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FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Parramore Oaks Phase Two, LLC,
a Florida Limited Liability Company,

Petitioner,

FHFC CASE NO. 2021-079VW
Application No. 2020-055DB

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.0025(7)(c), F.A.C. (7-11-19) AND WAIVER OF THE REQUIREMENT OF REQUEST FOR APPLICATIONS 2019-102

Petitioner Parramore Oaks Phase Two, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for: (1) a waiver of the prohibition under Request for Applications 2019-102 "RFA" against changing the principals of the Applicant identified in the Application prior to the MMRB Loan closing; and (2) a waiver of the requirement under Rule 67-21.0025(7)(c), F.A.C. that only natural persons (or trusts with natural person principals) be disclosed by or at the third principal disclosure level. Petitioner seeks a waiver to add two special purpose entities to its organizational structure in response to a request from its investor. The investor is requiring the change in structure to ensure that any possible default on the part of Petitioner's principal in connection with another transaction does not trigger a default event related to this Development. If the Petition is granted, two non-natural entities will be added to the organizational structure, but the natural person principals disclosed in the Application will remain the same with the exception of the principals of a publicly traded corporation: Walker & Dunlop, Inc. Walker & Dunlop, Inc., ticker symbol WD, is in the process of acquiring ADC Communities and Alliant

Capital, Ltd., which is to close by November 23, 2021. Once finalized, Walker & Dunlop, Inc. will replace Shawn Horwitz in Petitioner's organizational structure. Because Walker & Dunlop, Inc.'s principals will fall below the third level of disclosure, Petitioner is in need of the requested waiver.

In support of this Petition, Petitioner states as follows:

A. <u>The Petitioner.</u>

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

Paula McDonald Rhodes
Invictus Development, LLC
1910 West Cass Street
Tampa, FL 33606
Telephone: 813-448-7868
Email: prhodes@invictusdev.com

2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 E. College Ave.
Suite 1400
Tallahassee, Florida 32301
Telephone: 850-329-4852
Fax: 850-329-4864
Email: BSmitha@stearnsweaver.com

B. <u>WAIVER IS PERMANENT.</u>

3. The waiver being sought is permanent in nature.

C. <u>Development Background.</u>

4. The following information pertains to the Development:

- Development Name: Parramore Oaks Phase Two

- Development Address: Conley Street, northeast of the intersection of Conley Street and Short Avenue, Orlando
- County: Orange
- Developers: InVictus Development, LLC; ADC Communities II, LLC, Kiss & Company, Inc.
- Number of Units: 91
- Type: Mid-Rise, 4-stories
- Set Asides: 23 units (25%) at or below 30%, 15 units (16%) at or below 40%, 17 units (19%) at or below 60%, 36 units (40%) at or below 80%
- Demographics: Workforce
- Funding: $14,000,000 Corporation-issued MMRB; $1,276,521 Non-Competitive HC funding request (annual amount estimated based on the current budget)

D. <u>THE RULE AND NCA Provision FROM WHICH WAIVER IS REQUESTED.</u>

4. To change Petitioner's principals, Petitioner requests a waiver of Request for Application 201-102 Community Development Block Grant-Disaster Recovery (CDBG-DR) To Be Used In Conjunction With Tax-Exempt MMRB and Non-Competitive Housing Credits In Counties Deemed Hurricane Recovery Priorities which provides in pertinent part:

> (3) The Applicant entity, and if applicable, Land Owner entity, shall be the borrowing entity and cannot be changed in any way (materially or non-materially) until after loan closing. After loan closing, (a) any material change will require review and approval of the Credit Underwriter, as well as approval of the Board prior to the change, and (b) any non-material change will require review and approval of the Corporation, as well as approval of the Board prior to the change. Changes to the Applicant or Land Owner entity (material or non-material) prior to the loan closing or without Board approval after the loan closing may result in disqualification from receiving funding and may be deemed a material misrepresentation. Changes to the officers or directors of a Public Housing Authority, office or directors of a Non-Profit entity, Local Government, Land Authority or the investor limited partner of an Applicant limited partnership or the investor-member of an Applicant limited liability company owning the syndicating

interest therein will not result in disqualification. To allow the principals of the publicly traded company (*i.e.*, Walker & Dunlop, Inc.) to appear below the third principal disclosure level, Petitioner also requests a waiver of Rule 67-21.0025(7)(c), F.A.C., which provides:

> (7) Disclosure of the Principals of the Applicant must comply with the following:
>
> ***
>
> (c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, all of the Principals must be natural persons

Id.

5. To allow the principals of the publicly traded company (*i.e.*, Walker & Dunlop, Inc.) to appear below the third principal disclosure level, Petitioner also requests a waiver of Rule 67-21.0025(7)(c), F.A.C., which provides:

> (7) Disclosure of the Principals of the Applicant must comply with the following:
>
> ***
>
> (c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, all of the Principals must be natural persons

Id.

E. STATUTES IMPLEMENTED BY THE RULES.

6. Rule 67-21.003, F.A.C. (7/11/19), implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- Section 420.503, Definitions.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

Per Section 420.5099(1),(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULES.

7. Petitioner's investor determined that it was necessary to replace two of Petitioners' members (*i.e.*, two principals disclosed at the first level) with two special purpose entities to ward against the possibility that any potential default on the part of one of its non-investor members in connection with another transaction did not trigger a default event related to the Development. The investor is imposing this request upon all entities irrespective of their financial strength and is not an indicator of lack of faith in Petitioner's principals. The investor's request necessitates this Petition as the MMRB loan closing has not yet occurred.

8. Petitioner is a Florida limited liability company whose first principal disclosure level comprises: (a) InVictus Development, LLC (Member and Manager, 0.001%); (b) ADC Communities II, LLC (Non-Manager Member, 0.009%); (c) Truist Community Capital LLC (Investor Member, 99.99%); and (d) CDC Special Limited Partner, LLC (Special Member, 0.00%). *See* Current Organizational Structure, attached as Exhibit A.

9. At the first principal disclosure level, Petitioner would like to insert IVD Parramore Two, LLC as Petitioner' member and manager in the place of InVictus Development, LLC. Petitioner would also like to insert ADC Parramore Two Member, LLC as Petitioner's non-manager member in the place of ADC Communities II, LLC. *See* Proposed Organizational Structure, attached as Exhibit B. No changes are requested related to the equity providers (*i.e.*, Truist Community Capital LLC[1] and CDC Special Limited Partner, LLC).

10. If the Petition is granted, the sole manager and member of IVD Parramore Two, LLC would be the previously disclosed InVictus Development, LLC. Additionally, the sole

[1] Truist Community Capital, LLC will create an entity to act as the 99.99% investor member.

manager and member of ADC Parramore Two Member, LLC would be ADC Parramore Member, LLC. These entities would appear at the second principal disclosure level.

11. At the third principal disclosure level would appear the principals of InVictus Development, LLC (Paula McDonald Rhodes as a member and manager, and Richard Cavalieri as a member and manager) and ADC Parramore Member, LLC (Shawn Horwitz as the 100% member and manager).

12. If the Petition is granted, Petitioner's natural person principals disclosed in its Application will not change with one exception. Walker & Dunlop, Inc., a publicly traded corporation, is in the process of acquiring ADC Communities and Alliant Capital, Ltd., which is to close by November 23, 2021. This acquisition represents a very large undertaking on the part of Walker & Dunlop, Inc. without specific reference to the Development itself. Once that closing occurs, WDAAC, LLC (which is 100% owned and managed by Walker & Dunlop, Inc.) will replace Shawn Horwitz in Petitioner's organizational structure, causing Walker & Dunlop, Inc.'s principals to fall below the third principal disclosure level. The principals of Walker & Dunlop, Inc. are: William Walker (Chairman of the Board and Chief Executive Officer); Howard Smith (President and Board Member); Paula Pryor (Executive Vice President and Chief Human Resources Officer); Stephen Theobald (Executive Vice President and Chief Financial Officer); Richard Lucas (Executive Vice President, General Counsel and Secretary); Alan Bowers (Lead Director and Board Member); Dana Schmaltz (Board Member); Donna Wells (Board Member); Ellen Levy (Board Member); John Rice (Board Member); Michael Malone (Board Member); Michael Warren (Board Member); and numerous holders of publicly traded stock identified in Exhibit C.

13. Upon information and belief, the purpose of the requirement to identify all natural persons by or at the third level is to ensure all persons financially benefitted by the funding are disclosed. If the Petition is granted, the natural persons identified in the Application as financially benefitting from the Development will not change with the exception that Shawn Horwitz will be replaced by a publicly traded company. Accordingly, granting the Petition should not impact FHFC's confidence in the Petitioner or its principals.

14. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[2] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

15. Because all natural persons financially benefitting from the Development were disclosed to Florida Housing via the Petitioner's initial principal disclosures with the exception of one publicly traded company, granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule.

16. If the Petition is denied, Petitioner will suffer a substantial and unnecessary operational hardship related to the delay and concomitant cost increases. First and foremost, the

[2] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), Fla. Stat.

investor is refusing to close without inserting two special purpose entities into Petitioner's organizational structure, causing nearly all forward progress to grind to a halt. The delay in closing has already caused the ripple effect of the General Contractor losing a preferred subcontractor and is anticipated to cause similar problems unless or until a fixed schedule can be determined. Moreover, labor and supply chain issues, exacerbated by COVID-19, have caused costs to generally trend upwards each month such that further delay will likely result in cost increases. Additionally, further delay may prevent Petitioner from satisfying federally mandated deadlines.

17. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

18. The requested waiver will not adversely impact the Development or Florida Housing.

G. ACTION REQUESTED.

19. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that Petitioner may change its organizational structure as described herein; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 6th day of October, 2021.

By:___*/s/ Brian J. McDonough*_____
Brian J. McDonough, Esq.

Exhibit A – Current Organizational Chart

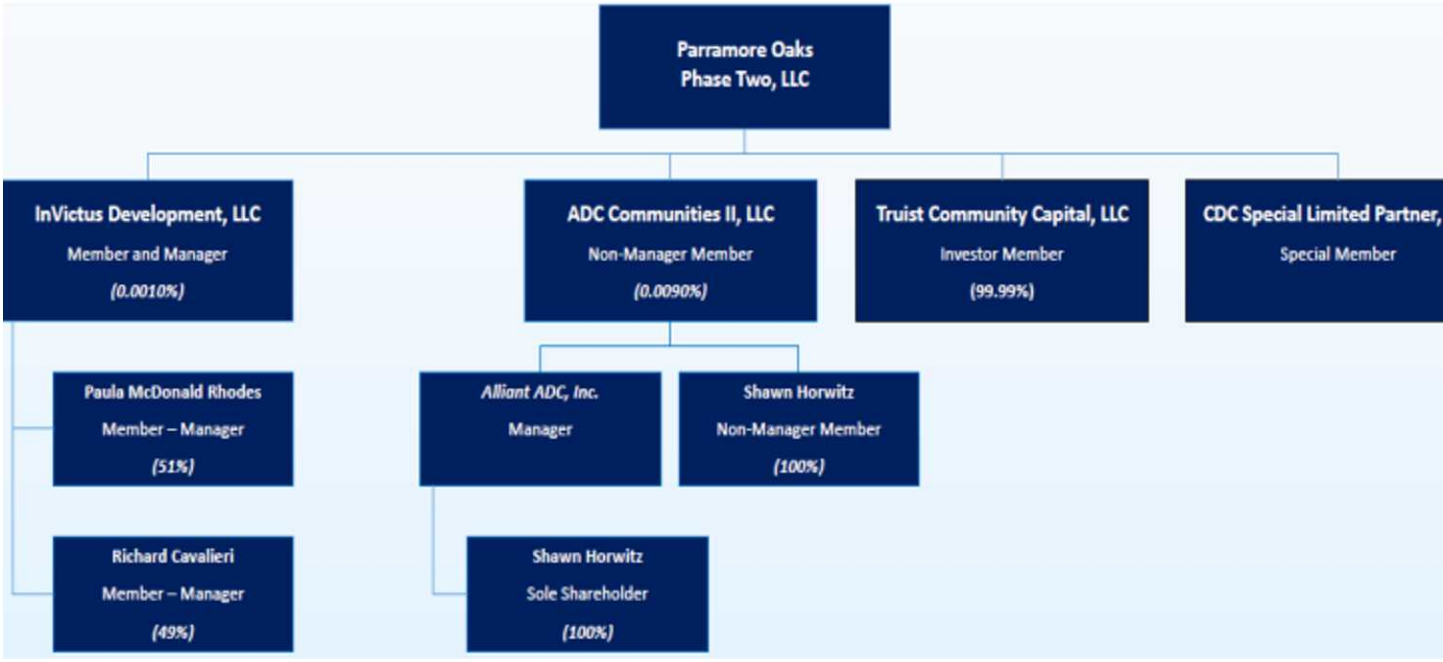
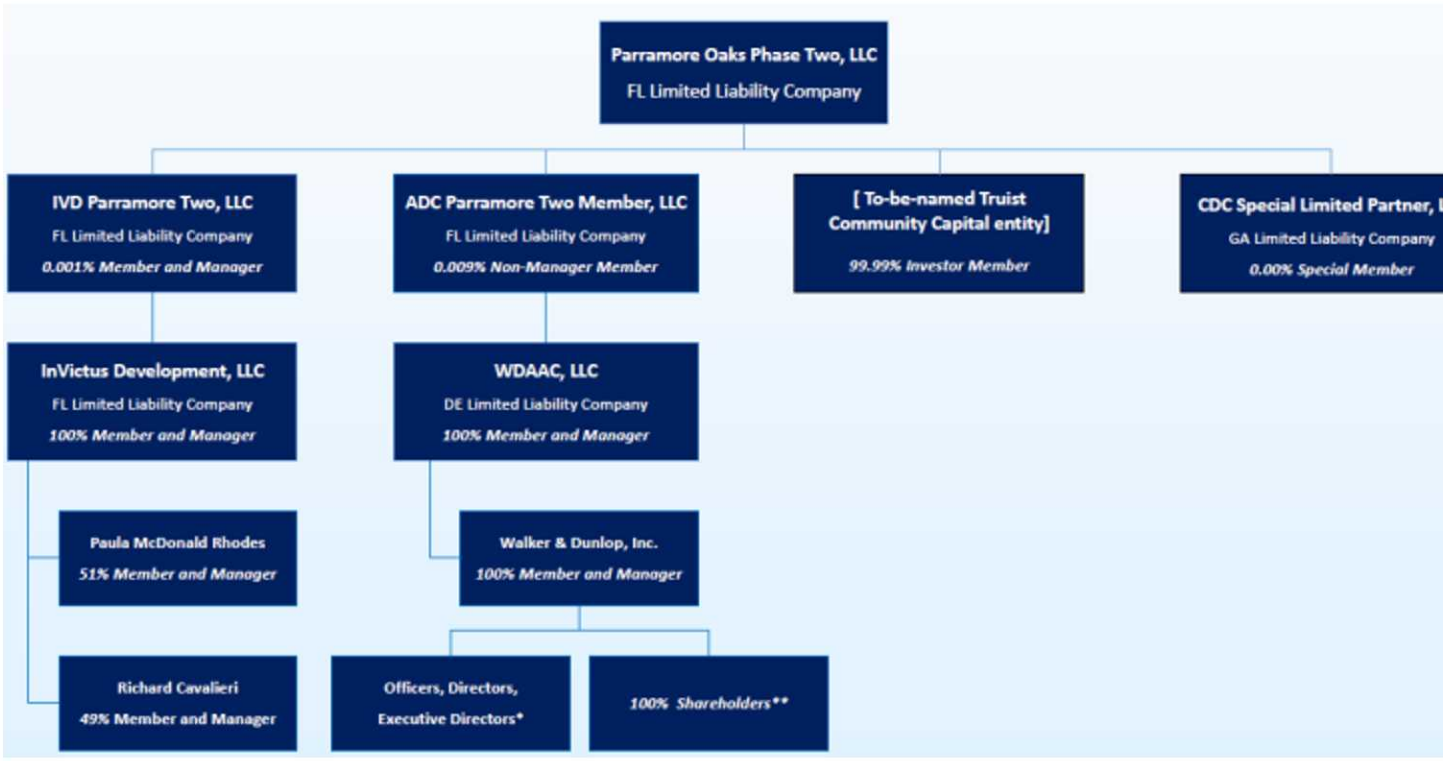


Exhibit B – Proposed Organizational Structure



*The officers of Walker & Dunlop, Inc. are: William Walker (Chairman of the Board and Chief Executive Officer); Howard Smith (President and Board Member); Paula Pryor (Executive Vice

President and Chief Human Resources Officer); Stephen Theobald (Executive Vice President and Chief Financial Officer); Richard Lucas (Executive Vice President, General Counsel and Secretary).

The Board of Directors of Walker & Dunlop, Inc. are: William Walker (Chairman of the Board and Chief Executive Officer); Howard Smith (President and Board Member); Alan Bowers (Lead Director and Board Member); Dana Schmaltz (Board Member); Donna Wells (Board Member); Ellen D. Levy (Board Member); John Rice (Board Member); Michael Malone (Board Member); and Michael Warren (Board Member).

**The shareholders of Walker & Dunlop, Inc. are identified in Exhibit C.

Exhibit C - Walker & Dunlop, Inc. Shareholders[3]

Beneficial Owner	Shares of Common Stock Beneficially Owned	% of Shares of Common Stock Beneficially Owned
5% Stockholders:		
BlackRock, Inc.(1)	4,519,618	14.45%
The Vanguard Group(2)	3,593,317	11.48%
Janus Henderson Group plc(3)	1,610,598	5.15%
Directors and Named Executive Officers:		
William M. Walker(4)	1,646,319	5.31%
Howard W. Smith, III(5)	651,061	2.09%
Stephen P. Theobald(6)	144,663	*
Richard M. Lucas(7)	121,779	*
Paula A. Pryor(8)	7,787	*
Dana L. Schmaltz(9)	64,403	*
Alan J. Bowers(9)	41,945	*
John Rice(10)	27,264	*
Michael D. Malone	31,519	*
Michael J. Warren	519	*
Ellen D. Levy	—	*
Donna C. Wells	—	*
Executive Officers and Directors as a group (12 persons)	2,737,259	8.75%

[3] As of March 5, 2021, Walker & Dunlop, Inc. had 30,940,267 shares of common stock outstanding.

*
Less than 1%.

(1)
This amount includes 4,448,586 shares and 4,519,618 shares in which the holder exercises sole voting power and sole dispositive power, respectively. The information provided is based solely on information obtained from a Schedule 13G/A filed with the SEC on January 26, 2021 by BlackRock, Inc. The information has been included solely in reliance upon, and without independent investigation of, the disclosures contained in such Schedule 13G/A. The address of the principal business office of BlackRock, Inc. is 55 East 52nd Street, New York, NY 10055.
(2)
This amount includes 32,808 shares, 3,534,737 shares and 58,580 shares in which the holder exercises shared voting power, sole dispositive power and shared dispositive power, respectively. The information provided is based solely on information obtained from a Schedule 13G/A filed with the SEC on February 10, 2021 by The Vanguard Group. The information has been included solely in reliance upon, and without independent investigation of, the disclosures contained in such Schedule 13G/A. The address of the principal business office of The Vanguard Group is 100 Vanguard Blvd., Malvern, PA 19355.

(3)
This amount includes 1,610,598 shares and 1,610,598 shares in which the holder exercises shared voting power and shared dispositive power, respectively. The information provided is based solely on information obtained from a Schedule 13G filed with the SEC on February 12, 2021 by Janus Henderson Group plc. The information has been included solely in reliance upon, and without independent investigation of, the disclosures contained in such Schedule 13G. The address of the principal business office of Janus Henderson Group plc is 201 Bishopsgate, EC2M 3AE, United Kingdom.

(4)
Includes 27,235 shares of restricted stock, which represent the unvested portions of restricted stock grants. All restricted stock grants were made to vest ratably on February 15 of each of the three successive years following the applicable grant date. Includes 3,955 shares of common stock held as custodian for each of his three sons, for an aggregate of 11,865 shares of common stock. The reported number also includes 83,218 shares underlying currently exercisable stock options.

(5)
Includes 17,208 shares of restricted stock, which represent the unvested portions of restricted stock grants. All restricted stock grants were made to vest ratably on February 15 of each of the three successive years following the applicable grant date. Includes 312,321 shares of common stock held by HIII 2011 Trust, 4,764 shares of common stock held as custodian for one daughter, 4,764 shares of common stock held by ADS 2015 Trust, 4,560 shares of common stock held by HWS IV 2012 Trust, 4,764 shares of common stock held by MHS

2010 Trust and 4,422 shares of common stock held by MMAS 2008 Trust. The reported number also includes 190,166 shares underlying currently exercisable stock options.

(6)
Includes 12,685 shares of restricted stock, which represent the unvested portions of restricted stock grants. All restricted stock grants were made to vest ratably on February 15 of each of the three successive years following the applicable grant date. The reported number also includes 70,659 shares underlying currently exercisable stock options.

(7)
Includes 12,270 shares of restricted stock, which represent the unvested portions of restricted stock grants. All restricted stock grants were made to vest ratably on February 15 of each of the three successive years following the applicable grant date. The reported number also includes 2,781 shares underlying currently exercisable stock options.

(8)
Includes 7,785 shares of restricted stock, which represent the unvested portions of restricted stock grants. All restricted stock grants were made to vest ratably on February 15 of each of the three successive years following the applicable grant date. The reported number also includes 0 shares underlying currently exercisable non-qualified stock options.

(9)
Includes 2,770 shares of restricted stock, which represent the unvested portions of restricted stock grants.

(10)
Includes 2,770 shares of restricted stock, which represent the unvested portions of restricted stock grants. Also includes 55 shares of common stock held by the Rice Family Trust.