of all series affected then Outstanding; *provided* that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such investigation shall be paid by the Issuer or, if paid by the Trustee or any predecessor Trustee, shall be repaid by the Issuer upon demand;

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(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys not regularly in its employ and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be charged with knowledge of any default or Event of Default with respect to a series of Securities unless either (i) a Responsible Officer of the Trustee assigned to the Corporate Trust Office of the Trustee (or any successor division or department of the Trustee) shall have actual knowledge of such default or Event of Default or (ii) written notice of such default or Event of Default shall have been given to the Trustee by the Issuer or any other obligor on such series of Securities or by any Holder of Securities of such series; and

(i) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

**SECTION 6.3 *Trustee Not Responsible for Recitals, Disposition of Securities or Application of Proceeds Thereof.*** The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Indenture, of the Securities or of any prospectus used to sell the Securities. The Trustee shall not be accountable for the use or application by the Issuer of any of the Securities or of the proceeds thereof.

**SECTION 6.4 *Trustee and Agents May Hold Securities; Collections, etc.*** The Trustee or any agent of the Issuer or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not the Trustee or such agent and, subject to Sections 6.8 and 6.13, may otherwise deal with the Issuer and receive, collect, hold and retain collections from the Issuer with the same rights it would have if it were not the Trustee or such agent.

**SECTION 6.5 *Moneys Held by Trustee.*** Subject to the provisions of Section 10.4 hereof, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. Neither the Trustee nor any agent of the Issuer or the Trustee shall be under any liability for interest on any moneys received by it hereunder.

**SECTION 6.6 *Compensation and Indemnification of Trustee and Its Prior Claim.*** The Issuer covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed to in writing between the Issuer and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and the Issuer covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Issuer also covenants to indemnify the Trustee and each predecessor Trustee for, and to hold it harmless against, any and all loss, liability, damage, claim or expense, including taxes (other than taxes based on the income of the Trustee), incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including the costs and expenses of defending itself against or investigating any claim or liability in the premises. The obligations of the Issuer under this Section 6.6 to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee. Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1 or in connection with Article Five hereof, the expenses (including the reasonable fees and expenses of its counsel) and the compensation for the service in connection therewith are intended to constitute expenses of administration under any bankruptcy law. The provisions of this Section 6.6 shall survive the resignation or removal of the Trustee and the termination of this Indenture.

**SECTION 6.7 *Right of Trustee to Rely on Officers' Certificate, etc.*** Subject to Sections 6.1 and 6.2, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter

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be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

**SECTION 6.8 *Qualification of Trustee; Conflicting Interests.*** This Indenture shall always have a Trustee who satisfies the requirements of Section 310(a) (1) of the Trust Indenture Act of 1939. The Trustee shall have a combined capital and surplus of at least \$25,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with Section 310(b) of the Trust Indenture Act of 1939 regarding disqualification of a trustee upon acquiring a conflicting interest.

**SECTION 6.9 *Persons Eligible for Appointment as Trustee: Different Trustees for Different Series.*** The Trustee for each series of Securities hereunder shall at all times be a corporation organized and doing business under the laws of the United States of America or of any state or the District of Columbia having a combined capital and surplus of at least \$25,000,000, and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal, state or District of Columbia authority, or a corporation or other Person permitted to act as trustee by the Commission. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor upon the Securities or any Affiliate of such obligor shall serve as trustee upon the Securities. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.9, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.10.

A different Trustee may be appointed by the Issuer for each series of Securities prior to the issuance of such Securities. If the initial Trustee for any series of Securities is to be a trustee other than First Union National Bank, the Issuer and such Trustee shall, prior to the issuance of such Securities, execute and deliver an indenture supplemental hereto, which shall provide for the appointment of such Trustee as Trustee for the Securities of such series and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee.

**SECTION 6.10 *Resignation and Removal: Appointment of Successor Trustee.*** (a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series of Securities by giving written notice of resignation to the Issuer. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor trustee or trustees with respect to the applicable series by written instrument in duplicate, executed by authority of the Board of Directors, one copy of which instrument shall be delivered to the resigning trustee and one copy to the successor trustee or trustees. If no successor



trustee shall have been so appointed with respect to any series and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a *bona fide* Holder of a Security or Securities of the applicable series for at least six months may, subject to the provisions of Section 5.9, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 6.8 with respect to any series of Securities after written request therefor by the Issuer or by any Securityholder who has been a *bona fide* Holder of a Security or Securities of such series for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.9 and shall fail to resign after written request therefor by the Issuer or by any such Securityholder; or

(iii) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver or liquidator of the Trustee or of its property shall be appointed,

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or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Issuer may remove the Trustee with respect to the applicable series of Securities and appoint a successor trustee for such series by written instrument, in duplicate, executed by order of the Board of Directors one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Article Five, any Securityholder who has been a *bona fide* Holder of a Security or Securities of such series for at least six months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Securities of each series then Outstanding may at any time remove the Trustee with respect to Securities of such series and appoint a successor trustee with respect to the Securities of such series by delivering to the Trustee so removed, to the successor trustee so appointed and to the Issuer the evidence provided for in Section 7.1 of the action in that regard taken by the Securityholders. If no successor trustee shall have been so appointed with respect to any series and have accepted appointment within 30 days after the delivery of such evidence of removal, the Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a *bona fide* Holder of a Security or Securities of the applicable series for at least six months may, subject to the provisions of Section 5.9, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(d) Any resignation or removal of the Trustee with respect to any series and any appointment of a successor trustee with respect to such series pursuant to any of the provisions of this Section 6.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 6.11.

**SECTION 6.11 Acceptance of Appointment by Successor Trustee.** Any successor trustee appointed as provided in Section 6.10 shall execute and deliver to the Issuer and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to all or any applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee for such series hereunder; but, nevertheless, on the written request of the Issuer or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall, subject to Section 10.4, pay over to the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers, duties and obligations. Upon request of any such successor trustee, the Issuer shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a prior claim upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 6.6.

If a successor trustee is appointed with respect to the Securities of one or more (but not all) series, the Issuer, the predecessor Trustee and each successor trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts under separate indentures.

No successor trustee with respect to any series of Securities shall accept appointment as provided in this Section 6.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 6.8 and eligible under the provisions of Section 6.9.

Upon acceptance of appointment by any successor trustee as provided in this Section 6.11, the Issuer shall give notice thereof to the Holders of Securities of each series affected, by mailing such notice to such Holders at their addresses as they shall appear on the registry books. If the Issuer fails to give such notice within ten days

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after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be given at the expense of the Issuer.

**SECTION 6.12 *Merger, Conversion, Consolidation or Succession to Business of Trustee.*** Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including the trust created by this Indenture), shall be the successor of the Trustee hereunder, *provided* that such corporation shall be qualified under the provisions of Section 6.8 and eligible under the provisions of Section 6.9, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Securities of any series shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee and deliver such Securities so authenticated; and, in case at that time any of the Securities of any series shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificate shall have the full force which it is anywhere in the Securities of such series or in this Indenture *provided* that the certificate of the Trustee shall have; *provided*, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Securities of any series in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

**SECTION 6.13 *Preferential Collection of Claims Against the Issuer.*** The Trustee shall comply with Section 311(a) of the Trust Indenture Act of 1939, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act of 1939. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act of 1939 to the extent indicated therein.

**SECTION 6.14 *Appointment of Authenticating Agent.*** As long as any Securities of a series remain Outstanding, the Trustee may, by an instrument in writing, appoint with the approval of the Issuer an authenticating agent (the "Authenticating Agent") which shall be authorized to act on behalf of the Trustee to authenticate Securities, including Securities issued upon exchange, registration of transfer, partial redemption or pursuant to Section 2.9. Securities of each such series authenticated by such Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee. Whenever reference is made in this Indenture to the authentication and delivery of Securities of any series by the Trustee or to the Trustee's Certificate of Authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent for such series and a Certificate of Authentication executed on behalf of the Trustee by such Authenticating Agent. Such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or of any state or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$25,000,000 (determined as provided in Section 6.9 with respect to the Trustee) and subject to supervision or examination by federal or state authority.

Any corporation into which any Authenticating Agent may be merged or converted, or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency business (including the authenticating agency contemplated by this Indenture) of any Authenticating Agent, shall continue to be the Authenticating Agent with respect to all series of Securities for which it served as Authenticating Agent without the execution or filing of any paper or any further act on the part of the Trustee or such Authenticating Agent. Any Authenticating Agent may at any time, and if it shall cease to be eligible shall, resign by giving written notice of resignation to the Trustee and to the Issuer. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Issuer.

Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.14 with respect to one or more series of Securities, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Issuer and the Issuer shall provide notice of such appointment to all Holders of Securities of such series in the manner and to the extent provided in Section 11.4. Any successor Authenticating Agent upon acceptance

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of its appointment hereunder shall become vested with all rights, powers, duties and responsibilities of its predecessor hereunder, with like effect as if originally named as Authenticating Agent. The Issuer agrees to pay to the Authenticating Agent for such series from time to time reasonable compensation. The Authenticating Agent for the Securities of any series shall have no responsibility or liability for any action taken by it as such at the direction of the Trustee.

Sections 6.2, 6.3, 6.4 and 7.3 shall be applicable to any Authenticating Agent.

## **Article 7.**

### **ARTICLE SEVEN CONCERNING THE SECURITYHOLDERS**

**SECTION 7.1 *Evidence of Action Taken by Securityholders.*** Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by a specified percentage in principal amount of the Securityholders of any or all series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Securityholders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Sections 6.1 and 6.2) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Article Seven.

**SECTION 7.2 *Proof of Execution of Instruments and of Holding of Securities.*** Subject to Sections 6.1 and 6.2, the execution of any instrument by a Securityholder or his agent or proxy may be proved in the following manner:

(a) The fact and date of the execution by any Holder of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the person executing such instruments acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute sufficient proof of the authority of the person executing the same.

(b) The ownership of Securities shall be proved by the Security register or by a certificate of the Security registrar.

**SECTION 7.3 *Holders to be Treated as Owners.*** The Issuer, the Trustee and any agent of the Issuer or the Trustee may deem and treat the Person in whose name any Security shall be registered upon the Security register for such series as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and, subject to the provisions of this Indenture, interest, if any, on such Security and for all other purposes; and neither the Issuer nor the Trustee nor any agent of the Issuer or the Trustee shall be affected by any notice to the contrary.

**SECTION 7.4 *Securities Owned by Issuer Deemed Not Outstanding.*** In determining whether the Holders of the requisite aggregate principal amount of Outstanding Securities of any or all series have concurred in any direction, consent or waiver under this Indenture, Securities which are owned by the Issuer or any other obligor on the Securities with respect to which such determination is being made or by any Affiliate of the Issuer or any other obligor on the Securities with respect to which such determination is being made shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver only Securities which a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or any other obligor on the Securities. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice. Upon request of the Trustee, the Issuer shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Securities, if any, known by the Issuer to be owned or held by or for the account of any of the above-described Persons; and, subject to Sections 6.1 and 6.2, the Trustee shall be entitled to accept such

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Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

**SECTION 7.5 *Right of Revocation of Action Taken.*** At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.1, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Securities of any or all series, as the case may be, specified in this Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article Seven, revoke such action so far as concerns such Security provided that such revocation shall not become effective until three Business Days after such filing. Except as aforesaid, any such action taken by the Holder of any Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Security and of any Securities issued in exchange or substitution therefor or on registration of transfer thereof, irrespective of whether or not any notation in regard thereto is made upon any such Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Securities of any or all series, as the case may be, specified in this Indenture in connection with such action shall be conclusively binding upon the Issuer, the Trustee and the Holders of all the Securities affected by such action.

**SECTION 7.6 *Record Date for Consents and Waivers.*** The Issuer may, but shall not be obligated to, establish a record date for the purpose of determining the Persons entitled to (i) waive any past default with respect to the Securities of such series in accordance with Section 5.7 of the Indenture, (ii) consent to any supplemental indenture in accordance with Section 8.2 of the Indenture or (iii) waive compliance with any term, condition or provision of any covenant hereunder. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and any such Persons, shall be entitled to waive any such past default, consent to any such supplemental indenture or waive compliance with any such term, condition or provision, whether or not such Holder remains a Holder after such record date; *provided, however,* that unless such waiver or consent is obtained from the Holders, or duly designated proxies, of the requisite principal amount of Outstanding Securities of such series prior to the date which is the 120th day after such record date, any such waiver or consent previously given shall automatically and, without further action by any Holder be cancelled and of no further effect.

## **Article 8.**

### **ARTICLE EIGHT SUPPLEMENTAL INDENTURES**

**SECTION 8.1 *Supplemental Indentures Without Consent of Securityholders.*** The Issuer, when authorized by a Board Resolution (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to an Issuer Order), and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act of 1939 as in force at the date of the execution thereof) for one or more of the following purposes:

(a) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities of one or more series any property or assets;

(b) to evidence the succession of another Person to the Issuer, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Issuer pursuant to Article Nine;

(c) to add to the covenants of the Issuer such further covenants, restrictions, conditions or provisions as the Issuer and the Trustee shall consider to be for the protection of the Holders of all or any series of Securities (and if such covenants, restrictions, conditions or provisions are to be for the protection of less than all series of Securities, stating that the same are expressly being included solely for the protection of such series), and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided, however,* that in respect of any such additional covenant, restriction, condition or

provision such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for

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an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the right of the Holders of a majority in aggregate principal amount of the Securities of such series to waive such an Event of Default;

(d) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make any other provisions as the Issuer may deem necessary or desirable, *provided, however*, that no such action shall materially adversely affect the interests of the Holders of the Securities;

(e) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 2.3;

(f) to provide for the issuance of Securities of any series in coupon form (including Securities registrable as to principal only) and to provide for exchangeability of such Securities for the Securities issued hereunder in fully registered form and to make all appropriate changes for such purpose;

(g) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act of 1939, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act of 1939, *excluding, however*, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act of 1939 as in effect at the date as of which this instrument was executed or any corresponding provision provided for in any similar federal statute hereafter enacted;

(h) to evidence and provide for the acceptance of appointment hereunder of a Trustee other than First Union National Bank as Trustee for a series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.9 hereof;

(i) subject to Section 8.2 hereof, to add to or modify the provisions hereof as may be necessary or desirable to provide for the denomination of Securities in foreign currencies which shall not adversely affect the interests of the Holders of the Securities in any material respect;

(j) to modify the covenants or Events of Default of the Issuer solely in respect of; or add new covenants or Events of Default of the Issuer that apply solely to, Securities not Outstanding on the date of such supplemental indenture; and

(k) to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to the requirements of Section 6.11.

The Trustee is hereby authorized to join with the Issuer in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section may be executed without the consent of the Holders of any of the Securities then Outstanding, notwithstanding any of the provisions of Section 8.2.

**SECTION 8.2 *Supplemental Indentures with Consent of Securityholders.*** With the consent (evidenced as provided in Article Seven) of the Holders of not less than a majority in aggregate principal amount of the Securities then Outstanding of any series affected by such supplemental indenture, the Issuer, when authorized by a Board Resolution (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to an Issuer Order), and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act of 1939 as in force at the date of execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of such series; *provided*, that no such supplemental indenture shall (a) extend the stated final maturity of the principal of any Security, or reduce the principal amount thereof; or reduce the rate or extend the time of payment of interest,

if any, thereon (or, in the case of an Original Issue Discount Security, reduce the rate of accretion of original issue discount thereon), or reduce or alter the method of computation of any amount payable on redemption, repayment or purchase by the Issuer thereof (or the time at which any such redemption, repayment or purchase may be made), or make the principal thereof (including any amount in respect of original issue discount), or interest, if any, thereon payable in any coin or currency other than that provided in the Securities or in accordance with the terms of the Securities, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the maturity thereof pursuant to Section 5.1 or the amount thereof provable in bankruptcy pursuant to Section 5.2, or impair or affect the right of any Securityholder to institute suit for the payment thereof or, if the Securities provide therefor, any right of repayment or purchase at the option of the Securityholder, in each case without the consent of the Holder of each Security so affected, or (b) reduce the aforesaid percentage of Securities of any series, the consent of the Holders of which is required for any such supplemental indenture, without the consent of the Holders of each Security so affected. No consent of any Holder of any Security shall be necessary under this Section 8.2 to permit the Trustee and the Issuer to execute supplemental indentures pursuant to Sections 8.1 and 9.2.

A supplemental indenture which changes or eliminates any covenant, Event of Default or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of Holders of Securities of such series, with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

Upon the request of the Issuer, accompanied by a copy of a resolution of the Board of Directors (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to an Issuer Order) certified by the secretary or an assistant secretary of the Issuer authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Holders of the Securities as aforesaid and other documents, if any, required by Section 7.1, the Trustee shall join with the Issuer in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may at its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof

Promptly after the execution by the Issuer and the Trustee of any supplemental indenture pursuant to the provisions of this Section 8.2, the Issuer (or the Trustee at the request and expense of the Issuer) shall give notice thereof to the Holders of then Outstanding Securities of each series affected thereby, as provided in Section 11.4. Any failure of the Issuer to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

**SECTION 8.3 *Effect of Supplemental Indenture.*** Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Issuer and the Holders of Securities of each series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**SECTION 8.4 *Documents to Be Given to Trustee.*** The Trustee, subject to the provisions of Sections 6.1 and 6.2, shall be entitled to receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article Eight complies with the applicable provisions of this Indenture and that all conditions precedent to the execution and delivery of such supplemental indenture have been satisfied.

**SECTION 8.5 *Notation on Securities in Respect of Supplemental Indentures.*** Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article Eight may bear a notation in form approved by the Trustee for such series as to any matter provided for by such supplemental indenture or as to any action taken by Securityholders. If the Issuer or the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Issuer,

to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Issuer, and such Securities may be authenticated by the Trustee and delivered in exchange for the Securities of such series then Outstanding.

## **Article 9.**

### **ARTICLE NINE CONSOLIDATION, MERGER, SALE, LEASE, EXCHANGE OR OTHER DISPOSITION**

**SECTION 9.1 *Issuer May Consolidate, etc., on Certain Terms.*** Subject to the provisions of Section 9.2, nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of the Issuer with or into any other Person or Persons (whether or not affiliated with the Issuer), or successive consolidations or mergers in which the Issuer or its successor or successors shall be a party or parties, or shall prevent any sale, lease, exchange or other disposition of all or substantially all the property and assets of the Issuer to any other Person (whether or not affiliated with the Issuer) authorized to acquire and operate the same; *provided, however,* and the Issuer hereby covenants and agrees, that any such consolidation, merger, sale, lease, exchange or other disposition shall be upon the conditions that (a) immediately after giving effect to such consolidation, merger, sale, lease, exchange or other disposition of the Person (whether the Issuer or such other Person) formed by or surviving any such consolidation or merger, or to which such sale, lease, exchange or other disposition shall have been made, no Event of Default, and no event which after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; (b) the Person (if other than the Issuer) formed by or surviving any such consolidation or merger, or to which such sale, lease, exchange or other disposition shall have been made, shall be a corporation or partnership organized under the laws of the United States of America, any state thereof or the District of Columbia; and (c) the due and punctual payment of the principal of and interest, if any, on all the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Issuer, shall be expressly assumed, by supplemental indenture satisfactory in form to the Trustee executed and delivered to the Trustee, by the Person (if other than the Issuer) formed by such consolidation, or into which the Issuer shall have been merged, or by the Person which shall have acquired or leased such property.

**SECTION 9.2 *Successor Corporation to be Substituted.*** In case of any such consolidation or merger or any sale, conveyance or lease of all or substantially all of the property of the Issuer and upon the assumption by the successor Person, by supplemental indenture executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of, premium, if any, and interest, if any, on all of the Securities and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Issuer, such successor Person shall succeed to and be substituted for the Issuer, with the same effect as if it had been named herein as the party of the first part, and the Issuer (including any intervening successor to the Issuer which shall have become the obligor hereunder) shall be relieved of any further obligation under this Indenture and the Securities; *provided, however,* that in the case of a sale, lease, exchange or other disposition of the property and assets of the Issuer (including any such intervening successor), the Issuer (including any such intervening successor) shall continue to be liable on its obligations under this Indenture and the Securities to the extent, but only to the extent, of liability to pay the principal of, premium, if any, and interest, if any, on the Securities at the time, places and rate prescribed in this Indenture and the Securities. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of the Issuer, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Issuer and delivered to the Trustee; and, upon the order of such successor Person instead of the Issuer and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Issuer to the Trustee for authentication, and any Securities which such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects have the same legal rank and

benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

In case of any such consolidation or merger or any sale, lease, exchange or other disposition of all or substantially all of the property and assets of the Issuer, such changes in phraseology and form (but not in substance) may be made in the Securities, thereafter to be issued, as may be appropriate.

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SECTION 9.3 *Opinion of Counsel to be Given Trustee.* The Trustee, subject to Sections 6.1 and 6.2, shall receive an Officers' Certificate and Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, lease, exchange or other disposition and any such assumption complies with the provisions of this Article Nine.

**Article 10.**

**ARTICLE TEN  
SATISFACTION AND DISCHARGE OF INDENTURE;  
COVENANT DEFEASANCE; UNCLAIMED MONEYS**

SECTION 10.1 *Satisfaction and Discharge of Indenture; Covenant Defeasance.*

(A) If at any time (a) the Issuer shall have paid or caused to be paid the principal of, premium, if any, and interest, if any, on all the Securities Outstanding (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.9) as and when the same shall have become due and payable, or (b) the Issuer shall have delivered to the Trustee for cancellation all Securities theretofore authenticated (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.9); and if, in any such case, the Issuer shall also pay or cause to be paid all other sums payable hereunder by the Issuer (including all amounts, payable to the Trustee pursuant to Section 6.6), then this Indenture shall cease to be of further effect, and the Trustee, on demand of the Issuer accompanied by an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the satisfaction and discharge contemplated by this provision have been complied with, and at the cost and expense of the Issuer, shall execute proper instruments acknowledging such satisfaction and discharging this Indenture. The Issuer agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred, and to compensate the Trustee for any services thereafter reasonably and properly rendered, by the Trustee in connection with this Indenture or the Securities.

(B) If at any time (a) the Issuer shall have paid or caused to be paid the principal of, premium, if any, and interest, if any, on all the Securities of any series Outstanding (other than Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.9) as and when the same shall have become due and payable; or (b) the Issuer shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated (other than any Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.9), or (c) in the case of any series of Securities with respect to which the exact amount described in clause (ii) below can be determined at the time of making the deposit referred to in such clause (ii), (i) all the Securities of such series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or by their terms are to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (ii) the Issuer shall have irrevocably deposited or caused to be deposited with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Securities of such series, cash in an amount (other than moneys repaid by the Trustee or any paying agent to the Issuer in accordance with Section 10.4) or non-callable, non-prepayable bonds, notes, bills or other similar obligations issued or guaranteed by the United States government or any agency thereof the full and timely payment of which are backed by the full faith and credit of the United States ("U.S. Government Obligations"), maturing as to principal and interest, if any, at such times and in such amounts as will insure the availability of cash, or a combination thereof sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (1) the principal of; premium, if any, and interest, if any, on all Securities of such series on each date that such principal of, premium, if any, or interest, if any, is due and payable, and (2) any mandatory sinking fund payments on the dates on which such payments are due and payable in accordance with the terms of the Indenture and the Securities of such series; then the Issuer shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such series on the date of the deposit referred to in clause (ii) above and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except, in the case of clause (c) of this Section 10.1(B), as to (i) rights of registration of transfer and exchange of Securities of such series, (ii) rights of substitution of mutilated, defaced, destroyed, lost or stolen Securities of such series, (iii) rights of Holders of Securities of such series to receive payments of principal thereof and premium, if any, and interest, if any, thereon upon the original stated due dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments thereon, if any, when due, (iv) the rights, obligations, duties and

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immunities of the Trustee hereunder, (v) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vi) the obligations of the Issuer under Section 3.2 with respect to Securities of such series) and the Trustee, on demand of the Issuer accompanied by an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent contemplated by this provision have been complied with, and at the cost and expense of the Issuer, shall execute proper instruments acknowledging the same.

(C) The following provisions shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution, Officers' Certificate or indenture supplemental hereto provided pursuant to Section 2.3. In addition to discharge of the Indenture pursuant to the next preceding paragraph, in the case of any series of Securities with respect to which the exact amount described in subparagraph (a) below can be determined at the time of making the deposit referred to in such subparagraph (a), the Issuer shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such a series on the 91st day after the date of the deposit referred to in subparagraph (a) below, and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Securities of such series, (ii) substitution of mutilated, defaced, destroyed, lost or

stolen Securities of such series, (iii) rights of Holders of Securities of such series to receive payments of principal thereof, premium, if any, and interest, if any, thereon upon the original stated due dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vi) the obligations of the Issuer under Section 3.2 with respect to Securities of such series) and the Trustee, on demand of the Issuer accompanied by an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent contemplated by this provision have been complied with, and at the cost and expense of the Issuer, shall execute proper instruments acknowledging the same, if

(a) with reference to this provision the Issuer has irrevocably deposited or caused to be irrevocably deposited with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Securities of such series (i) cash in an amount, or (ii) U.S. Government Obligations, maturing as to principal and interest, if any, at such times and in such amounts as will insure the availability of cash, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (A) the principal of, premium, if any, and interest, if any, on all Securities of such series on each date that such principal or interest, if any, is due and payable, and (B) any mandatory sinking fund payments on the dates on which such payments are due and payable in accordance with the terms of the Indenture and the Securities of such series;

(b) such deposit will not result in a breach or violation of, or constitute a default under, any agreement or instrument to which the Issuer is a party or by which it is bound; and

(c) the Issuer has delivered to the Trustee an Opinion of Counsel based on the fact that (x) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling or (y), since the date hereof, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit, defeasance and discharge had not occurred.

**SECTION 10.2 *Application by Trustee of Funds Deposited for Payment of Securities.*** Subject to Section 10.4, all moneys and U.S. Government Obligations deposited with the Trustee pursuant to Section 10.1 shall be held in trust, and such moneys and all moneys from such U.S. Government Obligations shall be applied by it to the payment, either directly or through any paying agent (including the Issuer acting as its own paying agent), to the Holders of the particular Securities of such series for the payment or redemption of which such moneys and U.S. Government Obligations have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest, if any, but such moneys and U.S. Government Obligations need not be segregated from other funds except to the extent required by law.

**SECTION 10.3 *Repayment of Moneys Held by Paying Agent.*** In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series, all moneys then held by any paying agent under

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the provisions of this Indenture with respect to such series of Securities shall, upon demand of the Issuer, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

**SECTION 10.4 *Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years.*** Any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal of, premium, if any, or interest, if any, on any Security of any series and not applied but remaining unclaimed for two years after the date upon which such principal, premium, if any, or interest, if any, shall have become due and payable, shall, upon the written request of the Issuer and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Issuer by the Trustee for such series or such paying agent, and the Holder of the Securities of such series shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Issuer for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

**SECTION 10.5 *Indemnity for U.S. Government Obligations.*** The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 10.1 or the principal or interest received in respect of such obligations.

## **Article 11.**

### **ARTICLE ELEVEN MISCELLANEOUS PROVISIONS**

**SECTION 11.1 *Partners, Incorporators, Stockholders, Officers and Directors of Issuer Exempt from Individual Liability.*** No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such or against any past, present or future stockholder, officer or director, as such, of the Issuer, or any partner of the Issuer or of any successor, either directly or through the Issuer or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders thereof and as part of the consideration for the issue of the Securities.

**SECTION 11.2 *Provisions of Indenture for the Sole Benefit of Parties and Holders of Securities.*** Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any Person, other than the parties hereto and their successors and the Holders of the Securities, any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders of the Securities.

**SECTION 11.3 *Successors and Assigns of Issuer Bound by Indenture.*** All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Issuer shall bind its successors and assigns, whether so expressed or not.

SECTION 11.4 *Notices and Demands on Issuer, Trustee and Holders of Securities.* Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Securities to or on the Issuer, or as required pursuant to the Trust Indenture Act of 1939, may be given or served by being deposited postage prepaid, first-class mail (except as otherwise specifically provided herein) addressed (until another address of the Issuer is filed by the Issuer with the Trustee) to K. Hovnanian Enterprises, Inc., 10 Highway 35, P.O. Box 500, Red Bank, New Jersey 07701. Any notice, direction, request or demand by the Issuer or any Holder of Securities to or upon the Trustee shall be deemed to have been sufficiently given or served by being deposited postage prepaid, first-class mail (except as otherwise specifically provided herein) addressed (until another address of the Trustee is filed by the Trustee with the Issuer) to First Union National Bank, 21 South Street, Morristown, New Jersey 07960, attention: Corporate Trust Administration (K. Hovnanian Enterprises, Inc. 9-1/8% Senior Notes due 2009).

Where this Indenture provides for notice to Holders of Securities, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder entitled thereto, at his last address as it appears in the Security register. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after

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the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Issuer when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be reasonably satisfactory to the Trustee shall be deemed to be sufficient notice.

SECTION 11.5 *Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein.* Upon any application or demand by the Issuer to the Trustee to take any action under any of the provisions of this Indenture, or as required pursuant to the Trust Indenture Act of 1939, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture (other than a certificate provided pursuant to Section 4.3(d)) and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person making such certificate or opinion has read such covenant or condition, (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an opinion as to whether or not such covenant or condition has been complied with, and (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters, information with respect to which is in the possession of the Issuer, upon the certificate, statement or opinion of or representations by an officer or officers of the Issuer, unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Issuer or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Issuer, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate or opinion of any independent firm of public accountants filed with and directed to the Trustee shall contain a statement that such firm is independent.

SECTION 11.6 *Payments Due on Saturdays, Sundays and Holidays.* If the date of maturity of principal of or interest, if any, on the Securities of any series or the date fixed for redemption, purchase or repayment of any such Security shall not be a Business Day, then payment of interest, if any, premium, if any, or principal need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, purchase or repayment, and, in the case of payment, no interest shall accrue for the period after such date.

SECTION 11.7 *Conflict of Any Provision of Indenture with Trust Indenture Act of 1939.* If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included herein by any of Sections 310 to 317, inclusive, or is deemed applicable to this Indenture by virtue of the provisions of the Trust Indenture Act of 1939, such required provision shall control.

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SECTION 11.8 *GOVERNING LAW.* THIS INDENTURE AND EACH SECURITY SHALL BE DEEMED TO BE A CONTRACT UNDER THE LAWS OF THE STATE OF NEW YORK AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS.



SECTION 11.9 *Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 11.10 *Effect of Headings*. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

## Article 12.

### ARTICLE TWELVE REDEMPTION OF SECURITIES AND SINKING FUNDS

SECTION 12.1 *Applicability of Article*. The provisions of this Article shall be applicable to the Securities of any series which are redeemable before their maturity or to any *sinking* fund for the retirement of Securities of a series except as otherwise specified, as contemplated by Section 2.3 for Securities of such series.

SECTION 12.2 *Notice of Redemption; Partial Redemptions*. Notice of redemption to the Holders of Securities of any series to be redeemed as a whole or in part at the option of the Issuer shall be given by mailing notice of such redemption by first class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities of such series at their last addresses as they shall appear in the Security register. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice. Failure to give notice by mail, or any defect in the notice to the Holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security of such series.

The notice of redemption to each such Holder shall specify (i) the principal amount of each Security of such series held by such Holder to be redeemed, (ii) the date fixed for redemption, (iii) the redemption price, (iv) the place or places of payment, (v) the CUSIP number relating to such Securities, (vi) that payment will be made upon presentation and surrender of such Securities, (vii) whether such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, (viii) whether interest, if any, (or, in the case of Original Issue Discount Securities, original issue discount) accrued to the date fixed for redemption will be paid as specified in such notice and (ix) whether on and after said date interest, if any, (or, in the case of Original Issue Discount Securities, original issue discount) thereon or on the portions thereof to be redeemed will cease to accrue. In case any Security of a series is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any series to be redeemed at the option of the Issuer shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer.

On or before the redemption date specified in the notice of redemption given as provided in this Section 12.2, the Issuer will deposit with the Trustee or with one or more paying agents (or, if the Issuer is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 33) an amount of money sufficient to redeem on the redemption date all the Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest, if any, to the date fixed for redemption. The Issuer will deliver to the Trustee at least 45 days prior to the date fixed for redemption (unless a shorter notice period shall be satisfactory to the Trustee) an Officers' Certificate stating the aggregate principal amount of Securities to be redeemed. In case of a redemption at the election of the Issuer prior to the expiration of any restriction on such redemption, the Issuer shall deliver to the Trustee, prior to the giving of any notice of redemption to Holders pursuant to this Section, an Officers' Certificate stating that such restriction has been complied with.

If less than all the Securities of a series are to be redeemed, the Trustee, within 10 Business Days after the Issuer gives written notice to the Trustee that such redemption is to occur, shall select, in such manner as it shall deem appropriate and fair, Securities of such series to be redeemed. Notice of the redemption shall be given only after such selection has been made. Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Securities of such series or any multiple thereof. The Trustee shall promptly notify the Issuer

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in writing of the Securities of such series selected for redemption and, in the case of any Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities of any series shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

SECTION 12.3 *Payment of Securities Called for Redemption*. If notice of redemption has been given as provided by this Article Twelve, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place or places stated in such notice at the applicable redemption price, together with interest, if any accrued to the date fixed for redemption, and on and after said date (unless the Issuer shall default in the payment of such Securities at the redemption price, together with interest, if any, accrued to said date) interest, if any (or, in the case of Original Issue Discount Securities, original issue discount), on the Securities or portions of Securities so called for redemption shall cease to accrue, and such Securities shall cease from and after the date fixed for redemption (unless an earlier date shall be specified in a Board Resolution, Officers' Certificate or executed supplemental indenture referred to in Sections 2.1 and 2.3 by or pursuant to which the form and terms of the Securities of such series were established) except as provided in Sections 6.5 and 10.4, to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest, if any, to the date fixed for redemption. On presentation and surrender of such Securities at a place of payment specified in said notice, said Securities or the specified portions thereof shall be paid and redeemed by the Issuer at the applicable redemption price, together with interest, if any, accrued thereon to the date fixed for redemption; *provided* that payment of interest, if any, becoming due on or prior to the date fixed for redemption shall be payable to the Holders of Securities registered as such on the relevant record date subject to the terms and provisions of Sections 2.3 and 2.7 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the redemption price shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount Security) borne by such

Security.

Upon presentation of any Security redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Issuer, a new Security or Securities of such series, and of like tenor, of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

**SECTION 12.4 *Exclusion of Certain Securities from Eligibility for Selection for Redemption.*** Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in an Officers' Certificate delivered to the Trustee at least 45 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by either (a) the Issuer, or (b) a Person specifically identified in such written statement as an Affiliate of the Issuer.

**SECTION 12.5 *Mandatory and Optional Sinking Funds.*** The minimum amount of any sinking fund payment provided for by the terms of the Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of the Securities of any series is herein referred to as an "optional sinking fund payment." The date on which a sinking fund payment is to be made is herein referred to as the "sinking fund payment date."

In lieu of making all or any part of any mandatory sinking fund payment with respect to any series of Securities in cash, the Issuer may at its option (a) deliver to the Trustee Securities of such series theretofore purchased or otherwise acquired (except upon redemption pursuant to the mandatory sinking fund) by the Issuer or receive credit for Securities of such series (not previously so credited) theretofore purchased or otherwise acquired (except as aforesaid) by the Issuer and delivered to the Trustee for cancellation pursuant to Section 2.10, (b) receive credit for optional sinking fund payments (not previously so credited) made pursuant to this Section 12.5, or (c) receive credit for Securities of such series (not previously so credited) redeemed by the Issuer through any optional redemption provision contained in the terms of such series. Securities so delivered or credited shall be received or credited by the Trustee at the sinking fund redemption price specified in such Securities.

On or before the 60th day next preceding each sinking fund payment date for any series, the Issuer will deliver to the Trustee an Officers' Certificate (a) specifying the portion of the mandatory sinking fund payment to be satisfied by payment of cash and the portion to be satisfied by credit of Securities of such series and the basis for such credit,

(b) stating that none of the Securities of such series to be so credited has theretofore been so credited, (c) stating that no defaults in the payment of interest or Events of Default with respect to such series have occurred (which have not been waived or cured or otherwise ceased to exist) and are continuing, and (d) stating whether or not the Issuer intends to exercise its right to make an optional sinking fund payment with respect to such series and, if so, specifying the amount of such optional sinking fund payment which the Issuer intends to pay on or before the next succeeding sinking fund payment date. Any Securities of such series to be credited and required to be delivered to the Trustee in order for the Issuer to be entitled to credit therefor as aforesaid which have not theretofore been delivered to the Trustee shall be delivered for cancellation pursuant to Section 2.10 to the Trustee with such Officers' Certificate (or reasonably promptly thereafter if acceptable to the Trustee). Such Officers' Certificate shall be irrevocable and upon its receipt by the Trustee the Issuer shall become unconditionally obligated to make all the cash payments or payments therein referred to, if any, on or before the next succeeding sinking fund payment date. Failure of the Issuer, on or before any such 60th day, to deliver such Officers' Certificate and Securities (subject to the parenthetical clause in the second preceding sentence) specified in this paragraph, if any, shall not constitute a default but shall constitute, on and as of such date, the irrevocable election of the Issuer (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof, and (ii) that the Issuer will make no optional sinking fund payment with respect to such series as provided in this Section 12.5.

If the sinking fund payment or payments (mandatory or optional or both) to be made in cash on the next succeeding sinking fund payment date plus any unused balance of any preceding sinking fund payments made in cash shall exceed \$50,000, or a lesser sum if the Issuer shall so request with respect to the Securities of any particular series, such cash shall be applied on the next succeeding sinking fund payment date to the redemption of Securities of such series at the sinking fund redemption price together with accrued interest, if any, to the date fixed for redemption. If such amount shall be \$50,000 or less and the Issuer makes no such request, then it shall be carried over until a sum in excess of \$50,000 is available. The Trustee shall select, in the manner provided in Section 12.2, for redemption on such sinking fund payment date a sufficient principal amount of Securities of such series to absorb said cash, as nearly as may be, and shall (if requested in writing by the Issuer) inform the Issuer of the serial numbers of the Securities of such series (or portions thereof) so selected. The Issuer, or the Trustee, in the name and at the expense of the Issuer (if the Issuer shall so request the Trustee in writing) shall cause notice of redemption of the Securities of such series to be given in substantially the manner provided in Section 12.2 (and with the effect provided in Section 12.3) for the redemption of Securities of such series in part at the option of the Issuer. The amount of any sinking fund payments not so applied or allocated to the redemption of Securities of such series shall be added to the next cash sinking fund payment for such series and, together with such payment, shall be applied in accordance with the provisions of this Section 12.5. Any and all sinking fund moneys held on the stated maturity date of the Securities of any particular series (or earlier, if such maturity is accelerated), which are not held for the payment or redemption of particular Securities of such series shall be applied, together with other moneys, if necessary, sufficient for the purpose, to the payment of the principal of, and interest, if any, on, the Securities of such series at maturity.

On or before each sinking fund payment date, the Issuer shall pay to the Trustee in cash or shall otherwise provide for the payment of all interest, if any, accrued to the date fixed for redemption on Securities to be redeemed on such sinking fund payment date.

The Trustee shall not redeem or cause to be redeemed any Securities of a series with sinking fund moneys or give any notice of redemption of Securities for such series by operation of the sinking fund during the continuance of a default in payment of interest on such Securities or of any Event of Default with respect to such series except that, where the giving of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem or cause to be redeemed such Securities, provided that it shall have received from the Issuer a sum sufficient for such redemption. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such default or Event of Default known to a Responsible Officer of the Trustee shall occur, and any moneys thereafter paid into the sinking fund, shall, during the continuance of such default or Event of Default, be deemed to have been collected under Article Five and held for the payment of all such Securities. In case such Event of Default shall have been waived as provided in Section 5.7 or the default cured on or before the 60th day preceding the sinking fund payment date in any year, such moneys shall thereafter be applied on the next succeeding sinking fund payment date in accordance with this Section to the redemption of such Securities.

**Article 13.****ARTICLE THIRTEEN  
GUARANTEE****Section 13.1 *Guarantee.***

Hovnanian Enterprises, Inc. (hereinafter referred to as the “Guarantor,” which term includes any successor thereto) hereby unconditionally guarantees (such guarantee to be referred to herein as the “Guarantee”), to each Holder of a Security authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Security or the obligations of the Company hereunder or thereunder, (i) the due and punctual payment of the principal of and any premium or interest on the Securities, whether at maturity or on an interest payment date, by acceleration, pursuant to an offer to purchase Securities or otherwise, and interest on the overdue principal of and interest, if any, on the Securities, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full, all in accordance with the terms hereof and thereof including all amounts payable to the Trustee under Section 6.6 hereof, and (ii) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, the same shall be promptly paid in full when due or to be performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

If the Company fails to make any payment when due of any amount so guaranteed for whatever reason, the Guarantor shall be obligated to pay the same immediately. The Guarantor hereby agrees that its obligations hereunder shall be continuing, absolute and unconditional, irrespective of, and shall be unaffected by, the validity, regularity or enforceability of the Securities, this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities or the Trustee with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of such Guarantor. The Guarantor hereby waives diligence, presentment, demand of payment, demand of performance, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, the benefit of discussion, protest, notice and all demand whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Securities, in this Indenture and in this Article 13. If any Holder or the Trustee is required by any court or otherwise to return to the Company or the Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or the Guarantor, any amount paid by the Company or the Guarantor to the Trustee or such Holder, this Article 13, to the extent theretofore discharged, shall be reinstated in full force and effect. The Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders and the Trustee on the other hand, (i) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 5 hereof for the purposes of the Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby and (ii) in the event of any acceleration of such obligations as provided in Article 5 hereof such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purpose of this Article 13. In addition, without limiting the foregoing, upon the effectiveness of an acceleration under Article 5, the Trustee may make a demand for payment on the Securities under the Guarantee provided hereunder and not discharged.

The Guarantor shall be subrogated to all rights of the Holder of any Securities against the Company in respect of any amounts paid to the Holder by the Guarantor pursuant to the provisions of this Guarantee; *provided*, that the Guarantor shall not be entitled to enforce, or to receive any payments arising out of or based upon, such right of subrogation until the principal of and interest on all the Securities shall have been paid in full.

The Guarantee set forth in this Section 13.1 shall not be valid or become obligatory for any purpose with respect to a Security until the certificate of authentication on such Security shall have been signed by the Trustee or any duly appointed agent.

**Section 13.2 *Obligations of the Guarantor Unconditional.***

Nothing contained in this Article 13 or elsewhere in this Indenture or in any Security is intended to or shall impair, as between the Guarantor and the Holders, the obligations of the Guarantor, which are absolute and unconditional, to pay to the Holders the principal of and interest on the Securities as and when the same shall become

due and payable in accordance with the provisions of this Guarantee or is intended to or shall affect the relative rights of the Holders and creditors of the Guarantor, nor shall anything herein or therein prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon Default under this Indenture in respect of cash, property or securities of the Guarantor received upon the exercise of any such remedy;

Upon any distribution of assets of the Guarantor referred to in this Article 13, the Trustee, subject to the provisions of Sections 6.1 and 6.2, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of other indebtedness of the Guarantor, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 13.

**Section 13.3 *Article 13 Not To Prevent Events of Default.***

The failure to make a payment on account of principal or interest on the Securities of any series by reason of any provision in this Article 13 shall not be construed as preventing the occurrence of an Event of Default under Section 5.1.

To evidence the Guarantee set forth in this Article 13, the Guarantor hereby agrees that the Guarantee Notation, substantially in the form of Exhibit A hereto, shall be endorsed on each Security authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of the Guarantor by the Chairman of the Board, its President or one of its Vice Presidents under a facsimile of its seal reproduced thereon.

The Guarantor hereby agrees that its Guarantee shall remain in full force and effect notwithstanding any failure to endorse the Guarantee Notation on each Security.

If an officer whose signature is on this Indenture or on the Securities no longer holds that office at the time the Trustee authenticates the Security on which a notation of the Guarantee is endorsed, the Guarantee shall be valid nevertheless.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantor.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of May 4, 1999.

K. HOVNANIAN ENTERPRISES, INC.

By:

/s/ \_\_\_\_\_

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

FIRST UNION NATIONAL BANK, as Trustee

By:

/s/ \_\_\_\_\_

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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of May 4, 1999.

K. HOVNANIAN ENTERPRISES, INC.

By:

/s/ \_\_\_\_\_

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

FIRST UNION NATIONAL BANK, as Trustee

By: Stephanie Roche

/s/ \_\_\_\_\_

Title: Vice President

**[FORM OF NOTATION OF SECURITY  
RELATING TO GUARANTEE]**

**GUARANTEE**

Hovnanian Enterprises, Inc. (hereinafter referred to as the "Guarantor", which term includes any successor person under the Indenture (the "Indenture") referred to in the Security upon which this notation is endorsed), has unconditionally guaranteed (i) the due and punctual payment of the principal of, premium, if any, and interest on the Securities, whether at maturity, by acceleration or otherwise, the due and punctual payment of interest on the overdue principal of, premium, if any, and interest, if any, on the Securities, to the extent lawful, and the due and punctual performance of all other obligations of the Company to the

Holders or the Trustee all in accordance with the terms set forth in Article 13 of the Indenture and (ii) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

The obligations of the Guarantor to the Holders and to the Trustee pursuant to the Guarantee and the Indenture are expressly set forth in Article 13 of the Indenture and reference is hereby made to such Indenture for the terms of the Guarantee.

No stockholder, officer, director or incorporator, as such, past, present or future, of the Guarantor shall have any personal liability under the Guarantee by reason of his or its status as such stockholder, officer, director or incorporator.

The Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication of the Securities upon which this Guarantee is endorsed shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

Guarantor

[SEAL]

HOVNANIAN ENTERPRISES, INC.

By \_\_\_\_\_

By \_\_\_\_\_

