



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

FORM 10-Q

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

For the Quarterly Period Ended March 31, 2009

or

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

Commission File Number 001-12822

**BEAZER HOMES USA, INC.**

(Exact name of registrant as specified in its charter)

DELAWARE  
(State or other jurisdiction of  
incorporation or organization)

58-2086934  
(I.R.S. employer  
Identification no.)

1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328  
(Address of principal executive offices) (Zip Code)  
(770) 829-3700

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to the filing requirements for the past 90 days.

YES  NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

YES  NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

YES  NO

Class  
Common Stock, \$0.001 par value

Outstanding at April 30, 2009  
39,247,753 shares

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References to “we,” “us,” “our,” “Beazer”, “Beazer Homes” and the “Company” in this quarterly report on Form 10-Q refer to Beazer Homes USA, Inc.

### **FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q contains forward-looking statements. These forward-looking statements represent our expectations or beliefs concerning future events, and it is possible that the results described in this quarterly report will not be achieved. These forward-looking statements can generally be identified by the use of statements that include words such as “estimate,” “project,” “believe,” “expect,” “anticipate,” “intend,” “plan,” “foresee,” “likely,” “will,” “goal,” “target” or other similar words or phrases. All forward-looking statements are based upon information available to us on the date of this quarterly report.

These forward-looking statements are subject to risks, uncertainties and other factors, many of which are outside of our control, that could cause actual results to differ materially from the results discussed in the forward-looking statements, including, among other things, the matters discussed in this quarterly report in the section captioned “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Additional information about factors that could lead to material changes in performance is contained in Part II, Item IA — Risk Factors of this Quarterly Report on Form 10-Q and in Part I, Item 1A— Risk Factors of our Annual Report on Form 10-K for the fiscal year ended September 30, 2008. Such factors may include:

- the timing and final outcome of the United States Attorney investigation and other state and federal agency investigations, the putative class action lawsuits, the derivative claims, multi-party suits and similar proceedings as well as the results of any other litigation or government proceedings;
- additional asset impairment charges or writedowns;
- economic changes nationally or in local markets, including changes in consumer confidence, volatility of mortgage interest rates and inflation;
- continued or increased downturn in the homebuilding industry;
- estimates related to homes to be delivered in the future (backlog) are imprecise as they are subject to various cancellation risks which cannot be fully controlled;
- our ability to maintain the listing of our common stock on the New York Stock Exchange;
- continued or increased disruption in the availability of mortgage financing;
- our cost of and ability to access capital and otherwise meet our ongoing liquidity needs including the impact of any further downgrades of our credit ratings or reductions in our tangible net worth or liquidity levels;
- potential inability to comply with covenants in our debt agreements;
- our ability to successfully complete any restructuring of our indebtedness;
- increased competition or delays in reacting to changing consumer preference in home design;
- shortages of or increased prices for labor, land or raw materials used in housing production;
- factors affecting margins such as decreased land values underlying land option agreements, increased land development costs on projects under development or delays or difficulties in implementing initiatives to reduce production and overhead cost structure;
- the performance of our joint ventures and our joint venture partners;
- the impact of construction defect and home warranty claims including those related to possible installation of drywall imported from China and the cost and availability of insurance;
- delays in land development or home construction resulting from adverse weather conditions;
- potential delays or increased costs in obtaining necessary permits as a result of changes to, or complying with, laws, regulations, or governmental policies and possible penalties for failure to comply with such laws, regulations and governmental policies;
- effects of changes in accounting policies, standards, guidelines or principles; or
- terrorist acts, acts of war and other factors over which the Company has little or no control.

Any forward-looking statement speaks only as of the date on which such statement is made, and, except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time and it is not possible for management to predict all such factors.

BEAZER HOMES USA, INC.  
FORM 10-Q

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**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**BEAZER HOMES USA, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(in thousands, except share and per share data)**

	March 31, 2009	September 30, 2008
<b>ASSETS</b>		
Cash and cash equivalents	\$ 559,527	\$ 584,334
Restricted cash	11,530	297
Accounts receivable (net of allowance of \$5,617 and \$8,915, respectively)	29,042	46,555
Income tax receivable	12,124	173,500
Inventory		
Owned inventory	1,431,122	1,545,006
Consolidated inventory not owned	53,046	106,655
Total inventory	1,484,168	1,651,661
Investments in unconsolidated joint ventures	31,606	33,065
Deferred tax assets	31,336	20,216
Property, plant and equipment, net	33,067	39,822
Goodwill	—	16,143
Other assets	54,169	76,206
Total assets	<u>\$ 2,246,569</u>	<u>\$ 2,641,799</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Trade accounts payable	\$ 41,188	\$ 90,371
Other liabilities	275,789	358,592
Obligations related to consolidated inventory not owned	31,640	70,608
Senior Notes (net of discounts of \$2,331 and \$2,565, respectively)	1,522,669	1,522,435
Junior subordinated notes	103,093	103,093
Other secured notes payable	34,087	50,618
Model home financing obligations	52,532	71,231
Total liabilities	<u>2,060,998</u>	<u>2,266,948</u>
Stockholders' equity:		
Preferred stock (par value \$.01 per share, 5,000,000 shares authorized, no shares issued)	—	—
Common stock (par value \$0.001 per share, 80,000,000 shares authorized, 42,604,057 and 42,612,801 issued and 39,248,956 and 39,270,038 outstanding, respectively)	43	43
Paid-in capital	562,847	556,910
Retained earnings (accumulated deficit)	(193,353)	1,845
Treasury stock, at cost (3,355,101 and 3,342,763 shares, respectively)	(183,966)	(183,947)
Total stockholders' equity	<u>185,571</u>	<u>374,851</u>
Total liabilities and stockholders' equity	<u>\$ 2,246,569</u>	<u>\$ 2,641,799</u>

See Notes to Unaudited Condensed Consolidated Financial Statements.

**BEAZER HOMES USA, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(in thousands, except per share data)**

	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2009	2008	2009	2008
Total revenue	\$ 188,323	\$ 405,417	\$ 420,687	\$ 906,071
Home construction and land sales expenses	167,898	379,424	373,744	815,740
Inventory impairments and option contract abandonments	51,755	187,860	64,464	356,372
Gross loss	<u>(31,330)</u>	<u>(161,867)</u>	<u>(17,521)</u>	<u>(266,041)</u>
Selling, general and administrative expenses	67,030	74,017	123,239	162,179
Depreciation and amortization	4,339	6,226	8,122	12,204
Goodwill impairment	—	48,105	16,143	48,105
Operating loss	<u>(102,699)</u>	<u>(290,215)</u>	<u>(165,025)</u>	<u>(488,529)</u>
Equity in loss of unconsolidated joint ventures	(8,341)	(40,361)	(9,754)	(56,501)
Other expense, net	<u>(15,735)</u>	<u>(4,569)</u>	<u>(34,014)</u>	<u>(7,418)</u>
Loss from continuing operations before income taxes	<u>(126,775)</u>	<u>(335,145)</u>	<u>(208,793)</u>	<u>(552,448)</u>
Benefit from income taxes	<u>(12,008)</u>	<u>(106,422)</u>	<u>(13,971)</u>	<u>(186,064)</u>
Loss from continuing operations	<u>(114,767)</u>	<u>(228,723)</u>	<u>(194,822)</u>	<u>(366,384)</u>
Loss from discontinued operations, net of tax	<u>(156)</u>	<u>(1,170)</u>	<u>(376)</u>	<u>(1,745)</u>
Net loss	<u>\$ (114,923)</u>	<u>\$ (229,893)</u>	<u>\$ (195,198)</u>	<u>\$ (368,129)</u>
Weighted average number of shares:				
Basic	38,662	38,548	38,627	38,548
Diluted	38,662	38,548	38,627	38,548
Earnings (loss) per share:				
Basic loss per share from continuing operations	\$ (2.97)	\$ (5.93)	\$ (5.04)	\$ (9.50)
Basic loss per share from discontinued operations	\$ —	\$ (0.03)	\$ (0.01)	\$ (0.05)
Basic loss per share	\$ (2.97)	\$ (5.96)	\$ (5.05)	\$ (9.55)
Diluted loss per share from continuing operations	\$ (2.97)	\$ (5.93)	\$ (5.04)	\$ (9.50)
Diluted loss per share from discontinued operations	\$ —	\$ (0.03)	\$ (0.01)	\$ (0.05)
Diluted loss per share	\$ (2.97)	\$ (5.96)	\$ (5.05)	\$ (9.55)

See Notes to Unaudited Condensed Consolidated Financial Statements.

**BEAZER HOMES USA, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Six Months Ended March 31,	
	2009	2008
Cash flows from operating activities:		
Net loss	<b>\$ (195,198)</b>	\$ (368,129)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	8,122	12,369
Stock-based compensation expense	6,255	5,241
Inventory impairments and option contract abandonments	64,464	356,372
Goodwill impairment	16,143	48,105
Deferred income tax benefit	(11,120)	(93,921)
Excess tax benefit from equity-based compensation	1,797	388
Equity in loss of unconsolidated joint ventures	9,754	56,501
Cash distributions of income from unconsolidated joint ventures	1,700	1,047
Gain on early debt extinguishment	(3,574)	—
Provision for doubtful accounts	(3,298)	2,002
Changes in operating assets and liabilities:		
Decrease (increase) in accounts receivable	20,811	(16,665)
Decrease (increase) in income tax receivable	161,376	(94,169)
Decrease in inventory	70,305	170,048
Decrease in other assets	23,054	46,418
Decrease in trade accounts payable	(49,183)	(33,240)
Decrease in other liabilities	(104,795)	(113,708)
Other changes	(32)	(6,305)
Net cash provided by (used in) operating activities	<b>16,581</b>	(27,646)
Cash flows from investing activities:		
Capital expenditures	(3,441)	(5,921)
Investments in unconsolidated joint ventures	(4,189)	(9,665)
Changes in restricted cash	(11,233)	1,579
Net cash used in investing activities	<b>(18,863)</b>	(14,007)
Cash flows from financing activities:		
Repayment of other secured notes payable	(992)	(99,785)
Repayment of model home financing obligations	(18,699)	(17,694)
Debt issuance costs	(1,018)	(21,135)
Common stock redeemed	(19)	(12)
Excess tax benefit from equity-based compensation	(1,797)	(388)
Net cash used in financing activities	<b>(22,525)</b>	(139,014)
Decrease in cash and cash equivalents	<b>(24,807)</b>	(180,667)
Cash and cash equivalents at beginning of period	584,334	454,337
Cash and cash equivalents at end of period	<b>\$ 559,527</b>	<b>\$ 273,670</b>

See Notes to Unaudited Condensed Consolidated Financial Statements.

**BEAZER HOMES USA, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(1) Summary of Significant Accounting Policies**

The accompanying unaudited condensed consolidated financial statements of Beazer Homes USA, Inc. (“Beazer Homes” or “the Company”) have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) for interim financial information and in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Such financial statements do not include all of the information and disclosures required by GAAP for complete financial statements. In our opinion, all adjustments (consisting solely of normal recurring accruals) necessary for a fair presentation have been included in the accompanying financial statements. For further information and a discussion of our significant accounting policies other than as discussed below, refer to our audited consolidated financial statements appearing in the Beazer Homes’ Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (the “2008 Annual Report”). Effective February 1, 2008, we exited the mortgage origination business. Results from our mortgage origination business are reported as discontinued operations in the accompanying unaudited condensed consolidated statements of operations for all periods presented. In addition, our historical segment information has been recast to reflect the change in reportable segments which occurred during the fourth quarter of fiscal 2008 (see Note 11).

**Inventory Valuation — Held for Development.** Our homebuilding inventories that are accounted for as held for development include land and home construction assets grouped together as communities. Homebuilding inventories held for development are stated at cost (including direct construction costs, capitalized indirect costs, capitalized interest and real estate taxes) unless facts and circumstances indicate that the carrying value of the assets may not be recoverable. We assess these assets no less than quarterly for recoverability in accordance with the provisions of Statement of Financial Accounting Standards (“SFAS”) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. For those communities for which construction and development activities are expected to occur in the future or have been idled (land held for future development), all applicable interest and real estate taxes are expensed as incurred and the inventory is stated at cost. The future enactment of a development plan or the occurrence of events and circumstances may indicate that the carrying value of the asset may not be recoverable. SFAS 144 requires that long-lived assets be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Generally, upon the commencement of land development activities, it may take three to five years (depending on, among other things, the size of the community and its sales pace) to fully develop, sell, construct and close all the homes in a typical community. However, the impact of the downturn in our business has significantly lengthened the estimated life of many communities. Recoverability of assets is measured by comparing the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If the expected undiscounted cash flows generated are expected to be less than its carrying amount, an impairment charge should be recorded to write down the carrying amount of such asset to its estimated fair value based on discounted cash flows.

We conduct a review of the recoverability of our homebuilding inventories held for development at the community level as factors indicate that an impairment may exist. Events and circumstances that might indicate impairment include, but are not limited to, (1) adverse trends in new orders, (2) higher than anticipated cancellations, (3) declining margins which might result from the need to offer incentives to new homebuyers to drive sales or price reductions or other actions taken by our competitors, (4) economic factors specific to the markets in which we operate, including fluctuations in employment levels, population growth, or levels of new and resale homes for sale in the marketplace and (5) a decline in the availability of credit across all industries.

As a result, we evaluate, among other things, the following information for each community:

- Actual “Net Contribution Margin” (defined as homebuilding revenues less homebuilding costs and direct selling expenses) for homes closed in the current fiscal quarter, fiscal year to date and prior two fiscal quarters. Homebuilding costs include land and land development costs (based upon an allocation of such costs, including costs to complete the development, or specific lot costs), home construction costs (including an estimate of costs, if any, to complete home construction), previously capitalized indirect costs (principally for construction supervision), capitalized interest and estimated warranty costs;
- Projected Net Contribution Margin for homes in backlog;
- Actual and trending new orders and cancellation rates;
- Actual and trending base home sales prices and sales incentives for home sales that occurred in the prior two fiscal quarters that remain in backlog at the end of the fiscal quarter and expected future homes sales prices and sales incentives and absorption over the expected remaining life of the community;
- A comparison of our community to our competition to include, among other things, an analysis of various product offerings including the size and style of the homes currently offered for sale, community amenity levels, availability

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of lots in our community and our competition's, desirability and uniqueness of our community and other market factors; and

- Other events that may indicate that the carrying value may not be recoverable.

In determining the recoverability of the carrying value of the assets of a community that we have evaluated as requiring a test for impairment, significant quantitative and qualitative assumptions are made relative to the future home sales prices, sales incentives, direct and indirect costs of home construction and land development and the pace of new home orders. In addition, these assumptions are dependent upon the specific market conditions and competitive factors for each specific community and may differ greatly between communities within the same market and communities in different markets. Our estimates are made using information available at the date of the recoverability test, however, as facts and circumstances may change in future reporting periods, our estimates of recoverability are subject to change.

For assets in communities for which the undiscounted future cash flows are less than the carrying value, the carrying value of that community is written down to its then estimated fair value based on discounted cash flows. The carrying value of assets in communities that were previously impaired and continue to be classified as held for development is not written up for future estimates of increases in fair value in future reporting periods. Market deterioration that exceeds our estimates may lead us to incur additional impairment charges on previously impaired homebuilding assets in addition to homebuilding assets not currently impaired but for which indicators of impairment may arise if the market continues to deteriorate.

The fair value of the homebuilding inventory held for development is estimated using the present value of the estimated future cash flows using discount rates commensurate with the risk associated with the underlying community assets. The discount rate used may be different for each community. The factors considered when determining an appropriate discount rate for a community include, among others: (1) community specific factors such as the number of lots in the community, the status of land development in the community, the competitive factors influencing the sales performance of the community and (2) overall market factors such as employment levels, consumer confidence and the existing supply of new and used homes for sale. The assumptions used in our discounted cash flow models are specific to each community tested for impairment and typically do not include market improvements except in limited circumstances in the latter years of long-lived communities.

For the three months ended March 31, 2009 and 2008, we used discount rates of 17% to 22% and 16% to 23%, respectively, in our estimated discounted cash flow impairment calculations. During the three and six months ended March 31, 2009, we recorded impairments of our inventory of \$35.1 million and \$47.1 million, respectively, for land under development and homes under construction. For the three and six months ended March 31, 2008, we recorded impairments of our inventory of \$119.0 million and \$227.1 million, respectively, for land under development and homes under construction.

Due to uncertainties in the estimation process, particularly with respect to projected home sales prices and absorption rates, the timing and amount of the estimated future cash flows and discount rates, it is reasonably possible that actual results could differ from the estimates used in our historical analyses. Our assumptions about future home sales prices and absorption rates require significant judgment because the residential homebuilding industry is cyclical and is highly sensitive to changes in economic conditions. We calculated the estimated fair values of inventory held for development that were evaluated for impairment based on current market conditions and assumptions made by management relative to future results. Because our projected cash flows are significantly impacted by changes in market conditions, it is reasonably possible that actual results could differ materially from our estimates and result in additional impairments.

**Asset Valuation — Land Held for Sale.** We record assets held for sale at the lower of the carrying value or fair value less costs to sell in accordance with SFAS 144. The following criteria are used to determine if land is held for sale:

- management has the authority and commits to a plan to sell the land;
- the land is available for immediate sale in its present condition;
- there is an active program to locate a buyer and the plan to sell the property has been initiated;
- the sale of the land is probable within one year;
- the property is being actively marketed at a reasonable sale price relative to its current fair value; and
- it is unlikely that the plan to sell will be withdrawn or that significant changes to the plan will be made.

Additionally, in certain circumstances, management will re-evaluate the best use of an asset that is currently being accounted for as held for development. In such instances, management will review, among other things, the current and projected competitive

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circumstances of the community, including the level of supply of new and used inventory, the level of sales absorptions by us and our competition, the level of sales incentives required and the number of owned lots remaining in the community. If, based on this review and the foregoing criteria have been met at the end of the applicable reporting period, we believe that the best use of the asset is the sale of all or a portion of the asset in its current condition, then all or portions of the community are accounted for as held for sale.

In determining the fair value of the assets less cost to sell, we considered factors including current sales prices for comparable assets in the area, recent market analysis studies, appraisals, any recent legitimate offers, and listing prices of similar properties. If the estimated fair value less cost to sell of an asset is less than its current carrying value, the asset is written down to its estimated fair value less cost to sell. During the three and six months ended March 31, 2009, we recorded inventory impairments on land held for sale of approximately \$14.2 million and \$14.4 million, respectively, compared to \$55.7 million and \$89.1 million, respectively, for the three and six months ended March 31, 2008.

Due to uncertainties in the estimation process, it is reasonably possible that actual results could differ from the estimates used in our historical analyses. Our assumptions about land sales prices require significant judgment because the current market is highly sensitive to changes in economic conditions. We calculated the estimated fair values of land held for sale based on current market conditions and assumptions made by management, which may differ materially from actual results and may result in additional impairments if market conditions continue to deteriorate.

**Goodwill.** Goodwill represents the excess of the purchase price over the fair value of assets acquired. We test goodwill for impairment annually as of April 30 or more frequently if an event occurs or circumstances indicate that the asset might be impaired. For purposes of goodwill impairment testing, we compare the fair value of each reporting unit with its carrying amount, including goodwill. Each of our operating divisions is considered a reporting unit. The fair value of each reporting unit is determined based on expected discounted future cash flows. If the carrying amount of a reporting unit exceeds its fair value, the goodwill within the reporting unit may be potentially impaired. An impairment loss is recognized if the carrying amount of the goodwill exceeds implied fair value of that goodwill.

The Company experienced a significant decline in its market capitalization during the three months ended December 31, 2008 (the first quarter of fiscal 2009). In addition, we believe the unprecedented macro-economic events, including the failure and near failure of several significant financial institutions, resulted in a temporary, but significant curtailment of consumer and business credit activities. As a result, consumer confidence declined, unemployment increased and the pace of new home orders slowed. As of December 31, 2008, we considered these current and expected future market conditions and estimated that our remaining goodwill was impaired and recorded a \$16.1 million goodwill impairment for the quarter ended December 31, 2008. We finalized our impairment calculations in the second quarter of fiscal 2009, confirming our impairment of goodwill recorded as of December 31, 2008. Based on fiscal 2008 impairment tests, we determined that goodwill for certain of our reporting units was impaired and recorded impairment charges of \$48.1 million and \$4.4 million during the second and third quarters of fiscal 2008, respectively, in accordance with SFAS 142, *Goodwill and Intangible Assets*.

Goodwill impairment charges are reported in Corporate and Unallocated and are not allocated to our homebuilding segments. Goodwill balances by reportable segment as of September 30, 2007, September 30, 2008 and March 31, 2009 were as follows.

<i>(in thousands)</i>	September 30, 2007	Fiscal 2008 Impairments	September 30, 2008	Fiscal 2009 Impairments	March 31, 2009
West	\$ 35,919	\$ (29,034)	\$ 6,885	\$ (6,885)	\$ —
East	28,330	(19,072)	9,258	(9,258)	—
Other	4,364	(4,364)	—	—	—
Total	\$ 68,613	\$ (52,470)	\$ 16,143	\$ (16,143)	\$ —

**Stock-Based Compensation.** Compensation cost arising from nonvested stock awards granted to employees and from non-employee stock awards is recognized as an expense using the straight-line method over the vesting period. Unearned compensation is included in paid-in capital in accordance with SFAS 123R. As of March 31, 2009 and September 30, 2008, there was \$10.4 million and \$13.5 million, respectively, of total unrecognized compensation cost related to nonvested stock awards. The cost remaining at March 31, 2009 is expected to be recognized over a weighted average period of 3.0 years. For the three and six months ended March 31, 2009, our total stock-based compensation expense, included in selling, general and administrative expenses ("SG&A"), was approximately \$3.2 million (\$2.3 million net of tax) and \$6.3 million (\$4.4 million net of tax), respectively. For the three and six months ended March

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31, 2008, our total stock-based compensation expense, included in selling, general and administrative expenses (“SG&A”), was approximately \$3.4 million (\$2.3 million net of tax) and \$5.2 million (\$3.8 million net of tax), respectively. Activity relating to nonvested stock awards for the three and six months ended March 31, 2009 is as follows:

	Three Months Ended March 31, 2009		Six Months Ended March 31, 2009	
	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value
Beginning of period	778,455	\$46.83	782,866	\$46.80
Granted	—	—	—	—
Vested	(101,180)	33.83	(101,180)	33.83
Forfeited	(41,614)	62.96	(46,025)	60.80
End of period	<u>635,661</u>	<u>\$47.85</u>	<u>635,661</u>	<u>\$47.85</u>

In addition, during the three and six months ended March 31, 2009, employees surrendered 5,169 shares and 12,338 shares, respectively, to us in payment of minimum tax obligations upon the vesting of nonvested stock awards under our stock incentive plans. We valued the stock at the market price on the date of surrender, for an aggregate value of approximately \$6,000 and \$19,000 for the three and six months ended March 31, 2009, respectively.

The fair value of each option/stock-based stock appreciation right (“SSAR”) grant is estimated on the date of grant using the Black-Scholes option-pricing model. Expected life of options and SSARs granted is computed using the mid-point between the vesting period and contractual life of the options/SSARs granted. Expected volatilities are based on the historical volatility of Beazer Homes’ stock and other factors. Since we are currently not paying dividends, the expected dividend yield is \$0.00. There were no options or SSAR grants in the three months ended March 31, 2009 or 2008. The following table summarizes stock options and SSARs outstanding as of March 31, 2009, as well as activity during the three and six months then ended:

	Three Months Ended March 31, 2009		Six Months Ended March 31, 2009	
	Shares	Weighted- Average Exercise Price	Shares	Weighted- Average Exercise Price
Outstanding at beginning of period	1,837,157	\$ 45.78	1,848,995	\$ 45.78
Granted	—	—	—	—
Exercised	—	—	—	—
Expired	—	—	(4,330)	41.78
Forfeited	(22,506)	43.10	(30,014)	43.99
Outstanding at end of period	<u>1,814,651</u>	<u>\$ 45.82</u>	<u>1,814,651</u>	<u>\$ 45.82</u>
Exercisable at end of period	<u>833,228</u>	<u>\$ 34.46</u>	<u>833,228</u>	<u>\$ 34.46</u>
Vested or expected to vest in the future	<u>1,542,753</u>	<u>\$ 43.74</u>	<u>1,542,753</u>	<u>\$ 43.74</u>

At March 31, 2009, the weighted-average remaining contractual life for all options/SSARs outstanding, currently exercisable, and vested or expected to vest in the future was 3.7 years, 2.9 years and 3.6 years, respectively.

At March 31, 2009, there was no aggregate intrinsic value of SSARs/options outstanding, vested and expected to vest in the future and SSARs/options exercisable based on the Company’s stock price of \$1.01 as of March 31, 2009. The intrinsic value of a stock option is the amount by which the market value of the underlying stock exceeds the exercise price of the stock option. There were no option/SSAR exercises during the three or six months ended March 31, 2009.

On August 5, 2008, at the Company’s annual meeting of stockholders, the stockholders voted to approve amendments to the 1999 Plan to authorize a stock option/SSAR exchange program for eligible employees other than executive officers and directors. The Compensation Committee of the Board of Directors has the authority to determine whether and when to initiate the exchange program. As of March 31, 2009, stock options/SSARs to purchase 342,547 shares of the Company’s common stock with exercise prices ranging from \$26.51 to \$62.02 per share were eligible to be exchanged for newly issued restricted shares of common stock under the exchange program. The exchange program has not yet been implemented and may not be implemented later than August 5, 2009.

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**Recently Adopted Accounting Pronouncements.** In September 2006, the FASB issued SFAS 157, *Fair Value Measurements*. SFAS 157 provides guidance for using fair value to measure assets and liabilities. SFAS 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value but does not expand the use of fair value in any new circumstances. SFAS 157 includes provisions that require expanded disclosure of the effect on earnings for items measured using unobservable data. SFAS 157 is effective for fiscal years beginning after November 15, 2007 and for interim periods within those fiscal years. In February 2008, the FASB issued FASB Staff Position (“FSP”) 157-2, *Effective Date of FASB Statement No. 157*, delaying the effective date of certain non-financial assets and liabilities to fiscal periods beginning after November 15, 2008. The adoption of SFAS 157 did not have a material impact on our consolidated financial condition and results of operations.

In February 2007, the FASB issued SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115*. SFAS 159 permits companies to measure certain financial instruments and other items at fair value. We have not elected the fair value option applicable under SFAS 159.

**Recent Accounting Pronouncements Not Yet Adopted.** In December 2007, the FASB issued SFAS 141 (revised 2007), *Business Combinations*. SFAS 141R amends and clarifies the accounting guidance for the acquirer’s recognition and measurement of assets acquired, liabilities assumed and noncontrolling interests of an acquiree in a business combination. SFAS 141R is effective for any acquisitions completed by the Company after September 30, 2009.

In December 2007, the FASB issued SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements — an Amendment of ARB 51*. SFAS 160 requires that a noncontrolling interest (formerly a minority interest) in a subsidiary be classified as equity and the amount of consolidated net income specifically attributable to the noncontrolling interest be included in the consolidated financial statements. SFAS 160 is effective for our fiscal year beginning October 1, 2009 and its provisions will be applied retrospectively upon adoption. We are currently evaluating the impact of adopting SFAS 160 on our consolidated financial condition and results of operations.

In June 2008, the FASB issued FSP Emerging Issues Task Force (“EITF”) Issue No 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions are Participating Securities*. FSP 03-6-1 clarifies that non-vested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and are to be included in the computation of earnings per share under the two-class method described in SFAS 128, *Earnings per Share* and requires that prior period EPS and share data be restated retrospectively for comparability. The Company grants restricted shares under a share-based compensation plan that qualify as participating securities. FSP 03-6-1 is effective for the Company beginning October 1, 2009 with early adoption prohibited. We are currently evaluating the impact of adopting FSP 03-6-1 on our consolidated financial statements.

In May 2008, the FASB issued FSP APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion (Including Partial Cash Settlement)*. FSP APB 14-1 applies to convertible debt instruments that have a “net settlement feature” permitting settlement partially or fully in cash upon conversion. FSP APB 14-1 is effective for the Company beginning October 1, 2009 and the provisions of FSP APB 14-1 are required to be applied retrospectively to all periods presented. Due to the fact that the Company’s convertible securities cannot be settled in cash upon conversion, the adoption of FSP APB 14-1 is not expected to have a material impact on our consolidated financial condition and results of operations.

### **(2) Supplemental Cash Flow Information**

During the six months ended March 31, 2009 and 2008, we paid interest of \$63.5 million and \$87.3 million, respectively. In addition, we paid income taxes of \$8.3 and \$0.8 million for the six months ended March 31, 2009 and 2008, respectively. During the quarter ended March 31, 2009, we received tax refunds totaling \$168.4 million. We also had the following non-cash activity (in thousands):

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	Six Months Ended	
	March 31,	
	2009	2008
Supplemental disclosure of non-cash activity:		
Decrease in consolidated inventory not owned	\$38,968	\$ 39,580
Land acquired through issuance of notes payable	780	32,219
Issuance of stock under deferred bonus stock plans	1,480	94
Decrease in retained earnings from FIN 48 adoption	—	(10,112)

### (3) Investments in Unconsolidated Joint Ventures

As of March 31, 2009, we participated in 17 active land development joint ventures in which Beazer Homes had less than a controlling interest. The following table presents, for our unconsolidated joint ventures, our investment, total equity, outstanding borrowings and our guarantees of the borrowings, as of March 31, 2009 and September 30, 2008:

(in thousands)	March 31, 2009	September 30, 2008
Beazer's investment in joint ventures	\$ 31,606	\$ 33,065
Total equity of joint ventures	341,712	340,674
Total outstanding borrowings of joint ventures	488,714	524,431
Beazer's estimate of its portion of loan-to-value maintenance guarantees	8,445	5,839
Beazer's estimate of its portion of repayment guarantees	20,211	39,166

Beazer's investment in these unconsolidated joint ventures was \$31.6 million and \$33.1 million at March 31, 2009 and September 30, 2008, respectively. The reduction in investments in unconsolidated joint ventures at March 31, 2009 as compared to September 30, 2008 resulted primarily from impairments totaling \$9.6 million and returns of capital totaling \$1.7 million which were offset by \$4.2 million of additional investments and \$5.8 million of accrued liabilities for guarantee payments and deferred income.

For the three and six months ended March 31, 2009, the writedown of our investment in certain of our other unconsolidated joint ventures, totaling \$8.3 million and \$9.6 million, respectively, were recorded in accordance with APB 18, *The Equity Method of Accounting for Investments in Common Stock*. Similar writedowns of our investment in certain joint ventures totaled \$31.7 million and \$44.6 million for the three and six months ended March 31, 2008, respectively. These impairments are included in Equity in loss of unconsolidated joint ventures on the accompanying unaudited condensed consolidated statements of operations. Equity in loss of unconsolidated joint ventures totaled \$8.3 million and \$9.8 million for the three and six months ended March 31, 2009, respectively and \$40.4 million and \$56.5 million for the three and six months ended March 31, 2008, respectively.

The aggregate debt of the unconsolidated joint ventures was \$488.7 million and \$524.4 million at March 31, 2009 and September 30, 2008, respectively. At March 31, 2009, total borrowings outstanding include \$327.9 million related to one joint venture in which we are a 2.58% partner. The \$35.7 million reduction in total outstanding joint venture debt during the period resulted primarily from the cancellation of \$33.2 million of debt of two joint ventures, and debt payments of \$16.9 million in accordance with loan agreements offset by loan draws of \$14.4 million to fund the development activities of the joint ventures.

During fiscal 2009, one of our unconsolidated joint ventures received a notice of default under its debt obligations totaling \$15.6 million as of March 31, 2009. Several of our other joint ventures were at risk of defaulting under their debt agreements as of March 31, 2009. The Company and its joint venture partners are currently in discussions with the lenders under these various debt agreements. In addition, certain of our joint venture partners have curtailed their funding of their allocable joint venture obligations. Given the inherent uncertainties in these negotiations, as of March 31, 2009, no accrual has been recorded, as obligations to Beazer, if any, related to these matters was not both probable and reasonably estimable.

During fiscal 2008, the lender to the joint venture, in which we have a 2.58% investment, notified the joint venture partners that it believes the joint venture is in default of certain joint venture loan agreements as a result of certain of the Company's joint venture partners not complying with all aspects of the joint ventures' loan agreements. The joint venture partners are currently in discussions with the lender. Recently, the lender has filed individual lawsuits against some of the joint venture partners and certain of those partners' parent companies (including the Company), seeking to recover damages under completion guarantees, among other claims. We intend to vigorously defend against this legal action. The Company's share of the outstanding debt is approximately \$14.5 million

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at March 31, 2009. Under the terms of the agreement, our repayment guarantee is \$15.1 million, which is only triggered in the event of bankruptcy of the joint venture. Our equity interest at March 31, 2009 was \$8.5 million in this joint venture.

Our joint ventures typically obtain secured acquisition, development and construction financing. Generally Beazer and our joint venture partners provide varying levels of guarantees of debt and other obligations for our unconsolidated joint ventures. At March 31, 2009, these guarantees included, for certain joint ventures, construction completion guarantees, loan-to-value maintenance agreements, repayment guarantees and environmental indemnities.

In assessing the need to record a liability for the contingent aspect of these guarantees in accordance with FIN 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, we consider our historical experience in being required to perform under the guarantees, the fair value of the collateral underlying these guarantees and the financial condition of the applicable unconsolidated joint ventures. In addition, we monitor the fair value of the collateral of these unconsolidated joint ventures to ensure that the related borrowings do not exceed the specified percentage of the value of the property securing the borrowings. We have not recorded a liability for the contingent aspects of any guarantees that we determined were reasonably possible but not probable. To the extent the recording of a liability related to such guarantees would be required, the recognition of such liability would result in an increase to the carrying value of our investment in the associated joint venture.

### *Construction Completion Guarantees*

We and our joint venture partners are generally obligated to the project lenders to complete land development improvements and the construction of planned homes if the joint venture does not perform the required development. Provided the joint venture and the partners are not in default under any loan provisions, the project lenders typically are obligated to fund these improvements through any financing commitments available under the applicable loans. A majority of these construction completion guarantees are joint and several with our partners. In those cases, we generally have a reimbursement arrangement with our partner which provides that neither party is responsible for more than its proportionate share of the guarantee. However, if our joint venture partner does not have adequate financial resources to meet its obligations under such reimbursement arrangement, we may be liable for more than our proportionate share, up to our maximum exposure, which is the full amount covered by the relevant joint and several guarantee. The guarantees cover a specific scope of work, which may range from an individual development phase to the completion of the entire project.

### *Loan-to-Value Maintenance Agreements*

We and our joint venture partners generally provide credit enhancements to acquisition, development and construction borrowings in the form of loan-to-value maintenance agreements, which can limit the amount of additional funding provided by the lenders or require repayment of the borrowings to the extent such borrowings plus construction completion costs exceed a specified percentage of the value of the property securing the borrowings. The agreements generally require periodic reappraisals of the underlying property value. To the extent that the underlying property gets reappraised, the amount of the exposure under the loan-to-value-maintenance ("LTV") guarantee would be adjusted accordingly and any such change could be significant. In certain cases, we may be required to make a re-balancing payment following a reappraisal in order to reduce the applicable loan-to-value ratio to the required level.

Our estimate of the Company's portion of LTV guarantees of the unconsolidated joint ventures was \$8.4 million at March 31, 2009 and \$5.8 million at September 30, 2008. The increase in LTV guarantees relates to the updated estimate and delineation of guarantees for one of our unconsolidated joint ventures that has a LTV guarantee, a repayment guarantee and a specific performance obligation, offset by a \$2.7 million reduction in the LTV guarantee related to an agreement reached with lenders of one of our joint ventures. We expect this agreement to be finalized during the third quarter of fiscal 2009. During the three months ended March 31, 2009 and 2008, we were not required to make any payments on the LTV guarantees.

### *Repayment Guarantees*

We and our joint venture partners have repayment guarantees related to certain joint ventures' borrowings. These repayment guarantees require the repayment of all or a portion of the debt of the unconsolidated joint venture in the event the joint venture defaults on its obligations under the borrowing or files for bankruptcy. During the three months ended March 31, 2009 and 2008, we were not required to make payments related to any portion of the remaining repayment guarantees. One of the remaining repayment guarantee agreements, which is limited to 12.5% of the outstanding debt of the joint venture, is related to an unconsolidated joint venture that also has a specific performance guarantee and a loan-to-value maintenance guarantee.

Our estimate of Beazer's portion of repayment guarantees related to the outstanding debt of its unconsolidated joint ventures was \$20.2 million and \$39.2 million at March 31, 2009 and September 30, 2008, respectively. The reduction in the estimate of joint venture repayment guarantees was driven primarily by the negotiated settlement with the lenders of two joint ventures for the cancellation of

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debt and the release of other loan obligations including \$16.6 million in repayment guarantees for nominal consideration. The remaining decrease related to updated estimates which reduced the repayment guarantee by \$2.4 million in one of our joint ventures.

### *Environmental Indemnities*

Additionally, we and our joint venture partners generally provide unsecured environmental indemnities to joint venture project lenders. In each case, we have performed due diligence on potential environmental risks. These indemnities obligate us to reimburse the project lenders for claims related to environmental matters for which they are held responsible. During the quarters ended March 31, 2009 and 2008, we were not required to make any payments related to environmental indemnities.

### **(4) Inventory**

<i>(in thousands)</i>	<u>March 31, 2009</u>	<u>September 30, 2008</u>
Homes under construction	\$ 264,200	\$ 338,971
Development projects in progress	594,896	618,252
Land held for future development	420,322	407,320
Land held for sale	72,883	85,736
Model homes	78,821	94,727
Total owned inventory	<u>\$ 1,431,122</u>	<u>\$ 1,545,006</u>

Homes under construction includes homes finished and ready for delivery and homes in various stages of construction. We had 379 (\$71.8 million) and 408 (\$76.2 million) completed homes that were not subject to a sales contract at March 31, 2009 and September 30, 2008, respectively. Development projects in progress consist principally of land and land improvement costs. Certain of the fully developed lots in this category are reserved by a deposit or sales contract. Land held for sale as of March 31, 2009 in our Other Homebuilding segment included land held for sale in the following markets we have decided to exit: Denver, Colorado and Charlotte, North Carolina.

Total owned inventory, by reportable segment, is set forth in the table below (in thousands):

	March 31, 2009				September 30, 2008			
	Projects in Progress	Held for Future Development	Land Held for Sale	Total Owned Inventory	Projects in Progress	Held for Future Development	Land Held for Sale	Total Owned Inventory
West Segment	\$336,773	\$347,076	\$18,231	\$ 702,080	\$ 348,475	\$341,784	\$26,515	\$ 716,774
East Segment	369,536	49,559	9,417	428,512	394,643	44,387	3,642	442,672
Southeast Segment	148,057	23,687	12,911	184,655	165,231	21,149	14,841	201,221
Other	3,340	—	32,324	35,664	15,302	—	40,738	56,040
Unallocated	80,211	—	—	80,211	128,299	—	—	128,299
Total	\$937,917	\$420,322	\$72,883	\$1,431,122	\$1,051,950	\$407,320	\$85,736	\$1,545,006

Unallocated inventory above primarily includes capitalized interest and indirect construction costs that are not allocated to the segments.

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The following tables set forth, by reportable segment, the inventory impairments and lot option abandonment charges recorded (in thousands):

	Quarter Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
<b>Development projects and homes in process (Held for Development)</b>				
West	\$19,654	\$ 56,616	\$27,487	\$115,968
East	3,721	29,008	6,624	51,964
Southeast	9,543	15,960	9,640	25,397
Other	49	8,606	93	17,043
Unallocated	2,164	8,848	3,274	16,737
Subtotal	\$35,131	\$119,038	\$47,118	\$227,109
<b>Land Held for Sale</b>				
West	\$ 2,796	\$ 804	\$ 2,957	\$ 804
East	307	9,171	307	9,171
Southeast	2,296	23,035	2,311	33,804
Other	8,777	22,643	8,858	45,314
Subtotal	\$14,176	\$ 55,653	\$14,433	\$ 89,093
<b>Lot Option Abandonments</b>				
West	\$ 64	\$ 786	\$ 76	\$ 831
East	1,506	5,310	1,716	7,408
Southeast	878	5,150	927	17,239
Other	—	1,923	194	14,692
Subtotal	\$ 2,448	\$ 13,169	\$ 2,913	\$ 40,170
Total	\$51,755	\$187,860	\$64,464	\$356,372

The inventory impaired during the three months ended March 31, 2009 represented 1,752 lots in 22 communities with an estimated fair value of \$43.4 million compared to 3,534 lots in 85 communities with an estimated fair value of \$205.5 million for the three months ended March 31, 2008. For the six months ended March 31, 2009, the inventory impaired represented 2,091 lots in 28 communities with an estimated fair value of \$66.7 million compared to 6,420 lots in 147 communities with an estimated fair value of \$392.0 million for the comparable period of the prior year. The impairments recorded on our held for development inventory, for all segments, primarily resulted from the continued decline in the homebuilding environment. During the current period, we determined that it was prudent to reduce sales prices or further increase sales incentives in certain markets in response to factors including competitive market conditions. Because the projected cash flows used to evaluate the fair value of inventory are significantly impacted by changes in market conditions, including decreased sales prices, the change in sales prices and changes in absorption estimates led to additional impairments in certain communities during the current quarter. In future periods, we may again determine that it is prudent to reduce sales prices, further increase sales incentives or reduce absorption rates which may lead to additional impairments, which could be material.

During the three and six months ended March 31, 2009, as a result of changing market conditions in the real estate industry and review of recent comparable transactions, certain of the Company's land held for sale was further written down to net realizable value, less estimated costs to sell. During the three and six months ended March 31, 2008, as a result of the Company's decision to re-allocate capital employed through strategic sales of select properties and through the exiting of certain markets no longer viewed as strategic, and based on current estimated fair values, less costs to sell, as compared to book values, we recorded impairments on land held for sale. These impairments were primarily located in our exit markets in Ohio and Charlotte, North Carolina.

We also have access to land inventory through lot option contracts, which generally enable us to defer acquiring portions of properties owned by third parties and unconsolidated entities until we have determined whether to exercise our lot option. A majority of our lot option contracts require a non-refundable cash deposit or irrevocable letter of credit based on a percentage of the purchase price of the land for the right to acquire lots during a specified period of time at a certain price. Under lot option contracts, both with and without specific performance provisions, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Our obligation with respect to options with specific performance provisions is included in our consolidated balance sheets in other liabilities. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, letters of credit and other non-refundable amounts incurred, which aggregated approximately \$35.2 million at

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March 31, 2009. This amount includes non-refundable letters of credit of approximately \$5.7 million. The total remaining purchase price, net of cash deposits, committed under all options was \$329.3 million as of March 31, 2009. Only \$10.0 million of the net remaining purchase price contains specific performance clauses which may require us to purchase the land or lots upon the land seller meeting certain obligations.

We have determined the proper course of action with respect to a number of communities within each homebuilding segment was to abandon the remaining lots under option and to write-off the deposits securing the option takedowns, as well as preacquisition costs. In determining whether to abandon a lot option contract, we evaluate the lot option primarily based upon the expected cash flows from the property that is the subject of the option. If we intend to abandon or walk-away from a lot option contract, we record a charge to earnings in the period such decision is made for the deposit amount and any related capitalized costs associated with the lot option contract. We recorded lot option abandonment charges during the three and six months ended March 31, 2009 of \$2.4 million and \$2.9 million, respectively, compared to \$13.2 million and \$40.2 million related to the three and six months ended March 31, 2008, respectively. The abandonment charges relate to our decision to abandon certain option contracts that no longer fit in our long-term strategic plan and related to our prior year decision to exit certain markets.

We expect to exercise substantially all of our option contracts with specific performance obligations and, subject to market conditions, most of our option contracts without specific performance obligations. Various factors, some of which are beyond our control, such as market conditions, weather conditions and the timing of the completion of development activities, will have a significant impact on the timing of option exercises or whether land options will be exercised.

Certain of our option contracts are with sellers who are deemed to be variable interest entities ("VIE"s) under FASB Interpretation No. 46 (Revised), *Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51* ("FIN 46R"). FIN 46R defines a VIE as an entity with insufficient equity investment to finance its planned activities without additional financial support or an entity in which the equity investors lack certain characteristics of a controlling financial interest. Pursuant to FIN 46R, an enterprise that absorbs a majority of the expected losses or receives a majority of the expected residual returns of a VIE is deemed to be the primary beneficiary of the VIE and must consolidate the VIE.

We have determined that we are the primary beneficiary of certain of these option contracts. Our risk is generally limited to the option deposits that we pay, and creditors of the sellers generally have no recourse to the general credit of the Company. Although we do not have legal title to the optioned land, for those option contracts for which we are the primary beneficiary, we are required to consolidate the land under option at fair value. We believe that the exercise prices of our option contracts approximate their fair value. Our consolidated balance sheets at March 31, 2009 and September 30, 2008 reflect consolidated inventory not owned of \$53.0 million and \$106.7 million, respectively. We consolidated \$42.8 million and \$46.9 million of lot option agreements as consolidated inventory not owned pursuant to FIN 46R as of March 31, 2009 and September 30, 2008, respectively. In addition, as of March 31, 2009 and September 30, 2008, we recorded \$10.3 million and \$59.8 million, respectively, of land under the caption "consolidated inventory not owned" related to lot option agreements in accordance with SFAS 49, *Product Financing Arrangements*. Obligations related to consolidated inventory not owned totaled \$31.6 million at March 31, 2009 and \$70.6 million at September 30, 2008. The difference between the balances of consolidated inventory not owned and obligations related to consolidated inventory not owned represents cash deposits paid under the option agreements.

### **(5) Interest**

Our ability to capitalize all interest incurred during fiscal 2009 has been limited by the reduction in our inventory eligible for capitalization. The following table sets forth certain information regarding interest (in thousands):

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	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2009	2008	2009	2008
Capitalized interest in inventory, beginning of period	\$ 45,431	\$ 86,862	\$ 45,977	\$ 87,560
Interest incurred	33,332	35,366	67,253	70,980
Capitalized interest impaired	(1,416)	(5,641)	(1,953)	(10,593)
Interest expense not qualified for capitalization and included as other expense	(21,022)	(13,483)	(42,259)	(19,993)
Capitalized interest amortized to house construction and land sales expenses	(10,859)	(24,439)	(23,552)	(49,289)
Capitalized interest in inventory, end of period	<u>\$ 45,466</u>	<u>\$ 78,665</u>	<u>\$ 45,466</u>	<u>\$ 78,665</u>

**(6) Earnings Per Share**

In computing diluted loss per share for the three and six months ended March 31, 2009 and March 31, 2008, all common stock equivalents were excluded from the computation of diluted loss per share as a result of their anti-dilutive effect.

**(7) Borrowings**

At March 31, 2009 and September 30, 2008 we had the following long-term debt (*in thousands*):

	Maturity Date	March 31, 2009	September 30, 2008
Secured Revolving Credit Facility	July 2011	\$ —	\$ —
8 5/8% Senior Notes*	May 2011	180,000	180,000
8 3/8% Senior Notes*	April 2012	340,000	340,000
6 1/2% Senior Notes*	November 2013	200,000	200,000
6 7/8% Senior Notes*	July 2015	350,000	350,000
8 1/8% Senior Notes*	June 2016	275,000	275,000
4 5/8% Convertible Senior Notes*	June 2024	180,000	180,000
Junior subordinated notes	July 2036	103,093	103,093
Other secured notes payable	Various Dates	34,087	50,618
Model home financing obligations	Various Dates	52,532	71,231
Unamortized debt discounts		(2,331)	(2,565)
Total		<u>\$ 1,712,381</u>	<u>\$ 1,747,377</u>

\* Collectively, the “Senior Notes”

**Secured Revolving Credit Facility** — On August 7, 2008, we entered into an amendment to our Secured Revolving Credit Facility which changed the size, covenants and pricing for the facility. The size of the Secured Revolving Credit Facility was reduced from \$500 million to \$400 million and is subject to further reductions to \$250 million and \$100 million if our consolidated tangible net worth (“Tangible Net Worth”, defined in the agreement as stockholders’ equity less intangible assets as defined) falls below \$350 million and \$250 million, respectively. As of September 30, 2008, our consolidated tangible net worth of \$314.4 million resulted in a reduction of the facility size to \$250 million.

On May 4, 2009, the Company entered into a Third Limited Waiver related to the Company’s Secured Revolving Credit Facility. During the waiver period, which extends to the earlier of August 15, 2009 or the filing of the Company’s financial statements for the period ending June 30, 2009, the waiver agreement 1) preserves the facility size at \$150 million, rather than shrinking to \$100 million as required based on the Company’s reported Tangible Net Worth of \$143.8 million as of March 31, 2009, 2) maintains, at the current level, the collateral coverage in the secured borrowing base at 4.5x, 3) maintains the current facility pricing at the Eurodollar Margin of 5.0% and 4) waives a potential breach of an investments covenant in the facility. Absent the waiver agreement, the facility size, collateral level and Eurodollar Margin for borrowing would have been \$100 million, 6.0x, and 5.5% respectively, based on our Tangible Net Worth of \$143.8 million at March 31, 2009.

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In exchange for the waiver, the Company has agreed to not borrow under the facility and to maintain the current level of \$11.3 million of restricted cash in the secured borrowing base during the waiver period. The Company continues to be permitted to issue new Letters of Credit under the facility. At the end of the waiver period, the facility size, collateral level, and Eurodollar Margin for borrowing will be determined by the terms and conditions of the current facility.

The investments covenant restricts the Company's ability to make investments in joint ventures, non-guarantor subsidiaries, guaranty obligations of debt, and certain other investments ("Investments") that exceed 35% of Tangible Net Worth. At March 31, 2009, the Company's Investments were \$63.1 million representing 44% of Tangible Net Worth. The waiver agreement suspends required compliance with this covenant and allows for additional Investments not to exceed \$55 million during the waiver period. The investments covenant under the Secured Revolving Credit Facility encompasses a substantially broader definition of investment activity than the Permitted Investment and Restricted Payment covenants under the Company's Senior Notes.

For the balance of the year, the Company has no plans to enter into new joint ventures. The Company expects to incur additional Investments that may arise from 1) ongoing operations of the joint venture projects, 2) repayment of certain joint venture debt obligations, or 3) potential funding of existing guarantees. The \$55 million limitation on such Investments is our estimate of the maximum amount the Company could be required to fund, although the Company does not believe such level of funding will be necessary.

We have the option to elect two types of loans under the Secured Revolving Credit Facility which incur interest as applicable based on either the Alternative Base Rate or the Applicable Eurodollar Margin (both defined in the Secured Revolving Credit Facility). The Secured Revolving Credit Facility contains various operating and financial covenants. Substantially all of our significant subsidiaries are guarantors of the obligations under the Secured Revolving Credit Facility (see Note 12).

There were no amounts outstanding under the Secured Revolving Credit Facility at March 31, 2009 or September 30, 2008; however, we had \$48.6 million and \$61.2 million of letters of credit outstanding under the Secured Revolving Credit Facility at March 31, 2009 and September 30, 2008, respectively.

Availability under the facility continues to be subject to satisfaction of a secured borrowing base. The August 2008 amendment provided that the book value of the assets securing the facility must exceed 3.0x the outstanding loans and letters of credit. Such coverage level increases to 4.5x and 6.0x to the extent the facility size is reduced to \$250 million or \$100 million, respectively. As a result of the increase in collateral coverage to 4.5x during the first quarter of fiscal 2009 and through the Third Limited Waiver period, we have been required to provide cash in addition to pledged real estate assets to supplementally collateralize our outstanding letters of credit. As of March 31, 2009, for this collateralization we had provided \$11.3 million of cash, which is included in restricted cash on the unaudited condensed consolidated balance sheet as of March 31, 2009. We intend to add additional real estate assets to the borrowing base over the next twelve months, which is anticipated to provide additional borrowing base availability after providing for the return of the restricted cash. Assets in the borrowing base, and therefore any future availability, are subject to required appraisals and other bank review procedures. The availability under our facility is not impacted by any actions of the respective credit rating agencies. The value of the real estate assets securing our borrowing base could decline should the downturn in our industry worsen. Any reduction in value could result in a reduction in available borrowing capacity under the Secured Revolving Credit Facility.

The interest margins under the Secured Revolving Credit Facility are based on the facility size. Following the aforementioned August 2008 amendment, the Eurodollar Margin under the facility was set at 4.5%. With the facility size reduction to \$250 million, the Eurodollar Margin increased to 5.0% and would, upon a facility size reduction to \$100 million, increase to 5.5%. As a result of the reduction in facility size to \$250 million, and further reduction to \$150 million by the Third Limited Waiver, the current Eurodollar Margin is now 5.0%.

The financial maintenance covenants pertaining to the leverage ratio, interest coverage ratio and land inventory were eliminated as part of the August 2008 amendment. The remaining financial maintenance covenants are a minimum tangible net worth covenant (which requires us to have at least \$100 million of consolidated tangible net worth) and a minimum liquidity covenant. The minimum liquidity covenant, which is applicable for so long as our interest coverage ratio is less than 1.75x, requires us to maintain either (a) \$120 million of unrestricted cash and borrowing base availability or (b) a ratio (the "Adjusted Coverage Ratio") of adjusted cash flow from operations (defined as cash flow from operations plus interest incurred) to interest incurred of at least 1.75x. The following table sets forth our financial covenant requirements under our Secured Revolving Credit Facility and our compliance with such covenants as of March 31, 2009:

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<u>Financial Covenant</u>	<u>Covenant Requirement</u>	<u>Actual</u>
Consolidated Tangible Net Worth	> \$100 million	\$143.8 million
Minimum Liquidity	> \$120 million of unrestricted cash and borrowing base availability OR Adjusted Coverage Ratio > 1.75x	\$559.5 million of unrestricted cash and borrowing base availability and Adjusted Coverage Ratio of 3.8x

Further deteriorations in the housing market generally, or in our business particularly, could result in additional inventory impairments or operational losses which could also result in our having to seek additional amendments or waivers under the Secured Revolving Credit Facility. To the extent that we default under any of these covenants and we are unable to obtain waivers, the lenders under the Secured Revolving Credit Facility could accelerate our obligations thereunder or require us to post cash collateral to support our existing letters of credit. Any such acceleration may result in an event of default under our Senior Notes described below and would permit the holders thereof to accelerate our obligations under the Senior Notes.

**Senior Notes** - The Senior Notes are unsecured obligations ranking pari passu with all other existing and future senior indebtedness. Substantially all of our significant subsidiaries are full and unconditional guarantors of the Senior Notes and are jointly and severally liable for obligations under the Senior Notes and the Secured Revolving Credit Facility. Each guarantor subsidiary is a 100% owned subsidiary of Beazer Homes.

The indentures under which the Senior Notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At March 31, 2009, under the most restrictive covenants of each indenture, no portion of our retained earnings was available for cash dividends or for share repurchases. The indentures provide that, in the event of defined changes in control or if our consolidated tangible net worth falls below a specified level or in certain circumstances upon a sale of assets, we are required to offer to repurchase certain specified amounts of outstanding Senior Notes. Specifically, each indenture (other than the indenture governing the convertible Senior Notes) requires us to offer to purchase 10% of each series of Senior Notes at par if our consolidated tangible net worth (defined as stockholders' equity less intangible assets as defined) is less than \$85 million at the end of any two consecutive fiscal quarters. Such offer need not be made more than twice in any four-quarter period. If triggered and fully subscribed, this could result in our having to purchase 10% of outstanding notes one or more times, in an amount equal to \$134.5 million for the first time based on the principal outstanding at March 31, 2009.

In June 2004, we issued \$180 million aggregate principal amount of 4 5/8% Convertible Senior Notes due 2024 (the "Convertible Senior Notes"). The Convertible Senior Notes are not convertible into cash. We may at our option redeem for cash the Convertible Senior Notes in whole or in part at any time on or after June 15, 2009 at specified redemption prices. Holders have the right to require us to purchase all or any portion of the Convertible Senior Notes for cash on June 15, 2011, June 15, 2014 and June 15, 2019. In each case, we will pay a purchase price equal to 100% of the principal amount of the Convertible Senior Notes to be purchased plus any accrued and unpaid interest, if any, and any additional amounts owed, if any to such purchase date.

On October 26, 2007, we obtained consents from holders of our Senior Notes to approve amendments of the indentures under which the Senior Notes were issued. These amendments restrict our ability to secure additional debt in excess of \$700 million until certain conditions are met and enable us to invest up to \$50 million in joint ventures. The consents also provided us with a waiver of any and all defaults under the Senior Notes that may have occurred on or prior to May 15, 2008 relating to filing or delivering annual and quarterly financial statements. Fees and expenses related to obtaining these consents totaled approximately \$21 million. Such fees and expenses have been deferred, and included in Other Assets in the unaudited condensed consolidated balance sheets, and are being amortized as an adjustment to interest expense in accordance with EITF 96-19 — *Debtor's Accounting for a Modification or Exchange of Debt Instruments*.

**Junior Subordinated Notes** — On June 15, 2006, we completed a private placement of \$103.1 million of unsecured junior subordinated notes which mature on July 30, 2036 and are redeemable at par on or after July 30, 2011 and pay a fixed rate of 7.987% for the first ten years ending July 30, 2016. Thereafter, the securities have a floating interest rate equal to three-month LIBOR plus 2.45% per annum, resetting quarterly. These notes were issued to Beazer Capital Trust I, which simultaneously issued, in a private transaction, trust preferred securities and common securities with an aggregate value of \$103.1 million to fund its purchase of these notes. The transaction is treated as debt in accordance with GAAP. The obligations relating to these notes and the related securities are subordinated to the Secured Revolving Credit Facility and the Senior Notes.

**Other Secured Notes Payable** — We periodically acquire land through the issuance of notes payable. As of March 31, 2009 and September 30, 2008, we had outstanding notes payable of \$34.1 million and \$50.6 million, respectively, primarily related to land

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acquisitions. These notes payable expire at various times through 2011 and had fixed and variable rates ranging from 3.2% to 9.0% at March 31, 2009. These notes are secured by the real estate to which they relate. As of March 31, 2009, we had negotiated a reduced payoff of one of our secured notes payable and recorded a net \$3.6 million gain on debt extinguishment which is included in other expense, net in the accompanying unaudited condensed consolidated statement of operations.

The agreements governing these secured notes payable contain various affirmative and negative covenants. Certain of these secured notes payable agreements contain covenants that require us to maintain minimum levels of stockholders' equity (or some variation, such as tangible net worth) or maximum levels of debt to stockholders' equity. Although the specific covenants and related definitions vary among the agreements, further reductions in our stockholders' equity, absent the receipt of waivers, may cause breaches of some or all of these covenants. Breaches of certain of these covenants, to the extent they lead to an acceleration, may result in cross defaults under our senior notes. The dollar value of these secured notes payable agreements containing stockholders' equity-related covenants totaled \$22.7 million at March 31, 2009. There can be no assurance that we will be able to obtain any future waivers or amendments that may become necessary without significant additional cost or at all. In each instance, however, a covenant default can be cured by repayment of the indebtedness.

**Model Home Financing Obligations** - Due to a continuing interest in certain model home sale-leaseback transactions, we have recorded \$52.5 million and \$71.2 million of debt as of March 31, 2009 and September 30, 2008, respectively, related to these "financing" transactions in accordance with SFAS 98 (as amended), *Accounting for Leases*. These model home transactions incur interest at a variable rate of one-month LIBOR plus 450 basis points, 5.0% as of March 31, 2009, and expire at various times through 2015.

### **(8) Income Taxes**

During fiscal 2008, we determined that it was not more likely than not that substantially all of our deferred tax assets would be realized and, therefore, we established a valuation allowance of \$400.6 million for substantially all of our deferred tax assets. We have not changed our assessment regarding the recoverability of our deferred tax assets as of March 31, 2009 and consequently, during the six months ended March 31, 2009, we determined that an additional valuation allowance of \$62.0 million was warranted. As of March 31, 2009, our deferred tax valuation allowance was \$462.6 million.

Our tax benefit of \$12.0 million and \$14.0 million for the three and six months ended March 31, 2009, primarily resulted from the reduction in our liabilities for unrecognized tax benefits related to effectively settling examinations with tax authorities and the expiration of certain statutes of limitations, offset by interest expense on our remaining liabilities for unrecognized tax benefits.

During the second quarter of fiscal 2009, \$9.3 million of unrecognized federal and state tax benefits, including \$3.9 million in accrued interest, were reversed due to settlements with tax authorities. Other than this reversal, there have been no material changes to the components of the Company's total unrecognized tax benefits, including any amount which, if recognized, would affect the Company's effective tax rate. The principal difference between our effective rate and the U.S. federal statutory rate for the three and six months ended March 31, 2009 is due to our valuation allowance, state income taxes incurred, the non-deductible goodwill impairment charge and adjustments related to our liabilities for unrecognized tax benefits discussed above. The principal difference between our effective rate and the U.S. federal statutory rate for the three and six months ended March 31, 2008 is due to state income taxes incurred and the non-deductible goodwill impairment charge.

### **(9) Contingencies**

Beazer Homes and certain of its subsidiaries have been and continue to be named as defendants in various construction defect claims, complaints and other legal actions that include claims related to moisture intrusion. The Company is subject to the possibility of loss contingencies arising in its business and such contingencies are accounted for in accordance with SFAS 5, *Accounting for Contingencies*. In determining loss contingencies, we consider the likelihood of loss as well as the ability to reasonably estimate the amount of such loss or liability. An estimated loss is recorded when it is considered probable that a liability has been incurred and when the amount of loss can be reasonably estimated.

**Warranty Reserves** — We currently provide a limited warranty (ranging from one to two years) covering workmanship and materials per our defined performance quality standards. In addition, we provide a limited warranty (generally ranging from a minimum of five years up to the period covered by the applicable statute of repose) covering only certain defined construction defects. We also provide a defined structural element warranty with single-family homes and townhomes in certain states.

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Since we subcontract our homebuilding work to subcontractors who generally provide us with an indemnity and a certificate of insurance prior to receiving payments for their work, many claims relating to workmanship and materials are the primary responsibility of the subcontractors.

Our warranty reserves at March 31, 2009 and 2008 include accruals for Trinity Homes LLC (“Trinity”) moisture intrusion issues discussed more fully below. Warranty reserves are included in other liabilities and the provision for warranty accruals is included in home construction and land sales expenses in the unaudited condensed consolidated financial statements. We record reserves covering anticipated warranty expense for each home closed. Management reviews the adequacy of warranty reserves each reporting period based on historical experience and management’s estimate of the costs to remediate the claims and adjusts these provisions accordingly. Our review includes a quarterly analysis of the historical data and trends in warranty expense by operating segment. An analysis by operating segment allows us to consider market specific factors such as our warranty experience, the number of home closings, the prices of homes, product mix and other data in estimating our warranty reserves. In addition, our analysis also contemplates the existence of any non-recurring or community-specific warranty related matters that might not be contemplated in our historical data and trends. As a result of our analyses, we adjust our estimated warranty liabilities. While we believe that our warranty reserves are adequate as of March 31, 2009, historical data and trends may not accurately predict actual warranty costs, or future developments could lead to a significant change in the reserve. Our warranty reserves, which include amounts related to the Trinity moisture intrusion issues discussed below, are as follows (in thousands):

	Three Months Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
Balance at beginning of period	\$36,888	\$48,956	\$40,822	\$ 57,053
Provisions	471	4,824	719	6,232
Payments	(4,980)	(6,677)	(9,162)	(16,182)
Balance at end of period	\$32,379	\$47,103	\$32,379	\$ 47,103

**Trinity Moisture Intrusion Reserves** — Beazer Homes and certain of our subsidiaries have been and continue to be named as defendants in various construction defect claims, complaints and other legal actions that include claims related to moisture intrusion. We have experienced a significant number of such claims in our East region and particularly with respect to homes built by Trinity, a subsidiary which was acquired in the Crossmann acquisition in 2002.

As of March 31, 2009, there were four pending lawsuits related to such complaints received by Trinity, including a class action. Three of these suits are by individual homeowners, and the cost to resolve these matters is not expected to be material, either individually or in the aggregate. The class action suit was filed in the State of Indiana in August 2003 against Trinity Homes LLC. The parties in the class action reached a settlement agreement which was approved by the court on October 20, 2004. As of March 31, 2009, we have completed remediation of 1,867 homes related to 1,877 total Trinity claims.

Our warranty reserves at March 31, 2009 and September 30, 2008 include accruals for our estimated costs to assess and remediate all homes for which Trinity had received complaints related to moisture intrusion. Warranty reserves also include accruals for class action claims received, pursuant to the settlement discussed above, from class members who had not previously contacted Trinity with complaints.

The cost to assess and remediate a home depends on the extent of moisture damage, if any, that the home has incurred. Homes for which we receive complaints are classified into one of three categories: 1) homes with no moisture damage, 2) homes with isolated moisture damage or 3) homes with extensive moisture damage.

As of March 31, 2009 and September 30, 2008, we accrued for our estimated cost to remediate homes that we had assessed and assigned to one of the above categories, as well as our estimated cost to remediate those homes for which an assessment had not yet been performed. For purposes of our accrual, we have historically assigned homes not yet assessed to categories based on our expectations about the extent of damage and trends observed from the results of assessments performed to date. In addition, our cost estimation process considers the subdivision of the claimant along with the categorization discussed above. Once a home is categorized, detailed budgets are used as the basis to prepare our estimated costs to remediate such home.

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The following accruals at March 31, 2009 represent our best estimates of the costs to resolve remaining claims associated with Trinity moisture intrusion issues. Changes in the accrual for Trinity moisture intrusion issues during the period were as follows (in thousands):

	Three Months Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
Balance at beginning of period	\$ 1,722	\$ 8,461	\$ 2,759	\$ 12,116
Reductions	—	(358)	(243)	(970)
Payments	(953)	(2,194)	(1,747)	(5,237)
Balance at end of period	\$ 769	\$ 5,909	\$ 769	\$ 5,909

Actual costs to assess and remediate homes in each category and subdivision and the extent of damage to homes not yet assessed could differ from our estimates. As a result, the costs to resolve existing complaints could differ from our recorded accruals and have a material adverse effect on our earnings in the periods in which the matters are resolved. Additionally, it is possible that we will incur additional losses related to these matters, including additional losses related to homes for which we have not yet received complaints.

### Investigations

*United States Attorney, State and Federal Agency Investigations.* Beazer Homes and its mortgage subsidiary, Beazer Mortgage Corporation (“Beazer Mortgage”), have been under criminal and civil investigations by the United States Attorney’s Office in the Western District of North Carolina (“the U.S. Attorney”) and other state and federal agencies concerning the matters that were the subject of the independent investigation by the Audit Committee of the Beazer Homes’ Board of Directors (the “Investigation”) completed in May 2008. We have had several discussions with the U.S. Attorney to negotiate a resolution of its investigation. Although we have not reached an agreement on such a resolution and can not reasonably estimate the Company’s total liability, we recognized expense in the quarter ended March 31, 2009 of approximately \$11 million and \$2 million to cover payments that we believe are probable and reasonably estimable for fiscal years 2009 and 2010, respectively. Our negotiations with the U.S. Attorney are continuing and we believe that future additional payments are reasonably possible. While there is no agreement with the U.S. Attorney, such negotiations have included the possibility of future payments linked to the Company’s ability to return to generating positive earnings and a limit on total liability of approximately \$50 million over 60 months. There can be no assurance that we can conclude an agreement with the U.S. Attorney on these terms or on any financial or non-financial terms that are mutually acceptable.

*Independent Investigation.* In May 2008, the Audit Committee of the Beazer Homes Board of Directors completed the Investigation of Beazer Homes’ mortgage origination business, including, among other things, investigating certain evidence that the Company’s subsidiary, Beazer Mortgage, violated U.S. Department of Housing and Urban Development (“HUD”) regulations and may have violated certain other laws and regulations in connection with certain of its mortgage origination activities. The Investigation also found evidence that employees of the Company’s Beazer Mortgage subsidiary violated certain federal and/or state regulations, including HUD regulations. Areas of concern uncovered by the Investigation included our former practices in the areas of: down payment assistance program; the charging of discount points; the closure of certain HUD Licenses; closing accommodations; and the payment of a number of realtor bonuses and decorator allowances in certain Federal Housing Administration (“FHA”) insured loans and non-FHA conventional loans originated by Beazer Mortgage dating back to at least 2000. The Investigation also uncovered limited improper practices in relation to the issuance of a number of non-FHA Stated Income Loans. We reviewed the loan documents and supporting documentation, and determined that the assets were effectively isolated from the seller and its creditors (even in the event of bankruptcy). Based on that information, management continues to believe that sale accounting at the time of the transfer of the loans to third parties was appropriate. In addition, the Investigation identified accounting and financial reporting errors and irregularities which resulted in the restatement of certain prior period consolidated financial statements which was included in our 2007 Form 10-K filed with the SEC on May 12, 2008.

### Litigation

*Securities Class Action.* Beazer Homes and certain of our current and former officers (the “Individual Defendants”), as well as our Independent Registered Accounting Firm, are named as defendants in putative class action securities litigation pending in the United States District Court for the Northern District of Georgia. Three separate complaints were initially filed between March 29 and May 21, 2007. The cases were subsequently consolidated by the court and the court appointed Glickenhous & Co. and Carpenters Pension Trust Fund for Northern California as lead plaintiffs. On June 27, 2008, lead plaintiffs filed an Amended and Consolidated Class Action Complaint for Violation of the Federal Securities Laws (“Consolidated Complaint”), which purports to assert claims on behalf

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of a class of persons and entities that purchased or acquired the securities of Beazer Homes during the period January 27, 2005 through May 12, 2008. The Consolidated Complaint asserts a claim against the defendants under Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder for allegedly making materially false and misleading statements regarding our business and prospects, including, among other things, alleged misrepresentations and omissions related to alleged improper lending practices in our mortgage origination business, alleged misrepresentations and omissions related to improper revenue recognition and other accounting improprieties and alleged misrepresentations and omissions concerning our land investments and inventory. The Consolidated Complaint also asserts claims against the Individual Defendants under Sections 20(a) and 20A of the Exchange Act. Lead plaintiffs seek a determination that the action is properly maintained as a class action, an unspecified amount of compensatory damages and costs and expenses, including attorneys’ fees. On November 3, 2008, the Company and the other defendants filed motions to dismiss the Consolidated Complaint. Briefing of the motion was completed in March 2009. The Company reached an agreement with lead plaintiffs to settle the lawsuit. Under the terms of the proposed settlement, the lawsuit will be dismissed with prejudice, and the Company and all other defendants do not admit any liability and will receive a full and complete release of all claims asserted against them in the litigation, in exchange for the payment of an aggregate of \$30.5 million. The monetary payment to be made on behalf of the Company and the individual defendants will be funded from insurance proceeds. As a result, there will be no financial contribution by the Company. The agreement is subject to court approval.

*Derivative Shareholder Actions.* Certain of Beazer Homes’ current and former officers and directors were named as defendants in a derivative shareholder suit filed on April 16, 2007 in the United States District Court for the Northern District of Georgia. The complaint also names Beazer Homes as a nominal defendant. The complaint, purportedly on behalf of Beazer Homes, alleges that the defendants (i) violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; (ii) breached their fiduciary duties and misappropriated information; (iii) abused their control; (iv) wasted corporate assets; and (v) were unjustly enriched. Plaintiffs seek an unspecified amount of compensatory damages against the individual defendants and in favor of Beazer Homes. An additional lawsuit was filed subsequently on August 29, 2007 in the United States District Court for the Northern District of Georgia asserting similar factual allegations. The two Georgia derivative actions have been consolidated, and the plaintiffs have filed an amended, consolidated complaint. On November 21, 2008, the Company and the other defendants filed motions to dismiss the amended consolidated complaint. Briefing of the motion was completed in February 2009. The defendants intend to vigorously defend against these actions. Given the inherent uncertainties in this litigation, as of March 31, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

*ERISA Class Actions.* On April 30, 2007, a putative class action complaint was filed on behalf of a purported class consisting of present and former participants and beneficiaries of the Beazer Homes USA, Inc. 401(k) Plan. The complaint was filed in the United States District Court for the Northern District of Georgia. The complaint alleges breach of fiduciary duties, including those set forth in the Employee Retirement Income Security Act (“ERISA”), as a result of the investment of retirement monies held by the 401(k) Plan in common stock of Beazer Homes at a time when participants were allegedly not provided timely, accurate and complete information concerning Beazer Homes. Four additional lawsuits were filed subsequently on May 11, 2007, May 14, 2007, June 15, 2007 and July 27, 2007 in the United States District Court for the Northern District of Georgia making similar allegations. The court consolidated these five lawsuits, and on June 27, 2008, the plaintiffs filed a consolidated amended complaint. The consolidated amended complaint names as defendants Beazer Homes, our chief executive officer, certain current and former directors of the Company, including the members of the Compensation Committee of the Board of Directors, and certain employees of the Company who acted as members of the Company’s 401(k) Committee. On October 10, 2008, the Company and the other defendants filed a motion to dismiss the consolidated amended complaint. Briefing of the motion was completed in January 2009. The Company intends to vigorously defend against these actions. Given the inherent uncertainties in this litigation, as of March 31, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

*Homeowners Class Action Lawsuits and Multi-Plaintiff Lawsuit.* A putative class action was filed on April 8, 2008 in the United States District Court for the Middle District of North Carolina, Salisbury Division, against Beazer Homes, U.S.A., Inc., Beazer Homes Corp. and Beazer Mortgage Corporation. The Complaint alleges that Beazer violated the Real Estate Settlement Practices Act (“RESPA”) and North Carolina Gen. Stat. § 75-1.1 by (1) improperly requiring homebuyers to use Beazer-owned mortgage and settlement services as part of a down payment assistance program, and (2) illegally increasing the cost of homes and settlement services sold by Beazer Homes Corp. The purported class consists of all residents of North Carolina who purchased a home from Beazer, using mortgage financing provided by and through Beazer that included seller-funded down payment assistance, between January 1, 2000 and October 11, 2007. The Complaint demands an unspecified amount of damages, equitable relief, treble damages, attorneys’ fees and litigation expenses. The defendants moved to dismiss the Complaint on June 4, 2008. On July 25, 2008, in lieu of a response to the motion to dismiss, plaintiff filed an amended complaint. The Company has moved to dismiss the amended complaint and intends to vigorously defend against this action. Given the inherent uncertainties in this litigation, as of March 31, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

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Beazer Homes Corp. and Beazer Mortgage Corporation are also named defendants in a lawsuit filed on July 3, 2007, in the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina. The case was removed to the U.S. District Court for the Western District of North Carolina, Charlotte Division, but remanded on April 23, 2008 to the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina. The complaint was filed on behalf of ten individual homeowners who purchased homes from Beazer in Mecklenburg County. The complaint alleges certain deceptive conduct by the defendants and brings various claims under North Carolina statutory and common law, including a claim for punitive damages. On June 27, 2008 a second amended complaint, which added two plaintiffs to the lawsuit, was filed. The case has been designated as "exceptional" pursuant to Rule 2.1 of the General Rules of Practice of the North Carolina Superior and District Courts and has been assigned to the docket of the North Carolina Business Court. The Company filed a motion to dismiss on July 30, 2008. On November 18, 2008, the plaintiffs filed a third amended complaint. The Company filed a motion to dismiss the third amended complaint on December 29, 2008. The Company intends to vigorously defend against this action. Given the inherent uncertainties in this litigation, as of March 31, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

Beazer Homes' subsidiaries Beazer Homes Holdings Corp. and Beazer Mortgage Corporation were named as defendants in a putative class action lawsuit originally filed on March 12, 2008, in the Superior Court of the State of California, County of Placer. The lawsuit was amended on June 2, 2008 and named as defendants Beazer Homes Holdings Corp., Beazer Homes USA, Inc., and Security Title Insurance Company. The purported class is defined as all persons who purchased a home from the defendants or their affiliates, with the assistance of a federally related mortgage loan, from March 25, 1999 to the present where Security Title Insurance Company received any money as a reinsurer of the transaction. The complaint alleges that the defendants violated RESPA and asserts claims under a number of state statutes alleging that defendants engaged in a uniform and systematic practice of giving and/or accepting fees and kickbacks to affiliated businesses including affiliated and/or recommended title insurance companies. The complaint also alleges a number of common law claims. Plaintiffs seek an unspecified amount of damages under RESPA, unspecified statutory, compensatory and punitive damages and injunctive and declaratory relief, as well as attorneys' fees and costs. Defendants removed the action to federal court. On November 26, 2008, plaintiffs filed a Second Amended Complaint which substituted new named-plaintiffs. The Company filed a motion to dismiss the Second Amended Complaint. The federal court granted Beazer's motion to dismiss the Second Amended Complaint. The federal court dismissed the sole federal claim, declined to rule on the state law claims, and remanded the case to the Superior Court of California, Placer County, where Beazer's motion to dismiss the state law claims is now pending. The Company intends to continue to vigorously defend against the action. Given the inherent uncertainties in this litigation, as of March 31, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

We cannot predict or determine the timing or final outcome of the governmental investigations or the lawsuits or the effect that any adverse findings in the investigations or adverse determinations in the pending lawsuits may have on us. In addition, an estimate of possible loss or range of loss if any, cannot presently be made with respect to the above pending matters. While we are cooperating with the governmental investigations, developments, including the expansion of the scope of the investigations, could negatively impact us, could divert the efforts and attention of our management team from the operation of our business, and/or result in further departures of executives or other employees. An unfavorable determination resulting from any governmental investigation could result in the filing of criminal charges, payment of substantial criminal or civil restitution, the imposition of injunctions on our conduct or the imposition of other penalties or consequences, including but not limited to the Company having to adjust, curtail or terminate the conduct of certain of our business operations. Any of these outcomes could have a material adverse effect on our business, financial condition, results of operations and prospects. An unfavorable determination in any of the pending lawsuits could result in the payment by us of substantial monetary damages which may not be fully covered by insurance. Further, the legal costs associated with the investigations and the lawsuits and the amount of time required to be spent by management and the Board of Directors on these matters, even if we are ultimately successful, could have a material adverse effect on our business, financial condition and results of operations.

### **Other Matters**

In November 2003, Beazer Homes received a request for information from the EPA pursuant to Section 308 of the Clean Water Act seeking information concerning the nature and extent of storm water discharge practices relating to certain of our projects completed or under construction. The EPA has since requested information on additional projects and has conducted site inspections at a number of locations. In certain instances, the EPA or the equivalent state agency has issued Administrative Orders identifying alleged instances of noncompliance and requiring corrective action to address the alleged deficiencies in storm water management practices. As of March 31, 2009, no monetary penalties had been imposed in connection with such Administrative Orders. The EPA has reserved the right to impose monetary penalties at a later date, the amount of which, if any, cannot currently be estimated. Beazer Homes has taken action to comply with the requirements of each of the Administrative Orders and is working to otherwise maintain compliance with the requirements of the Clean Water Act.

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In 2006, we received two Administrative Orders issued by the New Jersey Department of Environmental Protection. The Orders allege certain violations of wetlands disturbance permits. The two Orders assess proposed fines of \$630,000 and \$678,000, respectively. We have met with the Department to discuss their concerns on the two affected projects and have requested hearings on both matters. We believe that we have significant defenses to the alleged violations and intend to contest the agency's findings and the proposed fines. We are currently pursuing settlement discussions with the Department. A hearing before the judge has been postponed pending settlement discussions.

We and certain of our subsidiaries have been named as defendants in various claims, complaints and other legal actions, most relating to construction defects, moisture intrusion and related mold claims and product liability. Certain of the liabilities resulting from these actions are covered in whole or part by insurance. In our opinion, based on our current assessment, the ultimate resolution of these matters will not have a material adverse effect on our financial condition, results of operations or cash flows.

We have accrued \$19.2 million and \$17.9 million in other liabilities related to these matters as of March 31, 2009 and September 30, 2008, respectively.

Recently, the lender of one of our unconsolidated joint ventures has filed individual lawsuits against some of the joint venture partners and certain of those partners' parent companies (including the Company), seeking to recover damages under completion guarantees, among other claims. We intend to vigorously defend against this legal action. We are a 2.58% partner in this joint venture (see Note 3 for additional information). In addition, an estimate of possible loss or range of loss if any, cannot presently be made with respect to the above matter. Given the inherent uncertainties in this litigation, as of March 31, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

We had performance bonds and total outstanding letters of credit of approximately \$309.3 million and \$48.6 million, respectively, at March 31, 2009 related principally to our obligations to local governments to construct roads and other improvements in various developments. Total outstanding letters of credit includes approximately \$6.2 million related to our land option contracts discussed in Note 4.

### **(10) Stock Repurchase Program**

On November 18, 2005, as part of an acceleration of Beazer Homes' comprehensive plan to enhance stockholder value, our Board of Directors authorized an increase in our stock repurchase plan to ten million shares of our common stock. Shares may be purchased for cash in the open market, on the NYSE or in privately negotiated transactions. We did not repurchase any shares in the open market during the three months ended March 31, 2009 or 2008. At March 31, 2009, there are approximately 5.4 million shares available for purchase pursuant to the plan; however, we have currently suspended our repurchase program and any resumption of such program will be at the discretion of the Board of Directors, and as allowed by our debt covenants, and is unlikely in the foreseeable future.

### **(11) Segment Information**

As defined in SFAS 131, "*Disclosures About Segments of an Enterprise and Related Information*", we have four homebuilding segments operating in 17 states and one financial services segment. Revenues in our homebuilding segments are derived from the sale of homes which we construct and from land and lot sales. Revenues in our financial services segment are derived primarily from title services provided predominantly to customers of our homebuilding operations. Our reportable segments, described below, have been determined on a basis that is used internally by management for evaluating segment performance and resource allocations in accordance with SFAS 131. The reportable homebuilding segments, and all other homebuilding operations not required to be reported separately, include operations conducting business in the following states:

*West:* Arizona, California, Nevada, New Mexico and Texas

*East:* Delaware, Maryland, New Jersey, New York, North Carolina (Raleigh), Pennsylvania, Tennessee (Nashville) and Virginia

*Southeast:* Florida, Georgia and South Carolina

*Other Homebuilding:* California (Fresno), Colorado, Kentucky, North Carolina (Charlotte), Ohio, South Carolina (Columbia) and Tennessee (Memphis)

Our Other Homebuilding segment includes those markets that we have decided to exit. These operations will be reported as discontinued operations upon cessation of all activities in these markets.

Management's evaluation of segment performance is based on segment operating income, which for our homebuilding segments is defined as homebuilding and land sale revenues less the cost of home construction, land development and land sales expenses, depreciation and amortization and certain selling, general and administrative expenses which are incurred by or allocated to our

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homebuilding segments. Segment operating income for our Financial Services segment is defined as revenues less costs associated with our title services and certain selling, general and administrative expenses incurred by or allocated to the Financial Services segment. The accounting policies of our segments are those described in Note 1 herein and the notes to the consolidated financial statements included in Item 8 of our 2008 Form 10-K.

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
<b>Revenue</b>				
West	\$ 73,683	\$ 138,862	\$ 177,100	\$ 292,456
East	71,795	138,419	144,986	311,266
Southeast	40,834	73,609	81,907	181,387
Other homebuilding	1,699	53,770	15,894	118,903
Financial Services	312	757	800	2,059
Consolidated total	<u>\$ 188,323</u>	<u>\$ 405,417</u>	<u>\$ 420,687</u>	<u>\$ 906,071</u>

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
<b>Operating (loss) income</b>				
West	\$ (20,434)	\$ (52,227)	\$ (26,680)	\$ (102,978)
East	(10,413)	(37,393)	(13,837)	(59,394)
Southeast	(14,724)	(46,625)	(16,669)	(74,146)
Other homebuilding	(9,933)	(45,850)	(10,799)	(90,467)
Financial Services	68	190	56	810
Segment total	<u>(55,436)</u>	<u>(181,905)</u>	<u>(67,929)</u>	<u>(326,175)</u>
Corporate and unallocated (a)	<u>(47,263)</u>	<u>(108,310)</u>	<u>(97,096)</u>	<u>(162,354)</u>
Total operating loss	<u>(102,699)</u>	<u>(290,215)</u>	<u>(165,025)</u>	<u>(488,529)</u>
Equity in loss of unconsolidated joint ventures	(8,341)	(40,361)	(9,754)	(56,501)
Other expense, net	(15,735)	(4,569)	(34,014)	(7,418)
Loss from continuing operations before income taxes	<u>\$ (126,775)</u>	<u>\$ (335,145)</u>	<u>\$ (208,793)</u>	<u>\$ (552,448)</u>

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
<b>Depreciation and amortization</b>				
West	\$ 1,256	\$ 2,032	\$ 2,771	\$ 3,702
East	1,772	1,971	2,535	3,719
Southeast	325	796	641	1,801
Other homebuilding	3	616	148	1,277
Financial Services	1	7	9	14
Segment total	<u>3,357</u>	<u>5,422</u>	<u>6,104</u>	<u>10,513</u>
Corporate and unallocated (a)	<u>982</u>	<u>804</u>	<u>2,018</u>	<u>1,691</u>
Consolidated total	<u>\$ 4,339</u>	<u>\$ 6,226</u>	<u>\$ 8,122</u>	<u>\$ 12,204</u>

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<i>(in thousands)</i>	March 31, 2009	September 30, 2008
<b>Assets (b)</b>		
West	\$ 728,501	\$ 779,863
East	476,248	507,412
Southeast	206,250	225,125
Other homebuilding	39,536	64,123
Financial Services	33,614	38,156
Corporate and unallocated (c)	762,295	1,024,681
Discontinued operations	125	2,439
Consolidated total	<u>\$ 2,246,569</u>	<u>\$ 2,641,799</u>

- (a) Corporate and unallocated includes amortization of capitalized interest and numerous shared services functions that benefit all segments, the costs of which are not allocated to the operating segments reported above including information technology, national sourcing and purchasing, treasury, corporate finance, legal, branding and other national marketing costs. In addition, for the three and six months ended March 31, 2009, corporate and unallocated also includes \$2.8 million and \$5.0 million of investigation-related costs, respectively. The three and six months ended March 31, 2009 also includes approximately \$13 million in estimated payments related to the government investigations (see Note 9). For the three and six months ended March 31, 2008, corporate and unallocated includes \$7.5 million and \$14.3 million of investigation-related costs, respectively. Corporate and unallocated also includes goodwill impairment charges of \$0 and \$16.1 million for the three and six months ended March 31, 2009 and \$48.1 million for the three and six months ended March 31, 2008, respectively (see Note 1).
- (b) Segment assets as of September 30, 2008 include goodwill assigned from prior acquisitions. See Note 1 for goodwill by segment as of March 31, 2009 and September 30, 2008.
- (c) Primarily consists of cash and cash equivalents, consolidated inventory not owned, deferred taxes, capitalized interest and other corporate items that are not allocated to the segments.

### **(12) Supplemental Guarantor Information**

As discussed in Note 7, our obligations to pay principal, premium, if any, and interest under certain debt are guaranteed on a joint and several basis by substantially all of our subsidiaries. Effective with the 2008 amendments discussed in Note 7, Beazer Mortgage is a guarantor of our Senior Notes. As a result, Beazer Mortgage has been included as a guarantor subsidiary for all periods presented. Certain of our title, warranty and immaterial subsidiaries do not guarantee our Senior Notes or our Secured Revolving Credit Facility. The guarantees are full and unconditional and the guarantor subsidiaries are 100% owned by Beazer Homes USA, Inc. We have determined that separate, full financial statements of the guarantors would not be material to investors and, accordingly, supplemental financial information for the guarantors is presented.

**Beazer Homes USA, Inc.**  
**Unaudited Consolidating Balance Sheet Information**  
**March 31, 2009**  
**(in thousands)**

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
<b>ASSETS</b>					
Cash and cash equivalents	\$ 560,404	\$ 1,842	\$ 1,946	\$ (4,665)	\$ 559,527
Restricted cash	11,321	207	2	—	11,530
Accounts receivable (net of allowance of \$5,617)	—	28,995	47	—	29,042
Income tax receivable	12,124	—	—	—	12,124
Owned inventory	—	1,431,122	—	—	1,431,122
Consolidated inventory not owned	—	53,046	—	—	53,046
Investments in unconsolidated joint ventures	3,093	28,513	—	—	31,606
Deferred tax assets, net	31,336	—	—	—	31,336
Property, plant and equipment, net	—	33,067	—	—	33,067
Investments in subsidiaries	393,691	—	—	(393,691)	—
Intercompany	926,904	(934,701)	3,132	4,665	—
Other assets	33,168	16,001	5,000	—	54,169
Total assets	\$1,972,041	\$ 658,092	\$10,127	\$(393,691)	\$2,246,569
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Trade accounts payable	\$ —	\$ 41,188	\$ —	\$ —	\$ 41,188
Other liabilities	106,989	162,429	6,371	—	275,789
Intercompany	1,187	—	(1,187)	—	—
Obligations related to consolidated inventory not owned	—	31,640	—	—	31,640
Senior notes (net of discounts of \$2,331)	1,522,669	—	—	—	1,522,669
Junior subordinated notes	103,093	—	—	—	103,093
Other notes payable	—	34,087	—	—	34,087
Model home financing obligations	52,532	—	—	—	52,532
Total liabilities	1,786,470	269,344	5,184	—	2,060,998
Stockholders' equity	185,571	388,748	4,943	(393,691)	185,571
Total liabilities and stockholders' equity	\$1,972,041	\$ 658,092	\$10,127	\$(393,691)	\$2,246,569

**Beazer Homes USA, Inc.**  
**Unaudited Consolidating Balance Sheet Information**  
**September 30, 2008**  
**(in thousands)**

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
<b>ASSETS</b>					
Cash and cash equivalents	\$ 575,856	\$ 14,806	\$ 5	\$ (6,333)	\$ 584,334
Restricted cash	—	297	—	—	297
Accounts receivable (net of allowance of \$8,915)	—	46,504	51	—	46,555
Income tax receivable	173,500	—	—	—	173,500
Owned inventory	—	1,545,006	—	—	1,545,006
Consolidated inventory not owned	—	106,655	—	—	106,655
Investments in unconsolidated joint ventures	3,093	29,972	—	—	33,065
Deferred tax assets, net	20,216	—	—	—	20,216
Property, plant and equipment, net	—	39,822	—	—	39,822
Goodwill	—	16,143	—	—	16,143
Investments in subsidiaries	393,783	—	—	(393,783)	—
Intercompany	979,646	(989,138)	3,159	6,333	—
Other assets	35,701	33,518	6,987	—	76,206
<b>Total assets</b>	<b>\$2,181,795</b>	<b>\$ 843,585</b>	<b>\$10,202</b>	<b>\$(393,783)</b>	<b>\$2,641,799</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Trade accounts payable	\$ —	\$ 90,371	\$ —	\$ —	\$ 90,371
Other liabilities	108,975	243,010	6,607	—	358,592
Intercompany	1,210	—	(1,210)	—	—
Obligations related to consolidated inventory not owned	—	70,608	—	—	70,608
Senior notes (net of discounts of \$2,565)	1,522,435	—	—	—	1,522,435
Junior subordinated notes	103,093	—	—	—	103,093
Other notes payable	—	50,618	—	—	50,618
Model home financing obligations	71,231	—	—	—	71,231
<b>Total liabilities</b>	<b>1,806,944</b>	<b>454,607</b>	<b>5,397</b>	<b>—</b>	<b>2,266,948</b>
Stockholders' equity	374,851	388,978	4,805	(393,783)	374,851
<b>Total liabilities and stockholders' equity</b>	<b>\$2,181,795</b>	<b>\$ 843,585</b>	<b>\$10,202</b>	<b>\$(393,783)</b>	<b>\$2,641,799</b>

**Unaudited Consolidating Statement of Operations Information**  
(in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
<b>Three Months Ended March 31, 2009</b>					
Total revenue	\$ —	\$ 188,217	\$106	\$ —	\$ 188,323
Home construction and land sales expenses	10,859	157,039	—	—	167,898
Inventory impairments and option contract abandonments	1,416	50,339	—	—	51,755
Gross (loss) profit	(12,275)	(19,161)	106	—	(31,330)
Selling, general and administrative expenses	—	66,997	33	—	67,030
Depreciation and amortization	—	4,339	—	—	4,339
Operating (loss) income	(12,275)	(90,497)	73	—	(102,699)
Equity in loss of unconsolidated joint ventures	—	(8,341)	—	—	(8,341)
Other (expense) income, net	(21,022)	5,297	(10)	—	(15,735)
(Loss) income from continuing operations before income taxes	(33,297)	(93,541)	63	—	(126,775)
(Benefit from) provision for income taxes	(12,130)	93	29	—	(12,008)
Equity in loss of subsidiaries	(93,600)	—	—	93,600	—
(Loss) income from continuing operations	(114,767)	(93,634)	34	93,600	(114,767)
Loss from discontinued operations, net of tax	—	(156)	—	—	(156)
Equity in loss of subsidiaries	(156)	—	—	156	—
Net (loss) income	\$(114,923)	\$ (93,790)	\$ 34	\$ 93,756	\$(114,923)
<b>Six Months Ended March 31, 2009</b>					
Total revenue	\$ —	\$ 420,351	\$336	\$ —	\$ 420,687
Home construction and land sales expenses	23,552	350,192	—	—	373,744
Inventory impairments and option contract abandonments	1,953	62,511	—	—	64,464
Gross (loss) profit	(25,505)	7,648	336	—	(17,521)
Selling, general and administrative expenses	—	123,146	93	—	123,239
Depreciation and amortization	—	8,122	—	—	8,122
Goodwill impairment	—	16,143	—	—	16,143
Operating (loss) income	(25,505)	(139,763)	243	—	(165,025)
Equity in loss of unconsolidated joint ventures	—	(9,754)	—	—	(9,754)
Other (expense) income, net	(42,259)	8,249	(4)	—	(34,014)
(Loss) income from continuing operations before income taxes	(67,764)	(141,268)	239	—	(208,793)
(Benefit from) provision for income taxes	(24,686)	10,614	101	—	(13,971)
Equity in loss of subsidiaries	(151,744)	—	—	151,744	—
(Loss) income from continuing operations	(194,822)	(151,882)	138	151,744	(194,822)
Loss from discontinued operations, net of tax	—	(376)	—	—	(376)
Equity in loss of subsidiaries	(376)	—	—	376	—
Net (loss) income	\$(195,198)	\$(152,258)	\$138	\$152,120	\$(195,198)

**Beazer Homes USA, Inc.**  
**Unaudited Consolidating Statement of Operations Information**  
(in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
<b>Three Months Ended March 31, 2008</b>					
Total revenue	\$ —	\$ 405,269	\$148	\$ —	\$ 405,417
Home construction and land sales expenses	24,439	354,985	—	—	379,424
Inventory impairments and option contract abandonments	5,641	182,219	—	—	187,860
Gross (loss) profit	(30,080)	(131,935)	148	—	(161,867)
Selling, general and administrative expenses	—	73,986	31	—	74,017
Depreciation and amortization	—	6,226	—	—	6,226
Goodwill impairment	—	48,105	—	—	48,105
Operating (loss) income	(30,080)	(260,252)	117	—	(290,215)
Equity in loss of unconsolidated joint ventures	—	(40,361)	—	—	(40,361)
Other (expense) income, net	(13,483)	8,886	28	—	(4,569)
(Loss) income before income taxes	(43,563)	(291,727)	145	—	(335,145)
(Benefit from) provision for income taxes	(16,305)	(90,170)	53	—	(106,422)
Equity in loss of subsidiaries	(201,465)	—	—	201,465	—
(Loss) income from continuing operations	(228,723)	(201,557)	92	201,465	(228,723)
Loss from discontinued operations, net of tax	—	(1,170)	—	—	(1,170)
Equity in loss of subsidiaries	(1,170)	—	—	1,170	—
Net (loss) income	\$(229,893)	\$(202,727)	\$ 92	\$202,635	\$(229,893)
<b>Six Months Ended March 31, 2008</b>					
Total revenue	\$ —	\$ 905,719	\$352	\$ —	\$ 906,071
Home construction and land sales expenses	49,289	766,451	—	—	815,740
Inventory impairments and option contract abandonments	10,593	345,779	—	—	356,372
Gross (loss) profit	(59,882)	(206,511)	352	—	(266,041)
Selling, general and administrative expenses	—	162,100	79	—	162,179
Depreciation and amortization	—	12,204	—	—	12,204
Goodwill impairment	—	48,105	—	—	48,105
Operating (loss) income	(59,882)	(428,920)	273	—	(488,529)
Equity in loss of unconsolidated joint ventures	—	(56,501)	—	—	(56,501)
Other (expense) income, net	(19,993)	12,503	72	—	(7,418)
(Loss) income before income taxes	(79,875)	(472,918)	345	—	(552,448)
(Benefit from) provision for income taxes	(29,897)	(156,294)	127	—	(186,064)
Equity in loss of subsidiaries	(316,406)	—	—	316,406	—
(Loss) income from continuing operations	(366,384)	(316,624)	218	316,406	(366,384)
Loss from discontinued operations, net of tax	—	(1,745)	—	—	(1,745)
Equity in loss of subsidiaries	(1,745)	—	—	1,745	—
Net (loss) income	\$(368,129)	\$(318,369)	\$218	\$318,151	\$(368,129)

**Beazer Homes USA, Inc.**  
**Unaudited Consolidating Statements of Cash Flow Information**  
(in thousands)

<i>For the six months ended March 31, 2009</i>	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
Net cash provided by (used in) operating activities	\$ 112,727	\$ (98,039)	\$1,893	\$ —	\$ 16,581
Cash flows from investing activities:					
Capital expenditures	—	(3,441)	—	—	(3,441)
Investments in unconsolidated joint ventures	—	(4,189)	—	—	(4,189)
Changes in restricted cash	(11,321)	90	(2)	—	(11,233)
Net cash used in investing activities	(11,321)	(7,540)	(2)	—	(18,863)
Cash flows from financing activities:					
Repayment of other secured notes payable	—	(992)	—	—	(992)
Repayment of model home financing obligations	(18,699)	—	—	—	(18,699)
Debt issuance costs	(1,018)	—	—	—	(1,018)
Common stock redeemed	(19)	—	—	—	(19)
Tax benefit from stock transactions	(1,797)	—	—	—	(1,797)
Advances to/from subsidiaries	(95,325)	93,607	50	1,668	—
Net cash (used in) provided by financing activities	(116,858)	92,615	50	1,668	(22,525)
(Decrease) increase in cash and cash equivalents	(15,452)	(12,964)	1,941	1,668	(24,807)
Cash and cash equivalents at beginning of period	575,856	14,806	5	(6,333)	584,334
Cash and cash equivalents at end of period	\$ 560,404	\$ 1,842	\$1,946	\$ (4,665)	\$ 559,527
<b><i>For the six months ended March 31, 2008</i></b>					
Net cash (used in) provided by operating activities	\$(141,179)	\$ 112,417	\$1,116	\$ —	\$ (27,646)
Cash flows from investing activities:					
Capital expenditures	—	(5,921)	—	—	(5,921)
Investments in unconsolidated joint ventures	—	(9,665)	—	—	(9,665)
Changes in restricted cash	—	1,579	—	—	1,579
Net cash used in investing activities	—	(14,007)	—	—	(14,007)
Cash flows from financing activities:					
Repayment of other secured notes payable	—	(99,785)	—	—	(99,785)
Repayment of model home financing obligations	(17,694)	—	—	—	(17,694)
Debt issuance costs	(21,135)	—	—	—	(21,135)
Common stock redeemed	(12)	—	—	—	(12)
Tax benefit from stock transactions	(388)	—	—	—	(388)
Advances to/from subsidiaries	18,446	(8,202)	(509)	(9,735)	—
Net cash (used in) provided by financing activities	(20,783)	(107,987)	(509)	(9,735)	(139,014)
Decrease in cash and cash equivalents	(161,962)	(9,577)	607	(9,735)	(180,667)
Cash and cash equivalents at beginning of period	447,296	9,700	1,559	(4,218)	454,337
Cash and cash equivalents at end of period	\$ 285,334	\$ 123	\$2,166	\$(13,953)	\$ 273,670

**(13) Discontinued Operations**

On February 1, 2008, the Company determined that it would discontinue its mortgage origination services through Beazer Mortgage Corporation (“BMC”). In February 2008, the Company entered into a new marketing services arrangement with Countrywide Financial Corporation (“Countrywide”), whereby the Company would market Countrywide as the preferred mortgage provider to its customers. In addition, during the three months ended March 31, 2008, the Company wrote off its entire \$7.1 million investment in Homebuilders Financial Network LLC (“HFN”). HFN was a joint venture investment which was established to provide loan processing services to mortgage originators. The Company assigned its ownership interest to its joint venture partner. The Company’s

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joint venture interest in HFN was not owned by Beazer Mortgage Corporation and, therefore, the associated investment as of March 31, 2008 is not included in the discontinued operations information presented below.

The Company has classified the results of operations of BMC, previously included in our Financial Services segment, as discontinued operations in the accompanying unaudited condensed consolidated statements of operations for all periods presented in accordance with SFAS 144. As of March 31, 2009, substantially all BMC operating activities have ceased. Discontinued operations were not segregated in the unaudited condensed consolidated statements of cash flows. Therefore, amounts for certain captions in the unaudited condensed consolidated statements of cash flows will not agree with the respective data in the unaudited condensed consolidated statements of operations.

The results of the BMC operations classified as discontinued operations in the unaudited condensed consolidated statements of operations for the three and six months ended March 31, 2009 and 2008 were as follows (dollars in thousands):

	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	2009	2008	2009	2008
Total revenue	\$ —	\$ 1,003	\$ —	\$ 3,497
Loss from discontinued operations before income taxes	(156)	(1,875)	(376)	(2,797)
Benefit from income taxes	—	(705)	—	(1,052)
Loss from discontinued operations, net of tax	(156)	(1,170)	(376)	(1,745)

Assets and liabilities from discontinued operations at March 31, 2009 and September 30, 2008, which entirely relates to BMC, consist of the following (in thousands):

	March 31, 2009	September 30, 2008
<b>ASSETS</b>		
Accounts receivable	—	2,305
Residential mortgage loans available-for-sale	91	94
Other	34	40
Assets of discontinued operations	<u>\$ 125</u>	<u>\$ 2,439</u>
<b>LIABILITIES</b>		
Trade accounts payable and other liabilities	\$ 377	\$ 360
Liabilities of discontinued operations	<u>\$ 377</u>	<u>\$ 360</u>

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

**Executive Overview:** Throughout fiscal 2008 and into the first half of fiscal 2009, the homebuilding environment continued to deteriorate as consumer confidence declined, unemployment increased, the availability of home mortgage credit tightened significantly and the economy continued to slow down. Specifically, the credit markets and the mortgage industry have been experiencing a period of unparalleled turmoil and disruption characterized by bankruptcy, financial institution failure, consolidation and an unprecedented level of intervention by the United States federal government. While the ultimate outcome of these events cannot be predicted, it has made it more difficult for homebuyers to obtain acceptable financing. In addition, the supply of new and resale homes in the marketplace remained excessive for the levels of consumer demand, further challenged by an increased number of foreclosed homes offered at substantially reduced prices. These pressures in the marketplace resulted in the use of increased sales incentives and price reductions in an effort to generate sales and reduce inventory levels by us and many of our competitors.

We have responded to this challenging environment with a disciplined approach to the business with continued reductions in direct costs, overhead expenses and land spending. We have limited our supply of unsold homes under construction and have focused on the generation of cash from our existing inventory supply as we strive to align our land supply and inventory levels to current expectations for home closings.

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During the first quarter of fiscal 2009, we did not pursue a strategy of additional sales incentives or sales price reductions in an effort to generate additional sales absorptions. Our belief was that those strategies would not have significantly improved the number of new home orders during that quarter due to unprecedented macro-economic events including the failure and near failure of several financial institutions. Those events resulted in temporary, but significant curtailment of consumer and business spending, particularly if access to credit was required. The confluence of the new Congress and the new White House administration and the enactment of the fiscal stimulus package focused on job creation and increased availability of credit may ultimately lead to improved sales absorptions without continued degradation of home sales margins.

During the current quarter, our second fiscal quarter, as the macro-economic environment tempered, we continued to focus on cash generation from the sale of existing inventory supply and introduced additional sales incentives and reduced sales prices in certain situations in order to move this inventory. We also reevaluated pricing and incentives offered in select communities in response to local market conditions to generate sales on to-be-built inventory. Certain of these changes resulted in adjustments to our inventory valuations. See Note 4 to the unaudited condensed consolidated financial statements for discussion of the current quarter's inventory impairments.

In fiscal 2008, we completed a comprehensive review of each of our markets in order to refine our overall investment strategy and to optimize capital and resource allocations in an effort to enhance our financial position and to increase shareholder value. This review entailed an evaluation of both external market factors and our position in each market and resulted in the decision formalized and announced on February 1, 2008, to discontinue homebuilding operations in Charlotte, NC, Cincinnati/Dayton, OH, Columbia, SC, Columbus, OH and Lexington, KY. During the third quarter of fiscal 2008, we announced our decision to discontinue homebuilding operations in Colorado and Fresno, CA. We are actively completing an orderly exit from each of these markets and remain committed to our remaining customer care responsibilities. We have committed to complete all homes under construction in these markets and are in the process of marketing the remaining land positions for sale. While the underlying basis for exiting each market was different, in each instance we concluded we could better serve shareholder interests by re-allocating the capital employed in these markets. As of March 31, 2009, these markets represented approximately 1.8% of the Company's total assets and are aggregated in our Other Homebuilding segment.

In addition, as disclosed in our 2008 Form 10-K, the independent investigation, initiated in April 2007 by the Audit Committee of the Board of Directors (the "Investigation") and concluded in May 2008, identified accounting and financial reporting errors and irregularities which resulted in the restatement of certain of our prior period consolidated financial statements and found evidence that employees of the Company's Beazer Mortgage Corporation ("Beazer Mortgage") subsidiary, which voluntarily ceased operations in February 2008, violated certain federal and/or state regulations, including U.S. Department of Housing and Urban Development ("HUD") regulations. Areas of concern uncovered by the Investigation included our former practices in the areas of: down payment assistance programs; the charging of discount points; the closure of certain HUD Licenses; closing accommodations; and the payment of a number of realtor bonuses and decorator allowances in certain Federal Housing Administration ("FHA") insured loans and non-FHA conventional loans originated by Beazer Mortgage dating back to at least 2000. The Investigation also uncovered limited improper practices in relation to the issuance of a number of non-FHA Stated Income Loans. We reviewed the loan documents and supporting documentation and determined that the assets were effectively isolated from the seller and its creditors (even in the event of bankruptcy). Based on that information, management continues to believe that sale accounting at the time of the transfer of the loans to third parties was appropriate.

As explained in Note 9 to the unaudited condensed consolidated financial statements, the Company and Beazer Mortgage have been under criminal and civil investigations by the United States Attorney's Office in the Western District of North Carolina ("U.S. Attorney") and other state and federal agencies concerning the matters that were the subject of the Investigation. We have had several discussions with the U.S. Attorney to negotiate a resolution of its investigation. Although we have not reached an agreement on such a resolution and can not reasonably estimate the Company's total liability, we recognized expense in the quarter ended March 31, 2009 of approximately \$11 million and \$2 million to cover payments that we believe are probable and reasonably estimable for fiscal years 2009 and 2010, respectively. Our negotiations with the U.S. Attorney are continuing and we believe that future additional payments are reasonably possible. While there is no agreement with the U.S. Attorney, such negotiations have included the possibility of future payments linked to the Company's ability to return to generating positive earnings and a limit on total liability of approximately \$50 million over 60 months. There can be no assurance that we can conclude an agreement with the U.S. Attorney on these terms or on any financial or non-financial terms that are mutually acceptable.

The Housing and Economic Recovery Act of 2008 ("HERA") was enacted into law on July 30, 2008. Among other things, HERA provides for a temporary first-time home buyer tax credit for purchases made through July 1, 2009; reforms of Fannie Mae and Freddie

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Mac, including adjustments to the conforming loan limits; modernization and expansion of the FHA, including an increase to 3.5% in the minimum down payment required for FHA loans; and the elimination of seller-funded down payment assistance programs for FHA loans approved after September 30, 2008. Overall, HERA was intended to help stabilize and add consumer confidence to the housing industry. However, certain of the changes, such as the elimination of the down payment assistance programs and the increase in minimum down payments, have adversely impacted the ability of potential homebuyers to afford to purchase a new home or obtain financing. The down payment assistance programs were utilized for a number of our home closings in fiscal 2008.

The Emergency Economic Stabilization Act of 2008 (“EESA”) was enacted into law on October 3, 2008. EESA authorizes up to \$700 billion in new spending authority for the United States Secretary of the Treasury (the “Secretary”) to purchase, manage and ultimately dispose of troubled assets. The provisions of this law include an expansion of the Hope for Homeowners Program. This program allows the Secretary to use loan guarantees and credit enhancements so that loans can be modified to prevent foreclosures. Also, the Secretary can consent to term extensions, rate-reductions and principal write-downs. Federal agencies that own mortgage loans are directed to seek modifications prior to foreclosures. In February 2009, the \$8,000 First Time Homebuyer Tax Credit was enacted into law. This law enables homebuyers who have not owned a home in the past three years, subject to certain income limits, to receive a tax credit of 10% of the purchase price of a home up to a maximum of \$8,000. While we expect the impact of this legislation will generally be favorable to the economy, the impact on our operations is not yet determinable.

**Outlook:** We expect that the remainder of fiscal 2009 will pose significant challenges for us. Like many other homebuilders, we have experienced a material reduction in revenues and margins and we incurred significant net losses in fiscal 2008 and the first six months of fiscal 2009. These net losses were driven primarily by asset impairment and lot option abandonment charges incurred in those periods. We believe that the homebuilding market will remain challenging throughout fiscal 2009 and, as a result, it is likely that we will also incur additional net losses in 2009, which will further reduce our stockholders’ equity.

Certain of our property-specific secured notes payable agreements contain covenants that require us to maintain minimum levels of stockholders’ equity (or some variation, such as tangible net worth) or maximum levels of debt to stockholders’ equity. Although the specific covenants and related definitions vary among the agreements, further reductions in our stockholders’ equity, absent the receipt of waivers, may cause breaches of some or all of these covenants. Breaches of certain of these covenants, to the extent they lead to an acceleration, may result in cross defaults under our senior notes. The dollar value of property-specific secured notes payable agreements containing stockholders’ equity-related covenants totaled \$22.7 million at March 31, 2009. There can be no assurance that we will be able to obtain any future waivers or amendments that may become necessary without significant additional cost or at all. In each instance, however, a covenant default can be cured by repayment of the indebtedness. During the quarter, we fully satisfied a \$16.5 million note, secured by a single property for \$10.7 million and recognized a net \$3.6 million gain on debt extinguishment which is included in other expense, net in the unaudited condensed consolidated statement of operations.

On May 4, 2009, the Company entered into a Third Limited Waiver related to the Company’s Secured Revolving Credit Facility. During the waiver period, which extends to the earlier of August 15, 2009 or the filing of the Company’s financial statements for the period ending June 30, 2009, the waiver agreement 1) preserves the facility size at \$150 million, rather than shrinking to \$100 million as required based on the Company’s reported Tangible Net Worth of \$143.8 million, 2) maintains, at the current level, the collateral coverage in the secured borrowing base at 4.5x, 3) maintains the current facility pricing at Eurodollar Margin of 5.0% and 4) waives a potential breach of an investments covenant in the facility. In exchange for the waiver, the Company has agreed to not borrow under the facility and to maintain the current level of \$11.3 million of restricted cash in the secured borrowing base. The Company continued to be permitted to issue new Letters of Credit under the facility. At March 31, 2009, we had letters of credit outstanding of \$48.6 million under the Secured Revolving Credit Facility. An acceleration of this facility may also result in cross defaults under our senior notes.

Decreased levels of stockholders’ equity may also trigger our obligations to consummate offers to purchase 10% of our non-convertible senior notes at par if our consolidated tangible net worth is less than \$85 million at the end of any two consecutive fiscal quarters. If triggered and fully subscribed, this could result in our having to purchase \$134.5 million of notes, based on amounts outstanding at March 31, 2009.

During the quarter ended March 31, 2009, S&P lowered its rating of the Company’s corporate credit and senior unsecured debt from B- to CCC+ and maintained its negative outlook. During this quarter, Moody’s also lowered its rating from B2 to Caa2 and reaffirmed its negative outlook. On March 12, 2009, Fitch lowered the Company’s issuer-default rating from B- to CCC and its senior notes from CCC+/RR5 to CC/RR5, all of which are non-investment grade ratings. The rating agencies announced that these downgrades reflect continued deterioration in our homebuilding operations, credit metrics, other earnings-based metrics and the significant decrease in our tangible net worth over the past year. These ratings and our current credit condition affect, among other things, our ability to access

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new capital, especially debt, and may result in more stringent covenants and higher interest rates under the terms of any new debt. Our credit ratings could be further lowered or rating agencies could issue adverse commentaries in the future, which could have a material adverse effect on our business, results of operations, financial condition and liquidity. In particular, a further weakening of our financial condition, including any further increase in our leverage or decrease in our profitability or cash flows, could adversely affect our ability to obtain necessary funds, result in a further credit rating downgrade, or otherwise increase our cost of borrowing.

Further, several of our joint ventures are in default under their debt agreements at March 31, 2009 or are at risk of defaulting. Although neither the Company nor any of its subsidiaries is the borrower of any of this joint venture debt, we have issued guarantees of various types with respect to many of these joint ventures. To the extent that we are unable to reach satisfactory resolutions, we may be called upon to perform under our applicable guarantees. The total dollar value of our repayment and loan-to-value maintenance guarantees was \$28.7 million at March 31, 2009. See Note 3 to the unaudited condensed consolidated financial statements.

Our cash and cash equivalents at March 31, 2009 was \$559.5 million. Although we expect to incur a net loss during the remainder of fiscal 2009, we believe our cash and cash equivalents as of March 31, 2009, cash generated from our operations during the remainder of fiscal 2009 and availability, if any, under our Secured Revolving Credit Facility will be adequate to meet our liquidity needs during fiscal 2009. Additionally, we may be able to reduce our investment in land and homes to generate further liquidity. However, if we are required to fund all of the potential obligations associated with lower levels of stockholders' equity and joint venture defaults, we would have cash requirements totaling approximately \$234 million which would significantly reduce our overall liquidity.

As a result of these issues, in addition to our continued focus on generation and preservation of cash, we are also focused on increasing our stockholders' equity and reducing our leverage. In order to accomplish this goal, we will likely need to issue new common or preferred equity. Any new issuance may take the form of public or private offerings for cash, equity issued to consummate acquisitions of assets or equity issued in exchange for a portion of our outstanding debt. In addition, we may from time to time seek to retire or purchase our outstanding debt through cash purchases and/or exchanges for equity or other debt securities, in open market purchases, privately negotiated transactions or otherwise. There can be no assurance that we will be able to complete any of these transactions on favorable terms or at all.

**Critical Accounting Policies:** Some of our critical accounting policies require the use of judgment in their application or require estimates of inherently uncertain matters. Although our accounting policies are in compliance with accounting principles generally accepted in the United States of America, a change in the facts and circumstances of the underlying transactions could significantly change the application of the accounting policies and the resulting financial statement impact. As disclosed in our annual report on Form 10-K for the fiscal year ended September 30, 2008, our most critical accounting policies relate to inventory valuation (inventory held for development and land held for sale), homebuilding revenues and costs, warranty reserves, investments in unconsolidated joint ventures and income tax valuation allowances. Since September 30, 2008, there have been no significant changes to those critical accounting policies.

**Seasonal and Quarterly Variability:** Our homebuilding operating cycle generally reflects escalating new order activity in the second and third fiscal quarters and increased closings in the third and fourth fiscal quarters. However, beginning in the second half of fiscal 2006 and continuing through the second quarter of fiscal 2009, we continued to experience challenging conditions in most of our markets which contributed to decreased revenues and closings as compared to prior periods including prior quarters, thereby reducing typical seasonal variations.

**RESULTS OF OPERATIONS:**

(\$ in thousands)	Quarter Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
<b>Revenues:</b>				
Homebuilding	\$ 187,457	\$ 400,656	\$ 417,868	\$ 892,443
Land and lot sales	554	4,004	2,019	11,569
Financial Services	312	757	800	2,059
Total	<u>\$ 188,323</u>	<u>\$ 405,417</u>	<u>\$ 420,687</u>	<u>\$ 906,071</u>
<b>Gross (loss) profit</b>				
Homebuilding	\$ (31,398)	\$ (159,305)	\$ (18,290)	\$ (267,060)
Land and lot sales	(244)	(3,319)	(31)	(1,040)
Financial Services	312	757	800	2,059
Total	<u>\$ (31,330)</u>	<u>\$ (161,867)</u>	<u>\$ (17,521)</u>	<u>\$ (266,041)</u>
<b>Selling, general and administrative (SG&amp;A) expenses:</b>				
Homebuilding	\$ 66,787	\$ 73,456	\$ 122,504	\$ 160,943
Financial Services	243	561	735	1,236
Total	<u>\$ 67,030</u>	<u>\$ 74,017</u>	<u>\$ 123,239</u>	<u>\$ 162,179</u>
<b>Depreciation and amortization</b>	<b>\$ 4,339</b>	<b>\$ 6,226</b>	<b>\$ 8,122</b>	<b>\$ 12,204</b>
<b>As a percentage of total revenue:</b>				
Gross Margin	-16.6%	-39.9%	-4.2%	-29.4%
SG&A — homebuilding	35.5%	18.1%	29.1%	17.8%
SG&A — Financial Services	0.1%	0.1%	0.2%	0.1%
<b>Goodwill impairment</b>	\$ —	\$ 48,105	\$ 16,143	\$ 48,105
<b>Equity in loss of unconsolidated joint ventures from:</b>				
Joint venture activities	\$ (8)	\$ (8,631)	\$ (128)	\$ (11,936)
Impairments	(8,333)	(31,730)	(9,626)	(44,565)
Equity in loss of unconsolidated joint ventures	<u>\$ (8,341)</u>	<u>\$ (40,361)</u>	<u>\$ (9,754)</u>	<u>\$ (56,501)</u>
<b>Effective tax rate from continuing operations</b>	<b>9.5%</b>	<b>31.8%</b>	<b>6.7%</b>	<b>33.7%</b>

**Three and Six Month Periods Ended March 31, 2009 Compared to the Comparable Periods Ended March 31, 2008**

**Revenues.** The continued deterioration of the housing industry contributed to 53.7% decreases in revenues for both the three and six months ended March 31, 2009 compared to the comparable periods ended March 31, 2008. Homes closed decreased by 48.1% to 814 from 1,568 for the quarters ended March 31, 2009 and March 31, 2008, respectively. For the six months ended March 31, 2009 compared to the same period of the prior year, homes closed decreased by 51.0% primarily due to the tightening of mortgage credit availability, an increase in home foreclosures and other economic factors that impacted consumer homebuyers. This decline in closings was especially pronounced throughout our markets in our East and Southeast segments. The average sales price of homes closed decreased by approximately 10% compared to the same quarter of the prior year due to increased price competition and subsequent price discounting and increased sales incentives related to the challenging market conditions, including the increased number of foreclosed homes on the market at below average sales prices.

In addition, we had \$0.6 million and \$2.0 million of land sales for the three and six months ended March 31, 2009 compared to \$4.0 million and \$11.6 million for the three and six months ended March 31, 2008, respectively.

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**Gross (Loss) Profit.** Gross margin for three and six months ended March 31, 2009 were -16.6% and -4.2% (10.8% and 11.2% without impairments and abandonments) compared to gross margins of -39.9% and -29.4% (6.4% and 10.0% without impairments and abandonments) for the comparable periods of the prior year, respectively. Gross margins continued to be negatively impacted by weakness in the homebuilding industry. The improvement in gross margin was directly related to a reduction in non-cash pre-tax inventory impairments and option contract abandonments from \$187.9 million and \$356.4 million for the three and six months ended March 31, 2008 to \$51.7 million and \$64.5 million for the three and six months ended March 31, 2009, as well as from cost reductions related to our cost control initiatives including renegotiated vendor pricing where possible.

In our continued efforts to redeploy assets to more profitable endeavors, we executed several land sales in the comparable period of the prior year. We realized losses on land sales of \$0.2 million and \$31,000 for the three and six months ended March 31, 2009 compared to losses on land sales of \$3.3 million and \$1.0 million for the three and six months ended March 31, 2008, respectively.

**Selling, General and Administrative Expense.** Selling, general and administrative expense ("SG&A") totaled \$67.0 million and \$74.0 million in the quarters ended March 31, 2009 and 2008 and \$123.2 million and \$162.2 million for the six months ended March 31, 2009 and 2008, respectively. The 9.4% and 24.0% decreases in SG&A expense during the fiscal 2009 three and six month periods is primarily related to cost reductions realized as a result of our comprehensive review and realignment of our overhead structure in light of our reduced volume expectations, lower sales commissions from decreased revenues and decreased investigation-related costs and severance costs offset partially by approximately \$13 million in estimated payments related to the government investigations recorded in the three months ended March 31, 2009 (see Note 9 to the unaudited condensed consolidated financial statements). The three months ended March 31, 2009 and 2008 include \$2.8 million and \$7.5 million, respectively, of investigation related costs. For the six months ended March 31, 2009 and 2008, investigation-related costs were \$5.0 million and \$14.3 million. As of March 31, 2009, we had reduced our overall number of employees by 742, or 43%, as compared to March 31, 2008, or a cumulative reduction of 77% since September 30, 2006.

**Depreciation and Amortization.** Depreciation and amortization ("D&A") totaled \$4.3 million and \$8.1 million for the three and six months ended March 31, 2009. D&A totaled \$6.2 million and \$12.2 million for the three and six months ended March 31, 2008, respectively. The decrease in D&A during the periods presented is related to reduced spending on model furnishings and sales office improvements as a result of our strategic review of our communities and reduced depreciation related to the consolidation of divisional offices and the discontinuation of our mortgage services in fiscal 2008.

**Goodwill Impairment Charges.** The Company experienced a significant decline in its market capitalization during the three months ended December 31, 2008 (the first quarter of fiscal 2009). As of December 31, 2008, we considered these current and expected future market conditions and estimated that our remaining goodwill was impaired and recorded a pretax, non-cash goodwill impairment charge of \$16.1 million in the first quarter of fiscal 2009 related to our reporting units in Houston, Texas, Maryland and Nashville, Tennessee. During the quarter ended March 31, 2009, we concluded our goodwill impairment testing and confirmed the estimated impairment which was recorded in the first quarter. During the three and six months ended March 31, 2008, we recorded goodwill impairment charges totaling \$48.1 million related to our reporting units in Arizona, Southern California, New Jersey and Virginia. These charges are reported in Corporate and Unallocated and are not allocated to our homebuilding segments. As a result of these goodwill impairments, as of March 31, 2009, we had no goodwill remaining.

**Joint Venture Impairment Charges.** As a result of the further deterioration of the housing market in fiscal 2008 and the first half of fiscal 2009 and the settlement of guarantees under debt obligations of certain of our unconsolidated joint ventures, we recorded impairments in certain of our unconsolidated joint ventures totaling \$8.3 million and \$9.6 million during the three and six months ended March 31, 2009, respectively (see Note 3 to the unaudited condensed consolidated financial statements where further discussed). Impairments of investments in our unconsolidated joint ventures totaled \$31.7 million and \$44.6 million for the three and six months ended March 31, 2008, respectively. If these adverse market conditions continue or worsen, we may have to take further writedowns of our investments in these joint ventures that may have a material adverse effect on our financial position and results of operations.

**Income Taxes.** As we are in a cumulative loss position, as analyzed under SFAS 109, and based on the lack of sufficient objective evidence regarding the realization of our deferred tax assets in the foreseeable future, beginning with the fourth quarter of fiscal 2008, we have recorded a valuation allowance for substantially all of our deferred tax assets (see Note 8 to the unaudited condensed consolidated financial statements for additional information). Our tax benefits of \$12.0 million and \$14.0 million for the three and six months ended March 31, 2009, primarily resulted from the reduction in our liabilities for unrecognized tax benefits related to effectively settling examinations with tax authorities and the expiration of certain statutes of limitations, offset by interest expense on our remaining liabilities for unrecognized tax benefits. During the second quarter of fiscal 2009, \$9.3 million of unrecognized federal and state tax benefits were reversed due to settlements with tax authorities.

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The principal difference between our effective rate and the U.S. federal statutory rate for the three and six months ended March 31, 2009 is due to our valuation allowance, state income taxes incurred, the non-deductible goodwill impairment charge and adjustments related to our liabilities for unrecognized tax benefits discussed above. The principal difference between our effective rate and the U.S. federal statutory rate for the three and six months ended March 31, 2008 is due to state income taxes incurred and the non-deductible goodwill impairment charge.

### **Segment Results for the Three and Six Months Ended March 31, 2009 and 2008:**

**Homebuilding Revenues and Average Selling Price.** The table below summarizes homebuilding revenues and the average selling prices of our homes by reportable segment (\$ in thousands):

	Quarter Ended March 31,					
	Homebuilding Revenues			Average Selling Price		
	2009	2008	Change	2009	2008	Change
West	\$ 73,683	\$ 138,514	-46.8%	\$ 217.4	\$ 258.4	-15.9%
East	71,795	135,906	-47.2%	262.0	282.5	-7.3%
Southeast	40,834	73,149	-44.2%	210.5	242.2	-13.1%
Other	1,145	53,087	-97.8%	163.6	213.2	-23.3%
Total	\$ 187,457	\$ 400,656	-53.2%	\$ 230.3	\$ 255.5	-9.9%

	Six Months Ended March 31,					
	Homebuilding Revenues			Average Selling Price		
	2009	2008	Change	2009	2008	Change
West	\$ 176,595	\$ 288,537	-38.8%	\$ 227.0	\$ 252.3	-10.0%
East	144,986	308,746	-53.0%	266.0	267.1	-0.4%
Southeast	81,862	180,927	-54.8%	218.9	239.3	-8.5%
Other	14,425	114,233	-87.4%	262.3	218.8	19.9%
Total	\$ 417,868	\$ 892,443	-53.2%	\$ 238.5	\$ 249.4	-4.4%

Homebuilding revenues decreased for the three and six months ended March 31, 2009 compared to comparable periods of the prior year due to a 48.1% and 51.0% decrease in closings, respectively, related to reduced demand, a continued high rate of cancellations and excess capacity in both new and resale markets (including increased foreclosures available at lower prices) as investors continued to divest of prior home purchases and potential homebuyers have difficulty selling their homes and/or obtaining financing. In addition, credit tightening in the mortgage markets and a decline in consumer confidence in all of our markets further compounded the market deterioration during the three and six months ended March 31, 2009.

Homebuilding revenues in our West segment decreased 46.8% and 38.8%, respectively for the three and six months ended March 31, 2009 compared to the comparable periods of fiscal 2008. These decreases were driven by decreased closings of 36.8% and 31.8%, and decreased average sales prices of 15.9% and 10.0%. These decreases were particularly impacted by credit tightening in the mortgage markets, the existence of excess capacity in both new home and resale markets and a decline in consumer confidence in all of our markets in this segment.

For the quarter ended March 31, 2009, our East segment homebuilding revenues decreased by 47.2% driven by a 43.0% decline in closings and a 7.3% decrease in average selling price. For the six months ended March 31, 2009 compared to the prior year, the decrease in homebuilding revenues was driven by a 52.9% decrease in closings. These declines reflect the impact of excess capacity in the resale markets and competitive pricing pressures.

Our Southeast segment continued to be challenged by significant declines in demand, high cancellations and excess capacity in both the new home and resale markets, driving decreases in homebuilding revenues of 44.2% and 54.8% for the three and six months ended March 31, 2009 as compared to the same periods of the prior year. Home closings in the Southeast segment decreased from the prior year comparable periods by 35.8% and 50.5% for the three and six months ended March 31, 2009 due to deteriorating market conditions and competitive pressures. The decrease in closings was driven by higher cancellations, lower demand, higher available

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supply or new and resale inventory, increased competition and the tightening of credit requirements and decreased availability of mortgage options for potential homebuyers.

Homebuilding revenues in our Other Homebuilding markets significantly decreased as a result of our fiscal 2008 strategic decision to exit these markets and optimize our capital and resource allocation in markets better suited to enhance our long-term financial position. As of March 31, 2009, we had two homes in backlog related to these communities and 1 home for sale.

**Land and Lot Sales Revenues.** The table below summarizes land and lot sales revenues by reportable segment (\$ in thousands):

	Quarter Ended March 31,			Six Months Ended March 31,		
	2009	2008	Change	2009	2008	Change
West	\$ —	\$ 348	-100.0%	\$ 505	\$ 3,919	-87.1%
East	—	2,513	-100.0%	—	2,520	-100.0%
Southeast	—	460	-100.0%	45	460	-90.2%
Other	554	683	-18.9%	1,469	4,670	-68.5%
Total	\$ 554	\$ 4,004	-86.2%	\$ 2,019	\$ 11,569	-82.5%

Land and lot sales in our Other Homebuilding segment in both periods relate to our strategic decision to exit these markets. Land and lot sales revenues in our remaining segments relate to land and lots sold that did not fit within our homebuilding programs and strategic plans in these markets.

**Gross Profit (Loss).** Homebuilding gross profit is defined as homebuilding revenues less home cost of sales (which includes land and land development costs, home construction costs, capitalized interest, indirect costs of construction, estimated warranty costs, closing costs and inventory impairment and lot option abandonment charges). The following table sets forth our homebuilding gross profit (loss) and gross margin by reportable segment and total gross profit (loss) and gross margin (\$ in thousands):

	Quarter Ended March 31,			
	2009		2008	
	Gross (Loss) Profit	Gross Margin	Gross (Loss) Profit	Gross Margin
West	\$ (7,608)	-10.3%	\$ (34,037)	-24.6%
East	3,620	5.0%	(19,696)	-14.5%
Southeast	(6,545)	-16.0%	(35,060)	-47.9%
Other	(8,905)	n/m	(33,074)	-62.3%
Corporate & unallocated	(11,960)		(37,438)	
Total homebuilding	(31,398)	-16.7%	(159,305)	-39.8%
Land and lot sales	(244)	-44.0%	(3,319)	-82.9%
Financial services	312	100.0%	757	100.0%
Total	\$ (31,330)	-16.6%	\$ (161,867)	-39.9%

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	Six Months Ended March 31,			
	2009		2008	
	Gross Profit (Loss)	Gross Margin	Gross (Loss) Profit	Gross Margin
West	\$ 4,110	2.3%	\$ (64,920)	-22.5%
East	11,580	8.0%	(19,798)	-6.4%
Southeast	(1,613)	-2.0%	(49,095)	-27.1%
Other	(7,580)	-52.5%	(68,613)	-60.1%
Corporate & unallocated	(24,787)		(64,634)	
Total homebuilding	(18,290)	-4.4%	(267,060)	-29.9%
Land and lot sales	(31)	-1.5%	(1,040)	-9.0%
Financial services	800	100.0%	2,059	100.0%
Total	\$ (17,521)	-4.2%	\$ (266,041)	-29.4%

The increase in gross margins across all segments is primarily due to lower inventory impairments and lot option abandonment charges.

**Corporate and unallocated.** Corporate and unallocated costs include the amortization of capitalized interest and indirect construction costs. The decrease in corporate and unallocated costs relates primarily to reductions of \$13.6 million and \$25.7 million in the amortization of capitalized interest costs due to a lower capitalizable inventory base and an increase in disallowed interest for capitalization which is recorded as other expense in the unaudited condensed consolidated financial statements. The three and six months ended March 31, 2008 also included additional expenses related to the impairment of capitalized interest and indirect costs in connection with our impairment of inventory held for development.

**Land and Lot Sales Gross Profit (Loss).** The table below summarizes land and lot sales gross profit (loss) by reportable segment (\$ in thousands):

	Quarter Ended March 31,			Six Months Ended March 31,		
	2009	2008	Change	2009	2008	Change
	West	\$ (5)	\$ 24	-120.8%	\$ (54)	\$ 1,630
East	—	—	n/a	—	5	-100.0%
Southeast	—	99	-100.0%	39	99	-60.6%
Other	(239)	(3,442)	-93.1%	(16)	(2,774)	-99.4%
Total	\$ (244)	\$ (3,319)	-92.6%	\$ (31)	\$ (1,040)	-97.0%

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**Inventory Impairments.** The following tables set forth, by reportable segment, the inventory impairments and lot option abandonment charges recorded for the three and six months ended March 31, 2009 and 2008 (in thousands):

	Quarter Ended March 31,		Six Months Ended March 31,	
	2009	2008	2009	2008
Development projects and homes in process (Held for Development)				
West	\$19,654	\$ 56,616	\$27,487	\$ 115,968
East	3,721	29,008	6,624	51,964
Southeast	9,543	15,960	9,640	25,397
Other	49	8,606	93	17,043
Unallocated	2,164	8,848	3,274	16,737
Subtotal	\$35,131	\$ 119,038	\$47,118	\$ 227,109
Land Held for Sale				
West	\$ 2,796	\$ 804	\$ 2,957	\$ 804
East	307	9,171	307	9,171
Southeast	2,296	23,035	2,311	33,804
Other	8,777	22,643	8,858	45,314
Subtotal	\$14,176	\$ 55,653	\$14,433	\$ 89,093
Lot Option Abandonments				
West	\$ 64	\$ 786	\$ 76	\$ 831
East	1,506	5,310	1,716	7,408
Southeast	878	5,150	927	17,239
Other	—	1,923	194	14,692
Subtotal	\$ 2,448	\$ 13,169	\$ 2,913	\$ 40,170
Total	\$51,755	\$187,860	\$64,464	\$356,372

The inventory impaired during the three months ended March 31, 2009 represented 1,752 lots in 22 communities with an estimated fair value of \$43.4 million compared to 3,534 lots in 85 communities with an estimated fair value of \$205.5 million for the three months ended March 31, 2008. For the six months ended March 31, 2009, the inventory impaired represented 2,091 lots in 28 communities with an estimated fair value of \$66.7 million compared to 6,420 lots in 147 communities with an estimated fair value of \$392.0 million for the comparable period of the prior year. The impairments recorded on our held for development inventory, for all segments, primarily resulted from the continued decline in the homebuilding environment. During the current period, we determined that it was prudent to reduce sales prices or further increase sales incentives in certain markets in response to factors including competitive market conditions. Because the projected cash flows used to evaluate the fair value of inventory are significantly impacted by changes in market conditions including decreased sales prices, the change in sales prices and changes in absorption estimates lead to additional impairments in certain communities during the current quarter. In future periods, we may again determine that it is prudent to reduce sales prices, further increase sales incentives or reduce absorption rates which may lead to additional impairments, which could be material.

During the three and six months ended March 31, 2009, as a result of changing market conditions in the real estate industry and review of recent comparable transactions, certain of the Company's land held for sale was further written down to net realizable value, less estimated costs to sell. During the three and six months ended March 31, 2008, as a result of the Company's decision to re-allocate capital employed through strategic sales of select properties and through the exiting of certain markets no longer viewed as strategic and based on current estimated fair values, less costs to sell, as compared to book values, we recorded impairments on land held for sale. These impairments were primarily located in our exit markets in Ohio and Charlotte, North Carolina.

We also have access to land inventory through lot option contracts, which generally enable us to defer acquiring portions of properties owned by third parties and unconsolidated entities until we have determined whether to exercise our lot option. A majority of our lot option contracts require a non-refundable cash deposit or irrevocable letter of credit based on a percentage of the purchase price of the land for the right to acquire lots during a specified period of time at a certain price. Under lot option contracts, both with and without specific performance provisions, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Our obligation with respect to options with specific performance provisions is included in our consolidated balance sheets in other

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liabilities. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, letters of credit and other non-refundable amounts incurred, which aggregated approximately \$35.2 million at March 31, 2009. This amount includes non-refundable letters of credit of approximately \$5.7 million. The total remaining purchase price, net of cash deposits, committed under all options was \$329.3 million as of March 31, 2009. Only \$10.0 million of the net remaining purchase price contains specific performance clauses which may require us to purchase the land or lots upon the land seller meeting certain obligations.

In addition, we have also completed a strategic review of all of the markets within our homebuilding segments and the communities within each of those markets with an initial focus on the communities for which land has been secured with option purchase contracts. As a result of this review, we have determined the proper course of action with respect to a number of communities within each homebuilding segment was to abandon the remaining lots under option and to write-off the deposits securing the option takedowns, as well as preacquisition costs. In determining whether to abandon a lot option contract, we evaluate the lot option primarily based upon the expected cash flows from the property that is the subject of the option. If we intend to abandon or walk-away from a lot option contract, we record a charge to earnings in the period such decision is made for the deposit amount and any related capitalized costs associated with the lot option contract. We recorded lot option abandonment charges during the three and six months ended March 31, 2009 of \$2.4 million and \$2.9 million, respectively, compared to \$13.2 million and \$40.2 million related to the three and six months ended March 31, 2008, respectively. The abandonment charges relate to our decision to abandon certain option contracts that no longer fit in our long-term strategic plan and related to our prior year decision to exit certain markets.

### Unit Data by Segment

	New Orders, net			Quarter Ended March 31, Cancellation Rates		Closings		
	2009	2008	Change	2009	2008	2009	2008	Change
	West	511	791	-35.4%	33.4%	34.5%	339	536
East	438	556	-21.2%	26.4%	34.9%	274	481	-43.0%
Southeast	175	398	-56.0%	26.8%	20.6%	194	302	-35.8%
Other	5	211	-97.6%	37.5%	45.9%	7	249	-97.2%
Total	<u>1,129</u>	<u>1,956</u>	-42.3%	<u>29.8%</u>	<u>33.7%</u>	<u>814</u>	<u>1,568</u>	-48.1%

	New Orders, net			Six Months Ended March 31, Cancellation Rates		Closings		
	2009	2008	Change	2009	2008	2009	2008	Change
	West	764	1,246	-38.7%	39.8%	39.7%	778	1,140
East	639	869	-26.5%	31.7%	45.1%	545	1,156	-52.9%
Southeast	254	684	-62.9%	34.0%	26.9%	374	756	-50.5%
Other	17	409	-95.8%	46.9%	42.6%	55	522	-89.5%
Total	<u>1,674</u>	<u>3,208</u>	-47.8%	<u>36.1%</u>	<u>39.4%</u>	<u>1,752</u>	<u>3,574</u>	-51.0%

*New Orders and Backlog:* New orders, net of cancellations, decreased 42.3% to 1,129 units for the three months ended March 31, 2009 compared to 1,956 units for the same period in the prior year driven by weaker market conditions resulting in reduced demand and our fiscal 2008 decision to exit the markets included in the Other Homebuilding segment. For the six months ended March 31, 2009 and 2008, respectively, new orders, net of cancellations, decreased 47.8% to 1,674 units compared to 3,208 units for the same period in the prior year. The decrease net new orders in the six months ended March 31, 2009 was driven by the weaker market conditions and our first quarter 2009 decision, given the significant turmoil in the general economy and the mortgage markets in particular, to purposefully not reduce the sales prices of homes to increase home sales absorptions and our fiscal 2008 decision to exit the markets included in the Other Homebuilding segment. For the three months ended March 31, 2009, we experienced cancellation rates of 29.8% compared to 33.7% for the same period of the prior year. These cancellation rates in both periods reflect the continued challenging market environment which includes the inability of many potential homebuyers to sell their existing homes and obtain affordable financing. The increase in cancellation rates in our Southeast segment primarily relates to increased cancellations in certain of our Florida and Georgia markets challenged by excess new and resale inventory supply and increased foreclosures.

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Backlog reflects the number and value of homes for which the Company has entered into a sales contract with a customer but has not yet delivered the home. The aggregate dollar value of homes in backlog at March 31, 2009 of \$296.6 million decreased 55.9% from \$672.5 million at March 31, 2008, related to a decrease in the number of homes in backlog from 2,619 units at March 31, 2008 to 1,280 units at March 31, 2009. The decrease in the number of homes in backlog across all of our markets is driven primarily by the aforementioned market weakness and lower new orders in addition to our fiscal 2008 decision to exit the markets included in Other homebuilding below.

	Backlog at March 31,		
	2009	2008	Change
West	513	911	-43.7%
East	579	1,030	-43.8%
Southeast	186	418	-55.5%
Other	2	260	-99.2%
Total	<u>1,280</u>	<u>2,619</u>	-51.1%

Backlog has declined in all of our homebuilding segments due primarily to the significant downturn in our industry, the reduction in the availability of mortgage credit for our potential homebuyers and our decision to sell certain large projects and exit certain markets. As the availability of mortgage loans declines and the inventory of new and used homes remains at elevated levels, buyers of homes in backlog may have difficulty selling their homes, which generally results in slower new sales absorptions and high cancellation rates. Each cancellation results in a reduction of backlog. As a result, increased cancellation rates result in reductions to backlog. Continued reduced levels of backlog will produce less revenue in the future which could also result in additional asset impairment charges and lower levels of liquidity.

**Derivative Instruments and Hedging Activities.** We are exposed to fluctuations in interest rates. From time to time, we enter into derivative agreements to manage interest costs and hedge against risks associated with fluctuating interest rates. As of March 31, 2009, we were not a party to any such derivative agreements. We do not enter into or hold derivatives for trading or speculative purposes.

**Liquidity and Capital Resources.** Our sources of cash liquidity include, but are not limited to, cash from operations, amounts available under credit facilities, proceeds from senior notes and other bank borrowings, the issuance of equity securities and other external sources of funds. Our short-term and long-term liquidity depend primarily upon our level of net income, working capital management (cash, accounts receivable, accounts payable and other liabilities) and bank borrowings.

Consistent with the seasonal nature of our business, we used \$24.8 million and \$180.7 million in cash during the first six months of fiscal 2009 and 2008, respectively, primarily for the payment of liabilities incurred during the fourth quarter of the prior fiscal year and the repayment of other secured notes payable. As of March 31, 2009, our liquidity position consisted of \$559.5 million in cash and cash equivalents.

For the six months ended March 31, 2009, net cash provided by operating activities was \$16.6 million primarily due to income tax refunds totaling \$168.4 million offset by significant reductions in trade accounts payable and other liabilities. For the six months ended March 31, 2008, net cash used in operating activities was \$27.6 million. Based on the applicable year's closings, as of March 31, 2009, our land bank includes a 5.9 year supply of owned and optioned land/lots for current and future development. Our ending land bank includes 34,407 owned and optioned lots and represents 13.2% and 36.5% decreases from the land bank as of September 30, 2008 and March 31, 2008, respectively. As the homebuilding market declined, we were successful in significantly reducing our land bank through the abandonment of lot option contracts, the sale of land assets not required in our homebuilding program and through the sale of new homes. The decrease in the number of owned lots in our land bank from March 31, 2008 to March 31, 2009 is related to our decision to eliminate non-strategic positions to align our land supply with our expectations for future home closings.

Net cash used in investing activities was \$18.9 million compared to \$14.0 million for the six months ended March 31, 2009 and 2008, respectively, as we were required to increase the amount of cash restricted under our amended Secured Revolving Credit Facility during fiscal 2009.

Net cash used in financing activities was \$22.5 million for the six months ended March 31, 2009 related primarily to the repayment of certain secured notes payable and model home financing obligations and the payment of debt issuance costs. Net cash used in financing activities was \$139.0 million for the comparable prior of fiscal 2008 and consisted primarily of the repayment of \$99.8 million of other secured notes payable and \$21.1 million of debt issuance costs.

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As the homebuilding markets have contracted, we have continued to decrease the size of our business through a reduction in personnel and the closeout of additional communities. We have continued our focus on cash generation and preservation to ensure we have the required liquidity to fund our operations as we attempt to build availability under our Secured Revolving Credit Facility.

We fulfill our short-term cash requirements with cash generated from our operations and funds available from our Secured Revolving Credit Facility, if any. There were no amounts outstanding under the Secured Revolving Credit Facility at March 31, 2009 or September 30, 2008; however, we had \$48.6 million and \$61.2 million of letters of credit outstanding under the Secured Revolving Credit Facility at March 31, 2009 and September 30, 2008, respectively. We believe that the cash and cash equivalents at March 31, 2009 of \$559.5 million, cash generated from our operations and availability, if any, under our Secured Revolving Credit Facility will be adequate to meet our liquidity needs during fiscal 2009. However, if we are required to fund all of the potential obligations associated with lower levels of stockholders' equity and joint venture defaults, we would have cash requirements totaling approximately \$234 million which would significantly reduce our overall liquidity.

As a result of these issues, in addition to our continued focus on generation and preservation of cash, we are also focused on increasing our stockholders' equity and reducing our leverage. In order to accomplish this goal, we will likely need to issue new common or preferred equity. Any new issuance may take the form of public or private offerings for cash, equity issued to consummate acquisitions of assets or equity issued in exchange for a portion of our outstanding debt. We may also from time to time seek to retire or purchase our outstanding debt through cash purchases and/or exchanges for equity or other debt securities, in open market purchases, privately negotiated transactions or otherwise. In addition, any material variance from our projected operating results or land investments, or investments in or acquisitions of businesses, amounts paid to resolve investigations with governmental entities and litigation or our inability to increase our availability under our Secured Revolving Credit Facility, as described in more detail below, could require us to obtain additional equity or debt financing. Any such equity transactions or debt financing may be on terms less favorable or at higher costs than our current financing costs, depending on future market conditions and other factors including any possible downgrades in our credit ratings or adverse commentaries issued by rating agencies in the future. Also, there can be no assurance that we will be able to complete any of these transactions on favorable terms or at all.

## Borrowings

At March 31, 2009 and September 30, 2008 we had the following long-term debt (*in thousands*):

	<u>Maturity Date</u>	<u>March 31, 2009</u>	<u>September 30, 2008</u>
Secured Revolving Credit Facility	July 2011	\$ —	\$ —
8 5/8% Senior Notes*	May 2011	180,000	180,000
8 3/8% Senior Notes*	April 2012	340,000	340,000
6 1/2% Senior Notes*	November 2013	200,000	200,000
6 7/8% Senior Notes*	July 2015	350,000	350,000
8 1/8% Senior Notes*	June 2016	275,000	275,000
4 5/8% Convertible Senior Notes*	June 2024	180,000	180,000
Junior subordinated notes	July 2036	103,093	103,093
Other secured notes payable	Various Dates	34,087	50,618
Model home financing obligations	Various Dates	52,532	71,231
Unamortized debt discounts		(2,331)	(2,565)
Total		<u>\$ 1,712,381</u>	<u>\$ 1,747,377</u>

\* Collectively, the "Senior Notes"

**Secured Revolving Credit Facility** —On August 7, 2008, we entered into an amendment to our Secured Revolving Credit Facility which changed the size, covenants and pricing for the facility. The size of the Secured Revolving Credit Facility was reduced from \$500 million to \$400 million and is subject to further reductions to \$250 million and \$100 million if our consolidated tangible net worth ("Tangible Net Worth", defined in the agreement as stockholders' equity less intangible assets as defined) falls below \$350 million and \$250 million, respectively. As of September 30, 2008, our consolidated tangible net worth of \$314.4 million resulted in a reduction of the facility size to \$250 million.

On May 4, 2009, the Company entered into a Third Limited Waiver related to the Company's Secured Revolving Credit Facility. During the waiver period, which extends to the earlier of August 15, 2009 or the filing of the Company's financial statements for the period ending June 30, 2009, the waiver agreement 1) preserves the facility size at \$150 million, rather than shrinking to \$100 million as required based on the Company's reported Tangible Net Worth of \$143.8 million as of March 31, 2009, 2) maintains, at the current level, the collateral

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coverage in the secured borrowing base at 4.5x, 3) maintains the current facility pricing at the Eurodollar Margin of 5.0% and 4) waives a potential breach of an investments covenant in the facility. Absent the waiver agreement, the facility size, collateral level and Eurodollar Margin for borrowing would have been \$100 million, 6.0x, and 5.5% respectively, based on our Tangible Net Worth of \$143.8 million at March 31, 2009.

In exchange for the waiver, the Company has agreed to not borrow under the facility and to maintain the current level of \$11.3 million of restricted cash in the secured borrowing base during the waiver period. The Company continues to be permitted to issue new Letters of Credit under the facility. At the end of the waiver period, the facility size, collateral level, and Eurodollar Margin for borrowing will be determined by the terms and conditions of the current facility.

The investments covenant restricts the Company's ability to make investments in joint ventures, non-guarantor subsidiaries, guaranty obligations of debt, and certain other investments ("Investments") that exceed 35% of Tangible Net Worth. At March 31, 2009, the Company's Investments were \$63.1 million representing 44% of Tangible Net Worth. The waiver agreement suspends required compliance with this covenant and allows for additional Investments not to exceed \$55 million during the waiver period. The investments covenant under the Secured Revolving Credit Facility encompasses a substantially broader definition of investment activity than the Permitted Investment and Restricted Payment covenants under the Company's Senior Notes.

For the balance of the year, the Company has no plans to enter into new joint ventures. The Company expects to incur additional Investments that may arise from 1) ongoing operations of the joint venture projects, 2) repayment of certain joint venture debt obligations, or 3) potential funding of existing guarantees. The \$55 million limitation on such Investments is our estimate of the maximum amount the Company could be required to fund, although the Company does not believe such level of funding will be necessary.

We have the option to elect two types of loans under the Secured Revolving Credit Facility which incur interest as applicable based on either the Alternative Base Rate or the Applicable Eurodollar Margin (both defined in the Secured Revolving Credit Facility). The Secured Revolving Credit Facility contains various operating and financial covenants. Substantially all of our significant subsidiaries are guarantors of the obligations under the Secured Revolving Credit Facility (see Note 12 to the unaudited condensed consolidated financial statements).

There were no amounts outstanding under the Secured Revolving Credit Facility at March 31, 2009 or September 30, 2008; however, we had \$48.6 million and \$61.2 million of letters of credit outstanding under the Secured Revolving Credit Facility at March 31, 2009 and September 30, 2008, respectively.

Availability under the facility continues to be subject to satisfaction of a secured borrowing base. The August 2008 amendment provided that the book value of the assets securing the facility must exceed 3.0x the outstanding loans and letters of credit. Such coverage level increases to 4.5x and 6.0x to the extent the facility size is reduced to \$250 million or \$100 million, respectively. As a result of the increase in collateral coverage to 4.5x during the first quarter of fiscal 2009 and through the Third Limited Waiver period, we have been required to provide cash in addition to pledged real estate assets to supplementally collateralize our outstanding letters of credit. As of March 31, 2009, for this collateralization we had provided \$11.3 million of cash, which is included in restricted cash on the unaudited condensed consolidated balance sheet as of March 31, 2009. We intend to add additional real estate assets to the borrowing base over the next twelve months, which is anticipated to provide additional borrowing base availability after providing for the return of the restricted cash. Assets in the borrowing base, and therefore any future availability, are subject to required appraisals and other bank review procedures. The availability under our facility is not impacted by any actions of the respective credit rating agencies. The value of the real estate assets securing our borrowing base could decline should the downturn in our industry worsen. Any reduction in value could result in a reduction in available borrowing capacity under the Secured Revolving Credit Facility.

The interest margins under the Secured Revolving Credit Facility are based on the facility size. Following the aforementioned August 2008 amendment, the Eurodollar Margin under the facility was set at 4.5%. With the facility size reduction to \$250 million, the Eurodollar Margin increased to 5.0% and would, upon a facility size reduction to \$100 million, increase to 5.5%. As a result of the reduction in facility size to \$250 million, and further reduction to \$150 million by the Third Limited Waiver, the current Eurodollar Margin is now 5.0%.

The financial maintenance covenants pertaining to the leverage ratio, interest coverage ratio and land inventory were eliminated as part of the August amendment. The remaining financial maintenance covenants are a minimum tangible net worth covenant (which requires us to have at least \$100 million of consolidated tangible net worth) and a minimum liquidity covenant. The minimum liquidity covenant, which is applicable for so long as our interest coverage ratio is less than 1.75x, requires us to maintain either (a) \$120 million

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of unrestricted cash and borrowing base availability or (b) a ratio (the “Adjusted Coverage Ratio”) of adjusted cash flow from operations (defined as cash flow from operations plus interest incurred) to interest incurred of at least 1.75x. The following table sets forth our financial covenant requirements under our Secured Revolving Credit Facility and our compliance with such covenants as of March 31, 2009:

<u>Financial Covenant</u>	<u>Covenant Requirement</u>	<u>Actual</u>
Consolidated Tangible Net Worth	> \$100 million	\$143.8 million
Minimum Liquidity	> \$120 million of unrestricted cash and borrowing base availability OR Adjusted Coverage Ratio > 1.75x	\$559.5 million of unrestricted cash and borrowing base availability and Adjusted Coverage Ratio of 3.8x

Further deteriorations in the housing market generally, or in our business particularly, could result in additional inventory impairments or operational losses which could also result in our having to seek additional amendments or waivers under the Secured Revolving Credit Facility. To the extent that we default under any of these covenants and we are unable to obtain waivers, the lenders under the Secured Revolving Credit Facility could accelerate our obligations thereunder or require us to post cash collateral to support our existing letters of credit. Any such acceleration may result in an event of default under our Senior Notes described below and would permit the holders thereof to accelerate our obligations under the Senior Notes.

**Senior Notes** - The Senior Notes are unsecured obligations ranking pari passu with all other existing and future senior indebtedness. Substantially all of our significant subsidiaries are full and unconditional guarantors of the Senior Notes and are jointly and severally liable for obligations under the Senior Notes and the Secured Revolving Credit Facility. Each guarantor subsidiary is a 100% owned subsidiary of Beazer Homes.

The indentures under which the Senior Notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At March 31, 2009, under the most restrictive covenants of each indenture, no portion of our retained earnings was available for cash dividends or for share repurchases. The indentures provide that, in the event of defined changes in control or if our consolidated tangible net worth falls below a specified level or in certain circumstances upon a sale of assets, we are required to offer to repurchase certain specified amounts of outstanding Senior Notes. Specifically, each indenture (other than the indenture governing the convertible Senior Notes) requires us to offer to purchase 10% of each series of Senior Notes at par if our consolidated tangible net worth (defined as stockholders’ equity less intangible assets as defined) is less than \$85 million at the end of any two consecutive fiscal quarters. Such offer need not be made more than twice in any four-quarter period. If triggered and fully subscribed, this could result in our having to purchase 10% of outstanding notes one or more times, in an amount equal to \$134.5 million for the first time, based on the principal outstanding at March 31, 2009.

In June 2004, we issued \$180 million aggregate principal amount of 4 5/8% Convertible Senior Notes due 2024 (the “Convertible Senior Notes”). The Convertible Senior Notes are not convertible into cash. We may at our option redeem for cash the Convertible Senior Notes in whole or in part at any time on or after June 15, 2009 at specified redemption prices. Holders have the right to require us to purchase all or any portion of the Convertible Senior Notes for cash on June 15, 2011, June 15, 2014 and June 15, 2019. In each case, we will pay a purchase price equal to 100% of the principal amount of the Convertible Senior Notes to be purchased plus any accrued and unpaid interest, if any, and any additional amounts owed, if any to such purchase date.

On October 26, 2007, we obtained consents from holders of our Senior Notes to approve amendments of the indentures under which the Senior Notes were issued. These amendments restrict our ability to secure additional debt in excess of \$700 million until certain conditions are met and enable us to invest up to \$50 million in joint ventures. The consents also provided us with a waiver of any and all defaults under the Senior Notes that may have occurred on or prior to May 15, 2008 relating to filing or delivering annual and quarterly financial statements. Fees and expenses related to obtaining these consents totaled approximately \$21 million. Such fees and expenses have been deferred, and included in Other Assets in the unaudited condensed consolidated financial statements, and are being amortized as an adjustment to interest expense in accordance with EITF 96-19 — *Debtor’s Accounting for a Modification or Exchange of Debt Instruments*.

**Junior Subordinated Notes** — On June 15, 2006, we completed a private placement of \$103.1 million of unsecured junior subordinated notes which mature on July 30, 2036 and are redeemable at par on or after July 30, 2011 and pay a fixed rate of 7.987% for the first ten years ending July 30, 2016. Thereafter, the securities have a floating interest rate equal to three-month LIBOR plus 2.45% per annum, resetting quarterly. These notes were issued to Beazer Capital Trust I, which simultaneously issued, in a private transaction, trust preferred securities and common securities with an aggregate value of \$103.1 million to fund its purchase of these

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notes. The transaction is treated as debt in accordance with GAAP. The obligations relating to these notes and the related securities are subordinated to the Secured Revolving Credit Facility and the Senior Notes.

**Other Secured Notes Payable** — We periodically acquire land through the issuance of notes payable. As of March 31, 2009 and September 30, 2008, we had outstanding notes payable of \$34.1 million and \$50.6 million, respectively, primarily related to land acquisitions. These notes payable expire at various times through 2011 and had fixed and variable rates ranging from 3.2% to 9.0% at March 31, 2009. These notes are secured by the real estate to which they relate. As of March 31, 2009, we had negotiated a reduced payoff of one of our secured notes payable and recorded a net \$3.6 million gain on debt extinguishment.

The agreements governing these secured notes payable contain various affirmative and negative covenants. Certain of these secured notes payable agreements contain covenants that require us to maintain minimum levels of stockholders' equity (or some variation, such as tangible net worth) or maximum levels of debt to stockholders' equity. Although the specific covenants and related definitions vary among the agreements, further reductions in our stockholders' equity, absent the receipt of waivers, may cause breaches of some or all of these covenants. Breaches of certain of these covenants, to the extent they lead to an acceleration, may result in cross defaults under our senior notes. The dollar value of these secured notes payable agreements containing stockholders' equity-related covenants totaled \$22.7 million at March 31, 2009. There can be no assurance that we will be able to obtain any future waivers or amendments that may become necessary without significant additional cost or at all. In each instance, however, a covenant default can be cured by repayment of the indebtedness.

**Model Home Financing Obligations** - Due to a continuing interest in certain model home sale-leaseback transactions, we have recorded \$52.5 million and \$71.2 million of debt as of March 31, 2009 and September 30, 2008, respectively, related to these "financing" transactions in accordance with SFAS 98 (as amended), *Accounting for Leases*. These model home transactions incur interest at a variable rate of one-month LIBOR plus 450 basis points, 5.0% as of March 31, 2009, and expire at various times through 2015.

**Stock Repurchases and Dividends**— On November 18, 2005, as part of an acceleration of Beazer Homes' comprehensive plan to enhance stockholder value, our Board of Directors authorized an increase in our stock repurchase plan to ten million shares of our common stock. The plan provides that shares may be purchased for cash in the open market, on the NYSE, or in privately negotiated transactions. We did not repurchase any shares in the open market during the three months ended March 31, 2009 or 2008. At March 31, 2009, there are approximately 5.4 million additional shares available for purchase pursuant to the plan. However, in December 2007, we suspended our repurchase program and any resumption of such program will be at the discretion of the Board of Directors and as allowed by our debt covenants and is unlikely in the foreseeable future. In addition, the indentures under which our senior notes were issued contain certain restrictive covenants, including limitations on share repurchases and the payment of dividends. At March 31, 2009, under the most restrictive covenants of each indenture, none of our retained earnings was available for cash dividends or share repurchases.

**Off-Balance Sheet Arrangements and Aggregate Contractual Commitments.** At March 31, 2009, we controlled 34,407 lots (a 6-year supply based on the last twelve months' closings). We owned 80%, or 27,489 lots, and 6,918 lots, 20%, were under option contracts which generally require the payment of cash or the posting of a letter of credit for the right to acquire lots during a specified period of time at a certain price. We historically have attempted to control a portion of our land supply through options. As a result of the flexibility that these options provide us, upon a change in market conditions we may renegotiate the terms of the options prior to exercise or terminate the agreement. Under option contracts, both with and without specific performance provisions, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Our obligation with respect to options with specific performance provisions is included in our consolidated balance sheets in other liabilities. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, letters of credit and other non-refundable amounts incurred, which aggregated approximately \$35.2 million at March 31, 2009. This amount includes non-refundable letters of credit of \$5.7 million. The total remaining purchase price, net of cash deposits, committed under all options was \$329.3 million as of March 31, 2009. Only \$10.0 million of the total remaining purchase price, net of cash deposits, contains specific performance clauses which may require us to purchase the land or lots upon the land seller meeting certain obligations.

We expect to exercise substantially all of our remaining option contracts with specific performance obligations and, subject to market conditions, most of our option contracts without specific performance obligations. Various factors, some of which are beyond our control, such as market conditions, weather conditions and the timing of the completion of development activities, will have a significant impact on the timing of option exercises or whether land options will be exercised.

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We have historically funded the exercise of land options through a combination of operating cash flows and borrowings under our credit facilities. We expect these sources to continue to be adequate to fund anticipated future option exercises. Therefore, we do not anticipate that the exercise of our land options will have a material adverse effect on our liquidity.

Certain of our option contracts are with sellers who are deemed to be Variable Interest Entities (“VIEs”) under FASB Interpretation No. 46 (Revised), *Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51* (“FIN 46R”). We have determined that we are the primary beneficiary of certain of these option contracts. Our risk is generally limited to the option deposits that we pay, and creditors of the sellers generally have no recourse to the general credit of the Company. Although we do not have legal title to the optioned land, for those option contracts for which we are the primary beneficiary, we are required to consolidate the land under option at fair value. We believe that the exercise prices of our option contracts approximate their fair value. Our consolidated balance sheets at March 31, 2009 and September 30, 2008 reflect consolidated inventory not owned of \$53.0 million and \$106.7 million, respectively. We consolidated \$42.8 million and \$46.9 million of lot option agreements as consolidated inventory not owned pursuant to FIN 46R as of March 31, 2009 and September 30, 2008, respectively. In addition, as of March 31, 2009 and September 30, 2008, we recorded \$10.3 million and \$59.8 million, respectively, of land under the caption consolidated inventory not owned related to lot option agreements in accordance with SFAS 49, *Product Financing Arrangements*. Obligations related to consolidated inventory not owned totaled \$31.6 million at March 31, 2009 and \$70.6 million at September 30, 2008. The difference between the balances of consolidated inventory not owned and obligations related to consolidated inventory not owned represents cash deposits paid under the option agreements.

We participate in a number of land development joint ventures in which we have less than a controlling interest. We enter into joint ventures in order to acquire attractive land positions, to manage our risk profile and to leverage our capital base. Our joint ventures are typically entered into with developers, other homebuilders and financial partners to develop finished lots for sale to the joint venture’s members and other third parties. We account for our interest in these joint ventures under the equity method. Our consolidated balance sheets include investments in joint ventures totaling \$31.6 million and \$33.1 million at March 31, 2009 and September 30, 2008, respectively.

Our joint ventures typically obtain secured acquisition and development financing. At March 31, 2009, our unconsolidated joint ventures had borrowings outstanding totaling \$488.7 million, of which \$327.9 million related to one joint venture in which we are a 2.58% partner. Generally, we and our joint venture partners have provided varying levels of guarantees of debt or other obligations of our unconsolidated joint ventures. At March 31, 2009, we had repayment guarantees of \$20.2 million and loan-to-value maintenance guarantees of \$8.4 million of debt of unconsolidated joint ventures. Several of our joint ventures are in default under their debt agreements at March 31, 2009 or are at risk of defaulting. To the extent that we are unable to reach satisfactory resolutions, we may be called upon to perform under our applicable guarantees. As of March 31, 2009, we had accrued \$5.3 million related to guarantees for the release of which we are in negotiations with the applicable lenders. See Note 3 to the unaudited condensed consolidated financial statements.

We had total outstanding letters of credit and performance bonds of approximately \$48.6 million and \$309.3 million, respectively, at March 31, 2009 related principally to our obligations to local governments to construct roads and other improvements in various developments. Total outstanding letters of credit includes approximately \$6.2 million related to our land option contracts discussed above.

**Recently Adopted Accounting Pronouncements.** In September 2006, the FASB issued SFAS 157, *Fair Value Measurements*. SFAS 157 provides guidance for using fair value to measure assets and liabilities. SFAS 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value but does not expand the use of fair value in any new circumstances. SFAS 157 includes provisions that require expanded disclosure of the effect on earnings for items measured using unobservable data. SFAS 157 is effective for fiscal years beginning after November 15, 2007 and for interim periods within those fiscal years. In February 2008, the FASB issued FASB Staff Position (“FSP”) 157-2, *Effective Date of FASB Statement No. 157*, delaying the effective date of certain non-financial assets and liabilities to fiscal periods beginning after November 15, 2008. The adoption of SFAS 157 did not have a material impact on our consolidated financial condition and results of operations.

In February 2007, the FASB issued SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115*. SFAS 159 permits companies to measure certain financial instruments and other items at fair value. We have not elected the fair value option applicable under SFAS 159.

**Recent Accounting Pronouncements Not Yet Adopted.** In December 2007, the FASB issued SFAS 141 (revised 2007), *Business Combinations*. SFAS 141R amends and clarifies the accounting guidance for the acquirer’s recognition and measurement of assets

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acquired, liabilities assumed and noncontrolling interests of an acquiree in a business combination. SFAS 141R is effective for any acquisitions completed by the Company after September 30, 2009.

In December 2007, the FASB issued SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements — an Amendment of ARB 51*. SFAS 160 requires that a noncontrolling interest (formerly minority interest) in a subsidiary be classified as equity and the amount of consolidated net income specifically attributable to the noncontrolling interest be included in the consolidated financial statements. SFAS 160 is effective for our fiscal year beginning October 1, 2009 and its provisions will be applied retrospectively upon adoption. We are currently evaluating the impact of adopting SFAS 160 on our consolidated financial condition and results of operations.

In June 2008, the FASB issued FSP Emerging Issues Task Force (“EITF”) Issue No 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions are Participating Securities*. FSP 03-6-1 clarifies that non-vested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and are to be included in the computation of earnings per share under the two-class method described in SFAS 128, *Earnings per Share* and requires that prior period EPS and share data be restated retrospectively for comparability. The Company grants restricted shares under a share-based compensation plan that qualify as participating securities. FSP 03-6-1 is effective for the Company beginning October 1, 2009 with early adoption prohibited. We are currently evaluating the impact of adopting FSP 03-6-1 on our consolidated financial statements.

In May 2008, the FASB issued FSP APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion (Including Partial Cash Settlement)*. FSP APB 14-1 applies to convertible debt instruments that have a “net settlement feature” permitting settlement partially or fully in cash upon conversion. FSP APB 14-1 is effective for the Company beginning October 1, 2009 and the provisions of FSP APB 14-1 are required to be applied retrospectively to all periods presented. Due to the fact that the Company’s convertible securities cannot be settled in cash upon conversion, the adoption of FSP APB 14-1 is not expected to have a material impact on our consolidated financial condition and results of operations.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to a number of market risks in the ordinary course of business. Our primary market risk exposure relates to fluctuations in interest rates. We do not believe that our exposure in this area is material to cash flows or earnings. As of March 31, 2009, we had \$75.2 million of variable rate debt outstanding. Based on our average outstanding borrowings under our variable rate debt at March 31, 2009, a one-percentage point increase in interest rates would negatively impact our annual pre-tax earnings by approximately \$0.8 million.

### **Item 4. Controls and Procedures**

#### ***Disclosure Controls and Procedures***

As of the end of the period covered by this report, an evaluation was performed under the supervision and with the participation of the Company’s management, including the Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), of the effectiveness of the Company’s disclosure controls and procedures as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934. Based on that evaluation, the CEO and CFO concluded that the Company’s disclosure controls and procedures were effective as of March 31, 2009.

Attached as exhibits to this Quarterly Report on Form 10-Q are certifications of our CEO and CFO, which are required by Rule 13a-14 of the Act. This Disclosure Controls and Procedures section includes information concerning management’s evaluation of disclosure controls and procedures referred to in those certifications and, as such, should be read in conjunction with the certifications of the CEO and CFO.

#### ***Changes in Internal Control Over Financial Reporting***

There have been no changes in the Company’s internal controls over financial reporting during the quarter ended March 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

#### **Investigations**

*United States Attorney, State and Federal Agency Investigations.* Beazer Homes and its mortgage subsidiary, Beazer Mortgage Corporation (“Beazer Mortgage”), have been under criminal and civil investigations by the United States Attorney’s Office in the

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Western District of North Carolina (“the U.S. Attorney”) and other state and federal agencies concerning the matters that were the subject of the independent investigation by the Audit Committee of the Beazer Homes’ Board of Directors (the “Investigation”) completed in May 2008. We have had several discussions with the U.S. Attorney to negotiate a resolution of its investigation. Although we have not reached an agreement on such a resolution and can not reasonably estimate the Company’s total liability, we recognized expense in the quarter ended March 31, 2009 of approximately \$11 million and \$2 million to cover payments that we believe are probable and reasonably estimable for fiscal years 2009 and 2010, respectively. Our negotiations with the U.S. Attorney are continuing and we believe that future additional payments are reasonably possible. While there is no agreement with the U.S. Attorney, such negotiations have included the possibility of future payments linked to the Company’s ability to return to generating positive earnings and a limit on total liability of approximately \$50 million over 60 months. There can be no assurance that we can conclude an agreement with the U.S. Attorney on these terms or on any financial or non-financial terms that are mutually acceptable.

*Independent Investigation.* In May 2008, the Audit Committee of the Beazer Homes Board of Directors completed the Investigation of Beazer Homes’ mortgage origination business, including, among other things, investigating certain evidence that the Company’s subsidiary, Beazer Mortgage, violated U.S. Department of Housing and Urban Development (“HUD”) regulations and may have violated certain other laws and regulations in connection with certain of its mortgage origination activities. The Investigation also found evidence that employees of the Company’s Beazer Mortgage subsidiary violated certain federal and/or state regulations, including HUD regulations. Areas of concern uncovered by the Investigation included our former practices in the areas of: down payment assistance program; the charging of discount points; the closure of certain HUD Licenses; closing accommodations; and the payment of a number of realtor bonuses and decorator allowances in certain Federal Housing Administration (“FHA”) insured loans and non-FHA conventional loans originated by Beazer Mortgage dating back to at least 2000. The Investigation also uncovered limited improper practices in relation to the issuance of a number of non-FHA Stated Income Loans. We reviewed the loan documents and supporting documentation, and determined that the assets were effectively isolated from the seller and its creditors (even in the event of bankruptcy). Based on that information, management continues to believe that sale accounting at the time of the transfer of the loans to third parties was appropriate. In addition, the Investigation identified accounting and financial reporting errors and irregularities which resulted in the restatement of certain prior period consolidated financial statements which was included in our 2007 Form 10-K filed with the SEC on May 12, 2008.

## **Litigation**

*Securities Class Action.* Beazer Homes and certain of our current and former officers (the “Individual Defendants”), as well as our Independent Registered Accounting Firm, are named as defendants in putative class action securities litigation pending in the United States District Court for the Northern District of Georgia. Three separate complaints were initially filed between March 29 and May 21, 2007. The cases were subsequently consolidated by the court and the court appointed Glickenhau & Co. and Carpenters Pension Trust Fund for Northern California as lead plaintiffs. On June 27, 2008, lead plaintiffs filed an Amended and Consolidated Class Action Complaint for Violation of the Federal Securities Laws (“Consolidated Complaint”), which purports to assert claims on behalf of a class of persons and entities that purchased or acquired the securities of Beazer Homes during the period January 27, 2005 through May 12, 2008. The Consolidated Complaint asserts a claim against the defendants under Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder for allegedly making materially false and misleading statements regarding our business and prospects, including, among other things, alleged misrepresentations and omissions related to alleged improper lending practices in our mortgage origination business, alleged misrepresentations and omissions related to improper revenue recognition and other accounting improprieties and alleged misrepresentations and omissions concerning our land investments and inventory. The Consolidated Complaint also asserts claims against the Individual Defendants under Sections 20(a) and 20A of the Exchange Act. Lead plaintiffs seek a determination that the action is properly maintained as a class action, an unspecified amount of compensatory damages and costs and expenses, including attorneys’ fees. On November 3, 2008, the Company and the other defendants filed motions to dismiss the Consolidated Complaint. Briefing of the motion was completed in March 2009. The Company reached an agreement with lead plaintiffs to settle the lawsuit. Under the terms of the proposed settlement, the lawsuit will be dismissed with prejudice, and the Company and all other defendants do not admit any liability and will receive a full and complete release of all claims asserted against them in the litigation, in exchange for the payment of an aggregate of \$30.5 million. The monetary payment to be made on behalf of the Company and the individual defendants will be funded from insurance proceeds. As a result, there will be no financial contribution by the Company. The agreement is subject to court approval.

*Derivative Shareholder Actions.* Certain of Beazer Homes’ current and former officers and directors were named as defendants in a derivative shareholder suit filed on April 16, 2007 in the United States District Court for the Northern District of Georgia. The complaint also names Beazer Homes as a nominal defendant. The complaint, purportedly on behalf of Beazer Homes, alleges that the defendants (i) violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; (ii) breached their fiduciary duties and misappropriated information; (iii) abused their control; (iv) wasted corporate assets; and (v) were unjustly enriched. Plaintiffs seek

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an unspecified amount of compensatory damages against the individual defendants and in favor of Beazer Homes. An additional lawsuit was filed subsequently on August 29, 2007 in the United States District Court for the Northern District of Georgia asserting similar factual allegations. The two Georgia derivative actions have been consolidated, and the plaintiffs have filed an amended, consolidated complaint. On November 21, 2008, the Company and the other defendants filed motions to dismiss the amended consolidated complaint. Briefing of the motion was completed in February 2009. The defendants intend to vigorously defend against these actions.

*ERISA Class Actions.* On April 30, 2007, a putative class action complaint was filed on behalf of a purported class consisting of present and former participants and beneficiaries of the Beazer Homes USA, Inc. 401(k) Plan. The complaint was filed in the United States District Court for the Northern District of Georgia. The complaint alleges breach of fiduciary duties, including those set forth in the Employee Retirement Income Security Act (“ERISA”), as a result of the investment of retirement monies held by the 401(k) Plan in common stock of Beazer Homes at a time when participants were allegedly not provided timely, accurate and complete information concerning Beazer Homes. Four additional lawsuits were filed subsequently on May 11, 2007, May 14, 2007, June 15, 2007 and July 27, 2007 in the United States District Court for the Northern District of Georgia making similar allegations. The court consolidated these five lawsuits, and on June 27, 2008, the plaintiffs filed a consolidated amended complaint. The consolidated amended complaint names as defendants Beazer Homes, our chief executive officer, certain current and former directors of the Company, including the members of the Compensation Committee of the Board of Directors, and certain employees of the Company who acted as members of the Company’s 401(k) Committee. On October 10, 2008, the Company and the other defendants filed a motion to dismiss the consolidated amended complaint. Briefing of the motion was completed in January 2009. The Company intends to vigorously defend against these actions.

*Homeowners Class Action Lawsuits and Multi-Plaintiff Lawsuit.* A putative class action was filed on April 8, 2008 in the United States District Court for the Middle District of North Carolina, Salisbury Division, against Beazer Homes, U.S.A., Inc., Beazer Homes Corp. and Beazer Mortgage Corporation. The Complaint alleges that Beazer violated the Real Estate Settlement Practices Act (“RESPA”) and North Carolina Gen. Stat. § 75-1.1 by (1) improperly requiring homebuyers to use Beazer-owned mortgage and settlement services as part of a down payment assistance program, and (2) illegally increasing the cost of homes and settlement services sold by Beazer Homes Corp. The purported class consists of all residents of North Carolina who purchased a home from Beazer, using mortgage financing provided by and through Beazer that included seller-funded down payment assistance, between January 1, 2000 and October 11, 2007. The Complaint demands an unspecified amount of damages, equitable relief, treble damages, attorneys’ fees and litigation expenses. The defendants moved to dismiss the Complaint on June 4, 2008. On July 25, 2008, in lieu of a response to the motion to dismiss, plaintiff filed an amended complaint. The Company has moved to dismiss the amended complaint and intends to vigorously defend against this action.

Beazer Homes Corp. and Beazer Mortgage Corporation are also named defendants in a lawsuit filed on July 3, 2007, in the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina. The case was removed to the U.S. District Court for the Western District of North Carolina, Charlotte Division, but remanded on April 23, 2008 to the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina. The complaint was filed on behalf of ten individual homeowners who purchased homes from Beazer in Mecklenburg County. The complaint alleges certain deceptive conduct by the defendants and brings various claims under North Carolina statutory and common law, including a claim for punitive damages. On June 27, 2008 a second amended complaint, which added two plaintiffs to the lawsuit, was filed. The case has been designated as “exceptional” pursuant to Rule 2.1 of the General Rules of Practice of the North Carolina Superior and District Courts and has been assigned to the docket of the North Carolina Business Court. The Company filed a motion to dismiss on July 30, 2008. On November 18, 2008, the plaintiffs filed a third amended complaint. The Company filed a motion to dismiss the third amended complaint on December 29, 2008. The Company intends to vigorously defend against this action.

Beazer Homes’ subsidiaries Beazer Homes Holdings Corp. and Beazer Mortgage Corporation were named as defendants in a putative class action lawsuit originally filed on March 12, 2008, in the Superior Court of the State of California, County of Placer. The lawsuit was amended on June 2, 2008 and named as defendants Beazer Homes Holdings Corp., Beazer Homes USA, Inc., and Security Title Insurance Company. The purported class is defined as all persons who purchased a home from the defendants or their affiliates, with the assistance of a federally related mortgage loan, from March 25, 1999 to the present where Security Title Insurance Company received any money as a reinsurer of the transaction. The complaint alleges that the defendants violated RESPA and asserts claims under a number of state statutes alleging that defendants engaged in a uniform and systematic practice of giving and/or accepting fees and kickbacks to affiliated businesses including affiliated and/or recommended title insurance companies. The complaint also alleges a number of common law claims. Plaintiffs seek an unspecified amount of damages under RESPA, unspecified statutory, compensatory and punitive damages and injunctive and declaratory relief, as well as attorneys’ fees and costs. Defendants removed the action to federal court. On November 26, 2008, plaintiffs filed a Second Amended Complaint which substituted new named-plaintiffs. The

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Company filed a motion to dismiss the Second Amended Complaint. The federal court granted Beazer's motion to dismiss the Second Amended Complaint. The federal court dismissed the sole federal claim, declined to rule on the state law claims, and remanded the case to the Superior Court of California, Placer County, where Beazer's motion to dismiss the state law claims is now pending. The Company intends to continue to vigorously defend against the action.

We cannot predict or determine the timing or final outcome of the governmental investigations or the lawsuits or the effect that any adverse findings in the investigations or adverse determinations in the pending lawsuits may have on us. In addition, an estimate of possible loss or range of loss if any, cannot presently be made with respect to the above pending matters. While we are cooperating with the governmental investigations, developments, including the expansion of the scope of the investigations, could negatively impact us, could divert the efforts and attention of our management team from the operation of our business, and/or result in further departures of executives or other employees. An unfavorable determination resulting from any governmental investigation could result in the filing of criminal charges, payment of substantial criminal or civil restitution, the imposition of injunctions on our conduct or the imposition of other penalties or consequences, including but not limited to the Company having to adjust, curtail or terminate the conduct of certain of our business operations. Any of these outcomes could have a material adverse effect on our business, financial condition, results of operations and prospects. An unfavorable determination in any of the pending lawsuits could result in the payment by us of substantial monetary damages which may not be fully covered by insurance. Further, the legal costs associated with the investigations and the lawsuits and the amount of time required to be spent by management and the Board of Directors on these matters, even if we are ultimately successful, could have a material adverse effect on our business, financial condition and results of operations.

### **Other Matters**

In November 2003, Beazer Homes received a request for information from the EPA pursuant to Section 308 of the Clean Water Act seeking information concerning the nature and extent of storm water discharge practices relating to certain of our projects completed or under construction. The EPA has since requested information on additional projects and has conducted site inspections at a number of locations. In certain instances, the EPA or the equivalent state agency has issued Administrative Orders identifying alleged instances of noncompliance and requiring corrective action to address the alleged deficiencies in storm water management practices. As of March 31, 2009, no monetary penalties had been imposed in connection with such Administrative Orders. The EPA has reserved the right to impose monetary penalties at a later date, the amount of which, if any, cannot currently be estimated. Beazer Homes has taken action to comply with the requirements of each of the Administrative Orders and is working to otherwise maintain compliance with the requirements of the Clean Water Act.

In 2006, we received two Administrative Orders issued by the New Jersey Department of Environmental Protection. The Orders allege certain violations of wetlands disturbance permits. The two Orders assess proposed fines of \$630,000 and \$678,000, respectively. We have met with the Department to discuss their concerns on the two affected projects and have requested hearings on both matters. We believe that we have significant defenses to the alleged violations and intend to contest the agency's findings and the proposed fines. We are currently pursuing settlement discussions with the Department. A hearing before the judge has been postponed pending settlement discussions.

Recently, the lender of one of our unconsolidated joint ventures has filed individual lawsuits against some of the joint venture partners and certain of those partners' parent companies (including the Company), seeking to recover damages under completion guarantees, among other claims. We intend to vigorously defend against this legal action. We are a 2.58% partner in this joint venture.

We and certain of our subsidiaries have been named as defendants in various claims, complaints and other legal actions, most relating to construction defects, moisture intrusion and related mold claims and product liability. Certain of the liabilities resulting from these actions are covered in whole or part by insurance. In our opinion, based on our current assessment, the ultimate resolution of these matters will not have a material adverse effect on our financial condition, results of operations or cash flows.

### **Item 1A. Risk Factors**

In addition to the other information set forth in this quarterly report, you should carefully consider the risk factors discussed below and in our Annual Report on Form 10-K for the fiscal year ended September 30, 2008.

*If we do not meet the New York Stock Exchange continued listing requirements, our common stock may be delisted, which could have an adverse impact on the liquidity and market price of our common stock and could require us to repurchase our 4% Convertible Senior Notes due 2024.*

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Our common stock is currently listed on the New York Stock Exchange (“NYSE”). If we do not meet the NYSE continued listing requirements, the NYSE may take action to delist our common stock. In February, 2009, the NYSE suspended the minimum average closing stock price requirements for all listed companies through June 2009. In the event this suspension is lifted and the Company receives notice that it is out of compliance with NYSE requirements, the Company will have an opportunity to bring itself into compliance with certain of these requirements. However, there can be no assurance that we will be able to take such actions in a timely manner or at all. A delisting of our common stock could negatively impact us by: (i) reducing the liquidity and market price of our common stock; (ii) reducing the number of investors willing to hold or acquire our common stock, which could negatively impact our ability to raise equity financing; (iii) decreasing the amount of news and analyst coverage for us.

In addition, delisting of our common stock on the NYSE would constitute a “fundamental change” under the indenture governing our 4% Convertible Senior Notes due 2024 (the “Convertible Senior Notes”) unless we are able to list our common stock on another exchange or have it quoted on an established over the counter trading market. If such a fundamental change occurs, holders of the Convertible Senior Notes will be entitled to require us to repurchase their Convertible Senior Notes at a price equal to 100% of the principal amount of the Convertible Senior Notes to be repurchased. In order to fund any required repurchases, we might be required to seek additional financing for such amounts. We can give no assurance that we would be able to obtain such financing, on favorable terms, or at all.

*The differing financial exposure our debt holders could impact our ability to complete any restructuring of our indebtedness or impact the terms of such restructuring.*

We believe that a portion of the holders of our Senior Notes may have hedged their risk of default with respect to the Senior Notes. These holders may have an economic interest that is different from the other holders of our Senior Notes. Such holders may be less willing to participate in any voluntary restructuring of our indebtedness if, under certain circumstances, they are entitled to receive higher consideration from a private counter-party. This could make any restructuring of our debt more expensive or prevent us from being able to complete certain types of recapitalization transactions.

#### **Item 4. Submission of Matters to a Vote of Security Holders**

On February 5, 2009, we held our annual meeting of stockholders, at which the following matters were voted upon with the results indicated below. All numbers reported are shares of Beazer Homes’ common stock (39,280,291 outstanding shares were entitled to vote).

1. The stockholders elected six members to the Board of Directors to serve until the 2010 annual meeting of stockholders. The results of the voting were as follows:

Director	For	Against	Abstain
Laurent Alpert	31,928,270	1,601,516	213,601
Brian C. Beazer	32,237,963	1,336,422	169,002
Peter G. Leemputte	32,059,884	1,402,488	281,015
Ian J. McCarthy	32,240,368	1,332,015	171,003
Larry T. Solari	24,774,301	8,744,522	224,563
Stephen P. Zelnak, Jr.	24,866,197	8,659,103	218,086

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2. The stockholders voted to ratify the selection of Deloitte & Touche LLP by the Audit Committee of the Board of Directors as the Company's independent registered public accounting firm for the fiscal year ending September 30, 2009 as follows:

For	Against	Abstain
32,466,279	1,114,815	132,292

### **Item 5. Other Information**

None.

### **Item 6. Exhibits**

- 10.1 Third Limited Waiver, dated as of May 4, 2009, to and under the Credit Agreement, dated as of July 25, 2007, among the Company, the lenders thereto
- 10.2 Stipulation and Agreement of Settlement, dated as of May 4, 2009, IN RE: Beazer Homes USA, Inc. Securities Litigation
- 31.1 Certification pursuant to 17 CFR 240.13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification pursuant to 17 CFR 240.13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

### **SIGNATURES**

Pursuant to the requirements 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.

Beazer Homes USA, Inc.

Date: May 8, 2009

By: /s/ Allan P. Merrill  
Name: Allan P. Merrill  
Executive Vice President and Chief Financial Officer

**THIRD LIMITED WAIVER**

THIRD LIMITED WAIVER (this "Limited Waiver") dated effective as of May 4, 2009 executed by Beazer Homes USA, Inc., a Delaware corporation (the "Borrower"), the lenders party hereto (the "Lenders") and the other parties hereto.

WHEREAS, the Borrower, Wachovia Bank, National Association, as agent (the "Agent"), the Lenders and the other lenders party thereto are party to that certain Credit Agreement dated as of July 25, 2007 (as amended, supplemented, or modified from time to time, the "Credit Agreement"; terms defined in the Credit Agreement are used herein as defined therein);

WHEREAS, the Credit Agreement provides that the Minimum Consolidated Tangible Net Worth Level drops to Level III if the Borrower's Consolidated Tangible Net Worth falls below \$250,000,000;

WHEREAS, Sections 6.07 and 6.08 of the Credit Agreement restrict the Borrower and the Guarantors from making Investments and guaranties but provides for certain exceptions, including the exceptions set forth in clauses (13) and (14) of Section 6.07 and clause (3) of Section 6.08 (collectively, the "CTNW Basket Exception"); and

WHEREAS, the Borrower has requested that the Required Lenders waive and amend the Credit Agreement, and the Required Lenders are agreeable to such request but only upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, and for other valuable consideration the receipt of which is hereby acknowledged, the Borrower and the Required Lenders agree as follows:

Section 1. Limited Waiver. Subject to the terms and conditions set forth herein, but with effect on and after the date hereof, the Lenders hereby waive any Default or Event of Default that may have occurred prior to the date hereof (or that may occur during the Waiver Period (as defined below)) under Section 6.07 or 6.08 as a result of the CTNW Basket Exception being exceeded. The "Waiver Period" shall be the period from and including the date hereof through and excluding the earliest of (i) the date of the occurrence of any other Default, (ii) August 15, 2009 and (iii) the date that the Borrower delivers financial statements for the quarter ending June 30, 2009 pursuant to Section 5.08(1).

Section 2. Future Investments. Notwithstanding anything to the contrary in the Credit Agreement, during the Waiver Period, the Borrower and the Guarantors shall, in addition to any other exceptions provided for in the Credit Agreement, be permitted to make Investments of the type set forth in clauses (13) and (14) of Section 6.07 and to incur obligations of the type set forth in clause (3) of Section 6.08 so long as the aggregate amount of all such Investments

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and other obligations made or incurred in reliance on this exception during the Waiver Period does not exceed \$55,000,000.

Section 3. Minimum CTNW Level. Notwithstanding anything to the contrary in the Credit Agreement, during the Waiver Period, the Minimum Consolidated Tangible Net Worth Level shall be Level II, regardless of the actual level of the Borrower's Consolidated Tangible Net Worth.

Section 4. Facility Size. The definition of Aggregate Commitment is hereby permanently amended by replacing the reference therein to "\$250,000,000" with the amount "\$150,000,000".

Section 5. Minimum CTNW Covenant. (i) Section 7.01 shall be amended by replacing the phrase "maintain at all times" with the phrase ", as of the last day of each fiscal quarter, maintain" and (ii) the definition of "Consolidated Tangible Net Worth" shall be amended by replacing the phrase "all determined as of such date" with the phrase "all determined as of the last day of the most recently ended fiscal quarter for which financial statements have been delivered (or were required to have been delivered) pursuant to Section 5.08(1) or (2)".

Section 6. Cash in Borrowing Base. Notwithstanding anything to the contrary in the Credit Agreement (including Section 2.01.2(b)(iii) thereof), during the Waiver Period, the Borrower shall not be entitled to request the release of the Agent's Lien on any Unrestricted Cash included in the Secured Borrowing Base.

Section 7. Borrowing Restriction. Notwithstanding anything to the contrary in the Credit Agreement, during the Waiver Period, the Borrower shall not be entitled to make any Borrowing of Loans (it being understood that this restriction shall not limit the Borrower's ability to request and obtain Facility Letters of Credit).

Section 8. Defaulting Lenders. The Credit Agreement shall be amended by:

(i) Adding the following new definition immediately following the definition of Default in Section 1.01:

"Defaulting Lender" means any Lender that has (a) failed to fund any portion of its Loans or participations in Facility Letters of Credit within three (3) Business Days of the date required to be funded by it hereunder, which failure has not been cured, (b) otherwise failed to pay to the Agent or any other Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, unless the subject of a good faith dispute, which failure has not been cured, or (c) (i) become insolvent or has a parent company that has become or is insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any

action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.”

(ii) Adding the following new Section 2.22.15 to the Credit Agreement:

“**Section 2.22.15 Defaulting Lenders.** Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Subject to the provisions of Section 2.22.15(c), if any Facility Letter of Credit Obligations are outstanding at the time a Lender is a Defaulting Lender, the Borrower shall within three (3) Business Days following notice by the Agent cash collateralize such Defaulting Lender’s Facility Letter of Credit Obligations by paying to the Agent an amount in immediately available funds equal to such Defaulting Lender’s Facility Letter of Credit Obligations, which funds shall be held in the Facility Letter of Credit Collateral Account in accordance with Section 2.22.13 for so long as such Facility Letter of Credit Obligations are outstanding and such Lender is a Defaulting Lender;

(b) Subject to the provisions of Section 2.22.15(c), no Issuer shall be required to issue, amend (other than to reduce) or increase any Facility Letter of Credit unless cash collateral has been provided by the Borrower in accordance with Section 2.22.15(a); and

(c) Notwithstanding the provisions of Sections 2.22.15(a) and (b), if within three (3) Business Days following the Agent’s notice under Section 2.22.15(a) the Borrower shall by notice to the Agent advise the Agent that the Borrower intends to effect the assignment by such Defaulting Lender of all of its right, title and interest under this Agreement to a Person that is not a Defaulting Lender (subject to and in accordance with the provisions of Section 11.02), the date by which the Borrower shall be required to comply with the provisions of Section 2.22.15(a) shall be extended to the 14th day after the date of the Agent’s notice; provided, however, that such extension shall not extend the date by which the Borrower is obligated to cash collateralize Facility Letters of Credit pursuant to any other provisions of this Agreement. A Defaulting Lender shall not be obligated to assign its interest under this Agreement except to the extent that the provisions of Section 2.20 require an assignment.

(iii) Amending Section 8.01 by inserting the following sentence immediately after the first sentence of clause (v) thereof:

“If the Borrower is required to provide an amount of cash collateral pursuant to Section 2.22.15, such amount shall be returned to the Borrower from the Facility Letter of Credit Collateral Account from time to time to the extent that no Event of Default is continuing and either the amount deposited shall exceed the Defaulting Lender’s Facility Letter of Credit Obligations or if such Lender ceases to be a Defaulting Lender.”

Section 9. Conditions Precedent. This Limited Waiver shall become effective, as of the date hereof, upon (a) the execution and delivery of this Limited Waiver by the Borrower and the Required Lenders, (b) the execution and delivery of the Acknowledgement and

Consent in the form set forth in Exhibit A hereto from each Guarantor and (c) receipt by each Lender executing this Limited Waiver of a fee in immediately available funds in an amount as set forth in the Borrower's waiver request letter to the Agent dated April 13, 2009 and posted on Intralinks.

Section 10. Representations. The Borrower hereby represents and warrants to the Agent and the Lenders that (a) the representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof (after giving effect to this Limited Waiver) as if made on and as of the date hereof (except where such representations and warranties expressly relate to an earlier date in which case such representations and warranties were true and correct in all material respects as of such earlier date); provided that the representations and warranties contained in Section 4.04 (Financial Statements), Section 4.06 (Other Agreements), Section 4.07 (Litigation), Section 4.14 (Law; Environment) and Section 4.17 (Accuracy of Information) shall be deemed to be made as set forth in the Credit Agreement except that such representations and warranties shall be deemed to be made with an exception for the matters identified in the Borrower's Annual Report on Form 10-K for the fiscal year ended September 30, 2007, and (b) after giving effect to this Limited Waiver, no Default has occurred and is continuing.

Section 11. Waiver of Claims. The Borrower acknowledges that the Agent and Lenders have acted in good faith and have conducted themselves in a commercially reasonable manner in their relationships with the Borrower and the Guarantors in connection with this Limited Waiver and in connection with the Credit Agreement and the other Loan Documents, the Borrower hereby waiving and releasing any claims to the contrary. The Borrower, on its own behalf and on behalf of each of its Affiliates, releases and discharges the Agent and Lenders, all Affiliates of the Agent and Lenders, all officers, directors, employees, attorneys and agents of the Agent and Lenders or any of their Affiliates, and all of their predecessors in interest, from any and all claims, defenses and causes of action arising out of or related to the Loan Documents, whether known or unknown, and whether now existing or hereafter arising, including without limitation, any usury claims, that have at any time been owned, or that are hereafter owned, in tort or in contract by the Borrower or any Affiliate of the Borrower and that arise out of any one or more circumstances or events that occurred prior to the date of this Limited Waiver.

Section 12. Miscellaneous. Except as herein provided, the Loan Documents shall remain unchanged and in full force and effect. The waivers and amendments set forth herein are not meant to be waivers or amendments of any other terms or provisions of the Credit Agreement. The Agent and the Lenders expressly reserve all of their rights and remedies with respect to any other present or future Default arising under the Credit Agreement (whether or not related to the matters addressed in this Limited Waiver). This Limited Waiver may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Limited Waiver by signing any such counterpart. This Limited Waiver shall be construed in accordance with and governed by the law of the State of New York, without regard to the conflict of laws principles thereof. Any provision of this Limited Waiver which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without in-

validating the remaining provisions of this Limited Waiver or affecting the validity or enforceability of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Limited Waiver to be duly executed and delivered as of the day and year first above written.

BEAZER HOMES USA, INC., as Borrower

By: /s/ Allan P. Merrill  
Name: Allan P. Merrill  
Title: Executive Vice President

WACHOVIA BANK, NATIONAL ASSOCIATION, as Agent

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

WACHOVIA BANK, NATIONAL ASSOCIATION, as a Lender

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

CITIBANK, N.A., as a Lender

By: /s/ Marni McManus  
Name: Marni McManus  
Title: Director

BNP PARIBAS, as a Lender

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

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

*Third Limited Waiver Signature Page*

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THE ROYAL BANK OF SCOTLAND, as a Lender

By: /s/ Jay Um

Name: Jay Um

Title: Vice President

GUARANTY BANK, as a Lender

By: /s/ Amy Satsky

Name: Amy Satsky

Title: Senior Vice President

REGIONS FINANCIAL CORPORATION, as a Lender

By: /s/ Ronny Hudspeth

Name: Ronny Hudspeth

Title: SR. Vice President

JPMORGAN CHASE BANK, N.A., as a Lender

By: /s/ Kimberly Turner

Name: Kimberly Turner

Title: Executive Director

CITY NATIONAL BANK, a national banking association,  
as a Lender

By: /s/ Xavier Barrera

Name: Xavier Barrera

Title: Vice President

PNC BANK, N.A., as a Lender

By: /s/ Douglas G. Paul

Name: Douglas G. Paul

Title: Senior Vice President

*Third Limited Waiver Signature Page*

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UBS LOAN FINANCE, LLC, as a Lender

By: /s/ Marie A. Haddad  
Name: Marie A. Haddad  
Title: Associate Director, Banking Products Services, US

By: /s/ Mary E. Evans  
Name: Mary E. Evans  
Title: Associate Director, Banking Products Services, US

COMERICA BANK, as a Lender

By: /s/ David J. Campbell  
Name: David J. Campbell  
Title: Senior Vice President

*Third Limited Waiver Signature Page*



WHEREAS:

A. The above-captioned action was initially filed in this Court on or about March 29, 2007, and is hereinafter referred to as the "Action";

B. This is a federal securities fraud class action, and is currently pending before Judge Clarence Cooper in the United States District Court for the Northern District of Georgia. The causes of action asserted against Defendants in this matter are founded, in whole or in part, on Sections 10(b), 20(a), and 20(A) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder;

C. Lead Plaintiffs, Glickenhau & Co. (an institutional investment advisor firm) and Carpenters Pension Trust Fund for Northern California (a fund providing retirement benefits for members of the United Brotherhood of Carpenters and Joiners of America within the 46 Northern California Counties), seek to represent a class of investors who purchased the securities of Beazer at allegedly artificially inflated prices during the putative Class Period (January 27, 2005 through May 12, 2008);

D. Defendant Beazer, a Delaware corporation, is a large Atlanta-based homebuilder that went public in 1994. Beazer offered mortgage services through a wholly-owned mortgage origination subsidiary ("Beazer Mortgage") until February 2008;

E. The Amended and Consolidated Class Action Complaint for Violation of the Federal Securities Laws, dated June 27, 2008 (the "Complaint"), alleges that Lead Plaintiffs and other Class Members purchased the common stock of Beazer during the Class Period at prices artificially inflated as a result of the Defendants' dissemination of materially false and misleading statements. The Complaint asserts claims under Sections 10(b), 20(a), and 20(A) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder;

F. The Defendants deny any liability in connection with the Action and the claims asserted by Plaintiffs in the Complaint, and Deloitte specifically denies any wrongdoing or liability with respect to each and all of the claims that were alleged or could have been alleged by Lead Plaintiffs or Class Members, including, but not limited to, all contentions concerning Deloitte's conduct, as well as contentions that such conduct constitutes wrongdoing or gives rise to legal liability or has caused damages to Lead Plaintiffs or Class Members. This Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or of any infirmity in the defenses that the Defendants have asserted. The parties to this Stipulation recognize, however, that the litigation has been filed by Plaintiffs and defended by Defendants in good faith and with adequate basis in fact under Federal Rule of

Civil Procedure 11 and that the litigation is being voluntarily settled after advice of counsel. This Stipulation shall not be construed or deemed to be a concession by any Plaintiff of any infirmity in the claims asserted in the Action;

G. Plaintiffs' Co-Lead Counsel have conducted an investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Plaintiffs' Co-Lead Counsel have analyzed the evidence adduced during pretrial investigation and have researched the applicable law with respect to the claims of Lead Plaintiffs and the Class against the Defendants and the potential defenses thereto, and Plaintiffs have opposed Defendants' motions to dismiss;

H. With the assistance of retired Superior Court Judge Daniel Weinstein of JAMS acting as a mediator, Lead Plaintiffs, by their counsel, have conducted discussions and arm's length negotiations with counsel for Defendants with respect to a compromise and settlement of the Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the best interests of the Class; and

I. Based upon their investigation as set forth above, Plaintiffs' Co-Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiffs and the Class, and in their best interests, and have agreed to settle the claims alleged in the Action pursuant to the terms and provisions of this Stipulation, after considering (1) the substantial benefits that

Lead Plaintiffs and the members of the Class will receive from settlement of the Action, (2) the attendant risks of litigation, and (3) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that all Settled Claims (as defined below) as against the Released Parties (as defined below) and all Settled Defendants' Claims (as defined below) shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

**CERTAIN DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) "Authorized Claimant" means a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator.

(b) “Beazer Defendants” means Beazer and the Individual Defendants.

(c) “Cash Settlement Amounts” means the sum of Twenty Nine Million Five Hundred and Fifty Thousand Dollars (\$29,550,000.00 US\$) to be paid on behalf of the Beazer Defendants by their directors’ and officers’ liability insurance carriers, and the sum of Nine Hundred and Fifty Thousand Dollars (\$950,000.00 US\$) to be paid by Deloitte.

(d) “Claims Administrator” means the firm of The Garden City Group, Inc., which shall administer the Settlement.

(e) “Class” means, for the purposes of this Settlement only, all persons or entities who purchased the common stock of Beazer during the Class Period. Excluded from the Class are the Defendants, members of the immediate families (parents, spouses, siblings, and children) of each of the Individual Defendants, all directors, officers, parents, subsidiaries and affiliates of Beazer, all members, partners, principals and affiliates of Deloitte, any person, firm, trust, corporation or entity in which any Defendant during the Class Period had a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of any such excluded party. Also excluded from the Class are any putative Class Members

who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice.

(f) "Class Member" means a member of the Class.

(g) "Class Period" means, for the purposes of this Settlement only, the period January 27, 2005 through and including May 12, 2008.

(h) "Defendants" means Beazer, the Individual Defendants and Deloitte.

(i) "Defendants' Counsel" means the law firms of Cravath, Swaine & Moore LLP and Troutman Sanders LLP for Defendants Beazer, McCarthy and O'Leary; Rogers and Hardin LLP for Defendant Rand; Covington & Burling LLP and Hartman Simons Spielman & Wood LLP for Defendant Furlow; and Sutherland Asbill & Brennan LLP for Deloitte.

(j) "Effective Date" means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in ¶ 25 below.

(k) "Final," with respect to the Order and Final Judgment, means: (a) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal from the Court's Judgment approving the Settlement substantially in the form of Exhibit B hereto, i.e. thirty (30) days after entry of the Judgment; or (b) if there is an appeal, the date of final dismissal of any appeal from the Judgment, or the final dismissal of any proceeding on certiorari to review the Judgment; or (c)

the date of final affirmance on an appeal of the Judgment, the expiration of the time to file a petition for a writ of certiorari, or the denial of a writ of certiorari to review the Judgment, and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to that grant. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys' fees, costs or expenses, shall not in any way delay or preclude the Judgment from becoming Final.

(l) "Gross Settlement Fund" means the respective Defendants' Cash Settlement Amounts, as defined in paragraph 1(c), plus any income or interest earned thereon.

(m) "Individual Defendants" means Ian J. McCarthy, James O'Leary, Michael T. Rand, and Michael H. Furlow.

(n) "Net Settlement Fund" has the meaning defined in ¶ 5 hereof.

(o) "Notice" means the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing, which is to be sent to members of the Class substantially in the form attached hereto as Exhibit 1 to Exhibit A.

(p) "Order and Final Judgment" means the proposed order to be entered approving the Settlement substantially in the form attached hereto as Exhibit B.

(q) “Order for Notice and Hearing” means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit A.

(r) “Plaintiffs’ Counsel” means Plaintiffs’ Co-Lead Counsel and all other counsel representing any Plaintiffs or Class Member in the Action.

(s) “Plaintiffs’ Co-Lead Counsel” means the law firms of Bernstein Liebhart LLP, Chitwood Harley Harnes LLP and Milberg LLP.

(t) “Publication Notice” means the summary notice of proposed Settlement and hearing for publication substantially in the form attached as Exhibit 3 to Exhibit A.

(u) “Released Parties” means any and all of the Defendants; Beazer and any of its past, present, and future direct or indirect parent companies, subsidiaries, subcontractors, divisions, affiliates, predecessors, successors, partners, principals, members, managers, attorneys, administrators, auditors, investment advisors, officers, directors, trusts, accountants, employees, stockholders, owners, agents, subrogees, insurers, reinsurers, servants, representatives, heirs, executors, personal representatives, legal representatives, transferees and assignees, and successors in interest of assigns; Deloitte & Touche LLP, Deloitte LLP (formerly known as Deloitte & Touche USA LLP), Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, Deloitte Tax LLP,

Deloitte Services LP, and any of their past, present, and future direct or indirect parent companies, subsidiaries, subcontractors, divisions, affiliates, predecessors, successors, partners, principals, members, managers, attorneys, administrators, auditors, investment advisors, officers, directors, trusts, accountants, employees, stockholders, owners, agents, subrogees, insurers, reinsurers, servants, representatives, heirs, executors, personal representatives, legal representatives, transferees and assignees, and successors in interest of assigns; the Individual Defendants' legal representatives, heirs, successors in interest, or assigns; and any person, firm, trust, corporation, officer, director or other individual or entity in which any of the foregoing persons or entities has a controlling interest or which is related to or affiliated with any of them, and any and all persons natural or corporate in privity with them or acting in concert with them or any of them. The Released Parties are express third-party beneficiaries of this Stipulation and Agreement of Settlement.

(v) "Settled Claims" means any and all claims, debts, suits, demands, rights or causes of action or liabilities, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, judgments, variances, executions, obligations, demands, rights, liabilities, losses, fees, and costs of any kind, nature and/or description whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and

any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, suspected or unsuspected, contingent or non-contingent, whether or not asserted, threatened, alleged or litigated, at law, equity or otherwise, including without limitation, claims for contribution or indemnification, or for costs, expenses (including, without limitation, amounts paid in settlement) and attorneys' fees, claims for negligence, fraud, breach of fiduciary duty, or violations of any federal, state or local statutes, common law, rules or regulations, that now exist or heretofore existed, whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties, (ii) that could have been asserted in any forum by the Class Members, now or in the future, or any of them against any of the Released Parties that relate to, or that in any way arise out of, or are based upon, the allegations, transactions, facts, matters or occurrences, acts, disclosures, statements, representations, omissions, or failures to act involved, set forth, or referred to in the Complaint, and that relate to the purchase, sale or other disposition of shares of the common stock of Beazer during the Class Period, or (iii) that relate to the purchase, sale or other disposition of shares of the common stock of Beazer during

the Class Period. "Settled Claims" does not mean or include the derivative claims asserted in *In re Beazer Homes USA, Inc. Derivative Litigation*, Civil Action No. 1:07-CV-842-CC (N.D. Ga.), or claims, if any, against the Released Parties arising under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA").

(w) "Settled Defendants' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, other Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement).

(x) "Settlement" means the settlement contemplated by this Stipulation.

(y) "Unknown Claims" means any and all Settled Claims which any Lead Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants' Claims which any Defendant does not know or suspect to exist in his,

her or its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants' Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Lead Plaintiffs and Defendants acknowledge, and all other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.

**SCOPE AND EFFECT OF SETTLEMENT**

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants' Claims.

3. (a) Upon the Effective Date of this Settlement, Lead Plaintiffs and all the other members of the Class on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be barred and enjoined from initiating, continuing, filing or otherwise prosecuting, any Settled Claims against any of the Released Parties, whether or not Lead Plaintiffs and Class Members have executed and delivered a Proof of Claim, participated in the Settlement, filed an objection to the Settlement, the Proposed Plan of Allocation, or any application by Lead Plaintiffs' counsel for an award of Attorneys' Fees and Expenses, and whether or not the claims of such Class Members have been approved or allowed. Nothing herein shall, however, bar any action or claim to enforce the terms of this Stipulation and Agreement of Settlement or the Order and Final Judgment.

(b) Upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, and the other Released Parties, shall release

and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims against Lead Plaintiffs, all other Class Members and their counsel. Nothing contained herein shall, however, bar any action or claim to enforce the terms of this Stipulation and Agreement of Settlement or the Order and Final Judgment.

**THE SETTLEMENT CONSIDERATION**

4. As consideration for the release of the Settled Claims, Defendants shall pay, and/or, with respect to the Beazer Defendants, cause their insurers to pay, their respective Cash Settlement Amounts, as defined in paragraph 1(c), into escrow for the benefit of Plaintiffs and the Class, within eleven (11) business days of entry of an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A. The payments shall be made to the "Beazer Homes Securities Litigation Settlement Fund," which has been assigned IRS Taxpayer Identification Number 26-4730772, in accordance with wire instructions to be sent to Defendants' Counsel by Plaintiffs' Co-Lead Counsel prior to the entry of the Order for Notice and Hearing, or by check payable to the "Beazer Homes Securities Litigation Settlement Fund." Upon deposit of any of the Cash Settlement Amounts into escrow, the Cash Settlement Amounts and any income or interest earned thereon shall be the "Gross Settlement Fund." In no event shall the Defendants or their insurers be required to pay any amounts, other than specified in this

paragraph and in paragraph 1(c), including without limitation, payment to the Class Members of their attorneys' fees or reimbursement of any other expenses.

5. (a) The Gross Settlement Fund, net of any Taxes (as defined below) on the income thereof, shall be used to pay (i) the Notice and Administration Costs referred to in ¶¶ 6-7 hereof, (ii) the attorneys' fee and expense award referred to in ¶ 8-9 hereof, and (iii) the remaining administration expenses referred to in ¶ 10 hereof. The balance of the Gross Settlement Fund after the above payments shall be the "Net Settlement Fund." The Net Settlement Fund shall be distributed to the Authorized Claimants as provided in ¶¶ 11-13 hereof. Any sums required to be held in escrow hereunder prior to the Effective Date shall be held by Plaintiffs' Co-Lead Counsel as Escrow Agents for the Gross Settlement Fund pursuant to the terms of this Stipulation in an escrow account in the name of the "Beazer Homes Securities Litigation Settlement Fund" at Signature Bank, 565 Fifth Avenue, New York, New York 10017, and no withdrawals shall be permitted from the account without the signatures of an authorized representative from each of the three (3) firms of Co-Lead Counsel. The parties agree that the escrow account shall be maintained in accordance with applicable New York State law and in compliance with the form of the escrow agreement governing such escrow account, attached hereto as Exhibit C. Prior to the Effective Date, Defendants' Counsel shall receive copies of all bank statements

relating to the Beazer Homes Securities Litigation Settlement Fund account. The Released Parties shall not bear any risk or have any liability for losses related to the investment of the Gross Settlement Fund. All funds held by the Escrow Agents shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned to the persons paying the same pursuant to this Stipulation and/or further order of the Court. The parties acknowledge and agree that, once placed in the Settlement Fund escrow account, the Defendants in general (and Beazer in particular) have no rights to any escrow property, except as provided herein in the event of a termination of this Stipulation. The Escrow Agents shall invest any funds held in escrow in short-term United States Agency or Treasury Securities (or a mutual fund invested solely in such instruments) or in a non-interest bearing account with a FDIC insured bank which is fully guaranteed by the US Government, and shall collect and reinvest any interest as is accrued thereon. The parties hereto agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agents, as administrator of the Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be responsible for filing tax returns for the Settlement Fund and paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. The parties hereto agree that the Settlement fund shall be treated

as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the Settlement Fund as a Qualified Settlement Fund from the earliest date possible. Defendants' Counsel agree to provide promptly to the Escrow Agents the statement described in Treasury Regulation § 1.468B-3(e).

(b) All (i) taxes on the income of the Gross Settlement Fund and (ii) expenses and costs incurred in connection with the taxation of the Gross Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) (collectively "Taxes") shall be paid out of the Gross Settlement Fund, shall be considered to be a cost of administration of the settlement and shall be timely paid by the Escrow Agents without prior Order of the Court. The Escrow Agents shall be responsible for filing tax returns for the Gross Settlement Fund and paying from the Gross Settlement Fund any Taxes owed with respect to the Gross Settlement Fund. Prior to the Effective Date, the Escrow Agents shall respond to Defendants' Counsel's reasonable requests for information about such tax payments.

#### **ADMINISTRATION**

6. The Claims Administrator shall administer the Settlement subject to the jurisdiction of the Court. Except as stated in ¶ 15 hereof, Defendants shall have no responsibility for the administration of the Settlement and shall have no liability

to the Class in connection with such administration. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms. Beazer will provide, as soon as possible, to the Claims Administrator all information from Beazer's transfer records concerning the identity of Beazer's shareholders, and their transactions, during the Class Period. Any charges, fees or expenses incurred by Beazer for providing this information will be deemed Administrative Costs (referred to in ¶¶ 6-7) and shall be promptly reimbursed to Beazer by the Escrow Agent upon presentation of an invoice therefore.

7. Plaintiffs' Co-Lead Counsel may pay from the Cash Settlement Amounts, without further approval from the Defendants, up to \$150,000 for the reasonable costs and expenses associated with identifying members of the Class and effecting mail Notice and Publication Notice to the Class, and the administration of the Settlement, including without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding notice to their beneficial owners, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims ("Administrative Costs").

**ATTORNEYS' FEES AND EXPENSES**

8. Plaintiffs' Co-Lead Counsel will apply to the Court for an award from the Gross Settlement Fund of attorneys' fees and reimbursement of expenses. Notwithstanding the existence of any timely-filed objections, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof, the fees and expenses, as awarded by the Court, shall be payable to Plaintiffs' Co-Lead Counsel exclusively from the Gross Settlement Fund after the Court (a) enters the Order and Final Judgment and (b) executes an order awarding such fees and expenses. Before any of the three (3) Plaintiffs' Co-Lead Counsel firms can withdraw any funds for their fees and expenses out of the Gross Settlement Fund prior to the Effective Date, such firm must provide to Defendants an undertaking, providing security with respect to repayment of such funds for fees and expenses to the Gross Settlement Fund in the event that the Settlement is cancelled or terminated for any reason, or the order making the fee and expense award is reversed or modified, which shall be subject to Defendants' approval, in their sole discretion. Absent Defendants' providing such approval, such Plaintiffs' Co-Lead Counsel firm may not withdraw any funds for its fees and expenses out of the Gross Settlement Fund prior to the Effective Date. Plaintiffs' Co-Lead Counsel accepting any such fee and expense payment agrees by such acceptance to be subject to the jurisdiction of the Court to enforce their repayment obligations hereunder.

9. Plaintiffs' Co-Lead Counsel shall allocate the attorneys' fees amongst Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action with Defendants. Defendants have no liability or obligation to Lead Plaintiffs, the other members of the Class, or Plaintiffs' Counsel, with respect to any attorneys' fees, costs or expenses other than Defendants' obligation to pay or cause to be paid their respective Cash Settlement Amounts, as defined in paragraph 1(c). It is not a condition of this Stipulation that any particular attorneys' fees, costs or expenses be awarded by the Court.

**DISTRIBUTION TO AUTHORIZED CLAIMANTS**

10. Plaintiffs' Counsel will apply to the Court, on notice to Defendants' Counsel, for an order (the "Class Distribution Order") approving the Claims Administrator's determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

11. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized

Claimant's Recognized Claim (as defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit 1 to Exhibit A, or in such other Plan of Allocation as the Court approves); provided, however, that the Claims Administrator shall reserve an appropriate amount if either the Claims Administrator or Plaintiffs' Co-Lead Counsel has been made aware of an unresolved dispute with any taxing authority concerning the amount of taxes due from the Gross Settlement Fund, until such dispute is fully and finally resolved

12. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular Plan of Allocation be approved. Reversal of any plan of allocation approved by the Court shall not constitute grounds for terminating the Settlement, shall not act to terminate the Settlement, and shall have no impact on the releases granted herein to the Defendants and the Released Parties.

13. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his or her Recognized Claim compared to the total Recognized Claims of all accepted claimants. This is not a claims-made settlement. The entire Net Settlement Fund shall be distributed to the Authorized Claimants. The Defendants shall not be entitled to get back any of the settlement monies once the Settlement becomes Final. The Defendants shall have no involvement in reviewing or challenging claims.

**ADMINISTRATION OF THE SETTLEMENT**

14. Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

15. The Claims Administrator shall process the Proofs of Claim and, after entry of the Class Distribution Order, distribute the Net Settlement Fund to the Authorized Claimants. Except for the Defendants' obligation to pay, or to cause their insurers to pay, their respective Cash Settlement Amounts, as defined in paragraph 1(c), and except for Beazer's obligation to cooperate in the production of information with respect to the identification of Class Members from Beazer's shareholder transfer records, as provided herein, Defendants shall have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund. Plaintiffs' Co-Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Plaintiffs' Co-Lead Counsel deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

16. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an “Authorized Claimant”, the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim (see attached Exhibit 2 to Exhibit A), supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as the Claims Administrator, in its discretion may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified in the Notice, unless such period is extended by Order of the Court. Any Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and

addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, who shall determine in accordance with this Stipulation and the approved Plan of Allocation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to attempt to remedy the curable deficiencies in the Proof of Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, each claimant whose Proof of Claim it proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the

claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by Plaintiffs' Co-Lead Counsel. If a dispute concerning a claim cannot be otherwise resolved, Plaintiffs' Co-Lead Counsel shall thereafter present the request for review to the Court on notice to the claimant; and

(f) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

17. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proofs of Claim.

18. Payment pursuant to this Settlement shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final

Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims whether or not such Class Member has filed an objection to the Settlement, the proposed Plan of Allocation, or any application by any of the Plaintiffs' Co-Lead Counsel for an award of attorney's fees and expenses.

19. Lead Plaintiffs and any and all Class Members shall be bound by all the terms of this Stipulation including the terms of the Order and Final Judgment entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Defendants concerning the Settled Claims whether or not Lead Plaintiffs or Class Members participated in the Net Settlement Fund, and whether or not the claims of Lead Plaintiffs or such Class Members have been approved or allowed.

20. All proceedings with respect to the administration, processing and determination of claims described by ¶ 16 of this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

21. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after: (a) all timely Claims have been processed, and all claimants whose Claims have been rejected or

disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (b) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired, or a reserve has been made to cover the potential payment to such claimants; (c) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, all appeals therefrom have been resolved or the time therefor has expired, or a reserve has been made to cover the potential payment with respect to such attorneys' fees, costs, and disbursements; and (d) all costs of administration have been paid or provided for.

**TERMS OF ORDER FOR NOTICE AND HEARING**

22. Promptly after this Stipulation has been fully executed, Plaintiffs' Co-Lead Counsel and Defendants' Counsel jointly shall apply to the Court for entry of an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A. The parties shall request that the Order for Notice and Hearing provide that requests for exclusion must be postmarked at least seven (7) calendar days prior to the Settlement Fairness Hearing date. Upon receiving any request(s) for exclusion pursuant to the Notice, the Claims Administrator shall promptly send copies of such exclusion requests to Plaintiffs' Co-Lead Counsel and counsel for Defendants.

**TERMS OF ORDER AND FINAL JUDGMENT**

23. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit B.

**OPT-OUT TERMINATION RIGHT**

24. Beazer, on behalf of the Beazer Defendants, or Deloitte individually, may terminate their or its participation in this Settlement if potential Class Members who in total purchased in excess of four percent (4%) of the shares of Beazer common stock purchased during the Class Period exclude themselves from the Class. Except as otherwise provided herein, the election of either Beazer, on behalf of the Beazer Defendants, or Deloitte individually to terminate this Settlement shall not impact the Settlement as to the non-terminating party. In the event of a termination by Beazer, on behalf of the Beazer Defendants, or Deloitte individually, this Stipulation as to the terminating party shall become null and void and of no further force and effect except for the provisions of ¶ 28. If Beazer, on behalf of the Beazer Defendants, or Deloitte individually, elects to terminate this Settlement pursuant to this paragraph written notice of such termination must be provided to Plaintiffs' Co-Lead Counsel on or before three (3) calendar days prior to the Settlement Fairness Hearing. Plaintiffs' Co-Lead Counsel shall have the right to communicate with Class Members regarding their decisions to opt-out. If

a sufficient number of Class Members withdraw their requests for exclusion such that the total number of remaining shares requesting exclusion falls below the four percent (4%) threshold noted above, Plaintiffs' Co-Lead Counsel shall so advise Defendants' Counsel in writing and provide proof of the withdrawal from the Class Members, and any notice by Defendants of termination of the Settlement shall automatically and immediately become null and void.

**EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

25. The "Effective Date" of Settlement shall be the date when all the following shall have occurred:

(a) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(b) entry by the Court of an Order and Final Judgment, substantially in the form set forth in Exhibit B annexed hereto, and the expiration of any time for appeal or review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") and

none of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes Final and no longer subject to appeal or review.

26. Beazer, on behalf of the Beazer Defendants, or Deloitte individually, and Lead Plaintiffs shall each have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other parties hereto within thirty (30) days of: (a) the Court's declining to enter the Order for Notice and Hearing in any material respect; (b) the Court's refusal to approve this Stipulation or any material part of it; (c) the Court's declining to enter the Order and Final Judgment in any material respect; (d) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. In the event that the respective Cash Settlement Amount for the Beazer Defendants, collectively, or Deloitte, individually, is not fully paid within sixteen (16) business days from the entry of the Order for Notice and Hearing, Plaintiffs' Co-Lead Counsel shall have the right to provide a Termination Notice to such Defendant, who shall have ten (10) business days to cure its non-payment by paying its respective Cash Settlement Amount, plus interest at a two percent (2%) per annum rate for the period from 11 business days after the entry of the Order for Notice and Hearing to

the date of actual payment. In the event that the respective Defendant does not cure its non-payment, and its respective Cash Settlement Amount is not fully paid within twenty-six (26) business days from the entry of the Order of Notice and Hearing, Plaintiffs' Co-Lead Counsel shall, for a period of ten (10) business days thereafter, in addition to any other rights hereunder, have the right to terminate the Settlement and this Stipulation as to that respective Defendant, or, if the amount of such nonpayment exceeds \$1,000,000, in its entirety.

27. In the event that any party elects to terminate this Settlement as to fewer than all Defendants, the settling Defendants and the Plaintiffs agree to obtain entry of a contribution bar order pursuant to the provisions of Private Securities Litigation Reform Act of 1995 and 15 U.S.C. § 78u-4(f)(7)(A). The order shall, among other things, bar all future claims for contribution arising out of the action by any person, including the non-settling parties, against the settling Defendants.

28. Except as otherwise provided herein, in the event the Settlement is terminated, then the parties to this Stipulation shall be deemed to have reverted to their respective status in the Action as of April 10, 2009 and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and the respective Defendants' Cash Settlement Amounts, as defined in paragraph 1(c), previously paid by or on behalf of Defendants, together with any interest earned on each of the respective Cash

Settlement Amounts thereon, less a pro rata share (based on the respective Cash Settlement Amounts) of any Taxes due with respect to such income, and less a pro rata share based on the respective Cash Settlement Amounts of up to \$150,000 of the costs of administration and notice actually incurred and paid or payable from the Cash Settlement Amounts, shall be returned by the Escrow Agents to the entities paying the same within five (5) business days, unless the funds are invested in a manner in which expedited withdrawal would be financially detrimental and then with respect to that portion, as soon as the funds can be reasonably withdrawn and distributed without penalty or detriment.

**NO ADMISSION OF WRONGDOING**

29. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against any Defendant as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any Defendant;

(b) shall not be offered or received against any Defendant as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) shall not be offered or received against any Defendant as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any Defendant, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, the Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) shall not be construed against any Defendant as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the other Class Members that any of their claims are without merit, or that any defenses asserted by any Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

**MISCELLANEOUS PROVISIONS**

30. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

31. Bankruptcy Matters:

(a) In the event of a Beazer bankruptcy before the Order and Final Judgment is entered, Beazer agrees not to take any action or bring any proceeding to (i) oppose approval of the Stipulation after the filing, (ii) seek to delay approval of the Stipulation, (iii) seek to delay or take any action with regard to performance of the Stipulation whether before or after approval of the Settlement, and/or (iv) take any other action or bring any proceeding which affects, limits or restrains the rights and duties of all other parties to the Stipulation.

(b) In the event of a Beazer bankruptcy before the Defendants' respective Cash Settlement Amounts are paid into escrow as described in ¶¶ 4 and 5, the obligation of Defendants and/or their insurers to fund their respective Cash Settlement Amounts and the distribution from the escrow account of any funds from the Gross Settlement Fund will be contingent upon the approval of the bankruptcy court. The requirement for such approval shall not be deemed a concession that such approval is legally necessary or that the bankruptcy court has jurisdiction over the Cash Settlement Amounts or the Gross Settlement Fund.

(c) In the event of a Beazer bankruptcy after the funding of escrow but before the Order and Final Judgment is entered, no distribution will be made to Class Members prior to the later of: (1) one year after the payment of the Cash Settlement Amounts into escrow, or (2) if in such Beazer bankruptcy, a proceeding is brought seeking to assert a fraudulent transfer or preferential transfer claim with respect to any part of the Cash Settlement Amounts or a claim that the payment of such Cash Settlement Amounts violates the automatic stay within the one year after the payment of the Cash Settlement Amounts into escrow, a final determination has been made with respect to that claim, provided that no distributions shall be made that are prohibited by such final determination.

(d) Each Defendant paying its respective Cash Settlement Amount, as defined in paragraph 1(c), represents as to itself that as of the date of this Stipulation, it is not insolvent (within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547), and represents that as of the date of this Stipulation, it does not believe that the funding of its respective Cash Settlement Amount, by itself or on its behalf by its insurers, will cause it to become insolvent. Beazer further represents that the proceeds of the insurance policies under which its insurers are paying funds to the Gross Settlement Fund are not Beazer's property. These warranties are made by each such Defendant and not by such Defendant's Counsel.

32. If a case is commenced in respect of any Defendant paying their respective Cash Settlement Amounts, as defined in paragraph 1(c), (or any insurer contributing funds to the respective Cash Settlement Amounts, as defined in paragraph 1(c), on behalf of any Defendant) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Gross Settlement Fund or any portion thereof by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Gross Settlement Fund by others, then, at the election of Plaintiffs' Co-Lead Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and any judgment entered in favor of the Defendants pursuant to this Stipulation, which releases and judgment shall be null and void, and the parties shall be restored to their respective positions in the litigation as of April 10, 2009 and any Cash Settlement Amounts in the Gross Settlement Fund shall be returned as provided in ¶ 28 above.

33. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims.

Accordingly, Lead Plaintiffs and Defendants agree not to assert in any forum that the litigation was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action. The parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

34. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

35. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

36. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Co-Lead Counsel and enforcing the terms of this Stipulation.

37. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

38. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

39. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

40. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

41. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Georgia without regard to conflicts of laws, except to the extent that federal law requires that federal law governs. Nothing in this Paragraph 40 shall be construed to contradict the fact that the escrow agreement reflected in Exhibit C shall be governed by New York law.

42. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by Plaintiffs' Co-Lead Counsel or counsel for the Defendants; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

43. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

44. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

45. Plaintiffs' Co-Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Order for Notice

and Hearing, the Stipulation and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

Dated: May 4, 2009

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- AND -

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**CERTIFICATION**  
**PURSUANT TO 17 CFR 240.13a-14**  
**PROMULGATED UNDER**  
**SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ian J. McCarthy, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Beazer Homes USA, 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 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) 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
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's second fiscal quarter of the fiscal year ended September 30, 2009 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 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: May 8, 2009

/s/ Ian J. McCarthy

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Ian J. McCarthy

President and Chief Executive Officer

**CERTIFICATION**  
**PURSUANT TO 17 CFR 240.13a-14**  
**PROMULGATED UNDER**  
**SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Allan P. Merrill, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Beazer Homes USA, 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 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) 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
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's second fiscal quarter of the fiscal year ended September 30, 2009 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 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: May 8, 2009

/s/ Allan P. Merrill

Allan P. Merrill

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**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned Chief Executive Officer of Beazer Homes USA, Inc. (the "Company") hereby certifies that the Report on Form 10-Q of the Company for the period ended March 31, 2009, accompanying this certification, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 8, 2009

/s/ Ian J. McCarthy

\_\_\_\_\_  
Ian J. McCarthy

President and Chief Executive Officer

The foregoing certification is being furnished solely pursuant to Rule 13a-14(b) under the Securities Exchange Act of 1934 and Section 1350 of Title 18, United States Code, and is not being filed as part of the report or as a separate disclosure document.

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

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned Chief Financial Officer of Beazer Homes USA, Inc. (the "Company") hereby certifies that the Report on Form 10-Q of the Company for the period ended March 31, 2009, accompanying this certification, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 8, 2009

/s/ Allan P. Merrill

\_\_\_\_\_  
Allan P. Merrill

Executive Vice President and Chief Financial Officer

The foregoing certification is being furnished solely pursuant to Rule 13a-14(b) under the Securities Exchange Act of 1934 and Section 1350 of Title 18, United States Code, and is not being filed as part of the report or as a separate disclosure document.